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Attached is the daily news report for June 13.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – JUNE 13, 2017

1. Interior Secretary Recommends Shrinking Borders of Bears Ears Monument

The New York Times, June 12 | Julie Turkewitz and Coral Davenport

Interior Secretary Ryan Zinke on Monday proposed significantly scaling back the borders of a national monument in southeastern Utah, in a legally unprecedented move that opponents say violates a century-old law signed by President Theodore Roosevelt.

2. 4×4 convoy transports Sand Mountain’s first restroom

The St George News, June 12 | Julie Applegate

HURRICANE – A small army of volunteers used 4×4 vehicles, trailers and military trucks to transport parts of a new composting toilet up the sand dunes to the top of Sand Mountain Sunday.

3. BLM-Utah announces Ahmed Mohsen as the new Color Country District Manager

The Emery County Progress, June 12 | Press Release

SALT LAKE CITY, Utah – In keeping with the Administration’s goals of better serving state and local communities, Bureau of Land Management (BLM) Utah State Director Edwin Roberson today announced the selection of Ahmed Mohsen as the new Color Country District Manager.

4. Snakes out earlier this year

The Emery County Progress, June 12 | Terry Messmer, Utah State University Extension Wildlife Specialist

Ask an Expert – Eight Things You Should Know

Unseasonably warm temperatures this year have caused snakes to emerge early from hibernation.



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5. Trimming monument in Utah pleases Republicans, angers tribes

The Washington Post, June 13 | Brady McCombs and Matthew Daly, AP

SALT LAKE CITY — Interior Secretary Ryan Zinke's recommendation to downsize the new Bears Ears National Monument in Utah was applauded by the state's top Republican leaders but marked a stinging setback for a coalition of Western tribes that pushed for protection of lands they consider sacred.

6. NATIONAL MONUMENTS: Utah lawmakers in no rush to file Bears Ears legislation

E & E News, June 13 | Jennifer Yachnin

Though Interior Secretary Ryan Zinke's recommendation to shrink the Bears Ears National Monument hinges on legislative follow-up, Utah lawmakers indicated yesterday they aren't teeing up to file related bills right away.

7. Fast start to fire season

The Spectrum, June 13 | David DeMille

Huddled together for a morning briefing between sets of cubicles, wildland firefighters with the Color Country Interagency Fire Center in Cedar City heard last week a common forecast for early June in southwestern Utah — hot, dry and windy.

8. EPA had no rules for working at risky mines when spill tainted Utah rivers, investigators say

The Salt Lake Tribune, June 12 | Dan Elliott, AP

Denver • The U.S. Environmental Protection Agency had no rules for working around old mines when the agency inadvertently triggered a massive spill from a Colorado mine that polluted rivers in Utah and two other states, government investigators said Monday.



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9. NATIONAL MONUMENTS: Key Dem asks Zinke for Bears Ears comments, meetings info

E & E News, June 13 | Jennifer Yachnin and Kellie Lunney

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, is pressing Interior Secretary Ryan Zinke to release the details of individual meetings he held in Utah following his recommendation to President Trump to shrink the state's Bears Ears National Monument.

E&E/NATIONAL NEWS – TOP STORIES

1. New threats to public lands endanger America's unique wildlife corridors

The Guardian, June 12 | Oliver Milman

The life of a Wyoming mule deer is a tough one. In order to survive, thousands of the deer undertake an arduous 150-mile migration twice a year to find food. Manmade and natural hazards abound on this two-month trek.

2. Interior Department Enhances Program to Deter Drones from Wildfires

Unmanned-Aerial.com, June 13 | Betsy Lillian

Building on recent initiatives to prevent privately operated unmanned aircraft systems (UAS) from interfering with federal, state and local wildland firefighting, the U.S. Department of the Interior (DOI) is expanding its wildfire location data-sharing program for 2017.

3. Interior Department Scrubs Climate Change From Agency Website. Again.

The Huffington Post, June 13 | Nick Visser

The Department of the Interior has removed almost all mentions of climate change from an agency website documenting efforts to address the phenomenon within government programs for Native Americans.



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4. PUBLIC LANDS: Advocates go to court as Trump unwinds climate policy

E & E News, June 13 | Ellen M. Gilmer

In a platter of pending challenges to fossil fuel development on public lands, environmentalists in the West see an opportunity to corner the Trump administration into taking a closer look at climate impacts.

5. LAW: Law pros urge court to continue fracking rule case

E & E News, June 13 | Ellen M. Gilmer

Dozens of law professors are urging a federal court to move ahead with a legal battle that calls into question the federal government's authority to regulate hydraulic fracturing.

6. LANGUAGE: Trump started using 'dominance.' Now his Cabinet is

E & E News, June 13 | Brittany Patterson

"Energy independence" is out, and "energy dominance" is in.

Trump administration officials are using a new term to describe America's energy policy that aggressively pushes past the decades-old aspiration in the United States to break free from its addiction to imported energy.

7. SAFETY: Colo. may tighten pipeline testing, impose other requirements

E & E News, June 13 | Mike Lee

Colorado oil and gas regulators are considering tougher pipeline testing rules, a mapping requirement and leak surveys using drones or ground vehicles in the wake of an oil-field-related explosion that killed two people.

8. SAGE GROUSE: Key habitat rarely overlaps with energy potential — report

E & E News, June 13 | Jennifer Yachnin

A new analysis of greater sage grouse habitat across seven Western states shows little overlap with areas with the potential for energy development, according to a report released today by Backcountry Hunters & Anglers.



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9. **ADVOCACY: Gas industry unveils campaign to counter activist 'assaults'**

E & E News, June 13 | Hannah Northey

The natural gas industry has launched a national campaign beginning in Connecticut and Virginia to counter a growing "keep it in the ground" grass-roots movement aimed at halting the spread of gas production, infrastructure and exports.

10. **PUBLIC LANDS: Advocates go to court as Trump unwinds climate policy**

E & E News, June 13 | Ellen M. Gilmer

In a platter of pending challenges to fossil fuel development on public lands, environmentalists in the West see an opportunity to corner the Trump administration into taking a closer look at climate impacts.

11. **APPROPRIATIONS: Shutdown may be 'right outcome' — Mnuchin**

E & E News, June 13 | George Cahlink

The Trump administration is not ruling out closing federal agencies this fall if it can't reach a spending accord with Congress.



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UTAH – FULL STORY

1. Interior Secretary Recommends Shrinking Borders of Bears Ears Monument

The New York Times, June 12 | Julie Turkewitz and Coral Davenport

Interior Secretary Ryan Zinke on Monday proposed significantly scaling back the borders of a national monument in southeastern Utah, in a legally unprecedented move that opponents say violates a century-old law signed by President Theodore Roosevelt.

Bears Ears National Monument is a 1.3-million-acre conservation area that was designated by President Barack Obama in his final days in office. President Trump had called for a review of that decision, and Mr. Zinke's recommendation is being watched closely as an indicator of how the Trump administration will treat public lands.

Mr. Zinke made his recommendation in a report that also requests Congress give local tribes the authority to co-manage "designated cultural resources" within the monument's new boundaries. But he suggests that the president hold off on a final decision on the region until a review of 26 other monuments is complete in late August.

The Bears Ears designation was supported by environmentalists and the leaders of many native tribes in the region, including the Navajo Nation, but was opposed by Utah's governor, the state's congressional delegation, and some local residents who said they did not want tighter federal restrictions on land near their homes.

In a statement, Mr. Zinke said monument designation was "not the best use of the land." Mr. Zinke recommended that Mr. Trump roll back the boundaries to protect only areas that include historic and prehistoric structures, such as archaeological sites and remains of dwellings.

The monument, as it stands, is a vast canyon region of red rocks named for two towering buttes called the Bears Ears. It is home to some 100,000 archaeological sites.

The Antiquities Act, signed by Roosevelt in 1906, gives presidents the authority to protect designated areas as public monuments. In the century since its passage, presidents have used the law to protect millions of acres of public lands, including the Grand Canyon and the Muir Woods in California.



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In recent years, however, conservative lawmakers have criticized Democratic presidents for what they view as overuse of the act. The move to protect Bears Ears was particularly controversial because of the monument's size; it is more than 2,000 square miles, four times larger than Canyonlands National Park, the largest national park in Utah.

But no president has ever used his authority to eliminate or drastically reduce the size of a monument. (Presidents have on occasion modified monuments designated by their predecessors.)

Mr. Zinke declined to quantify the exact area of the proposed smaller monument, but said that the new boundaries should be limited to "the smallest area compatible" with the management of those sites.

"These recommendations were not made in a bubble in Washington, D.C.," Mr. Zinke said in a phone call with reporters. "They were made after extensive on-the-ground consultation in Utah."

Farmers, ranchers, and the oil and gas industry have urged the Utah congressional delegation to push for a rollback of the protected areas so they could have access to the land for development.

But opponents of the boundary reductions said that Mr. Zinke's description of the area that would still be eligible for protection appeared to account only for a small fraction of the acres designated by Mr. Obama.

"If you look at a map, that area is only about 5 percent of the monument area," said Adam Sarvana, a spokesman for Democrats on the House Natural Resources Committee.

"It seems like what they're describing is a few steps on a boardwalk arcade, a few isolated areas, rather than a professionally conserved landscape the way national monuments are typically designated," Mr. Sarvana said.

"Make no mistake: Unilaterally shrinking the boundaries of Bears Ears National Monument would not only be a slap in the face to the five sovereign tribes who share sacred ties to this land, it would violate both the Antiquities Act and the separation of powers doctrine," said Heidi McIntosh, a lawyer for the advocacy group Earthjustice. "The president simply lacks the authority to change a national monument designation under the Antiquities Act, our country's century-old law that protects some of our most scenic and historic landscapes."



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Mr. Zinke also recommended that Congress pass legislation to designate some areas within the existing monument as national recreation areas or conservation areas, which have different levels of protection.

The monument has emerged as a lightning rod in the fight over control of land in the West. Mr. Obama set it aside on Dec. 28. But in late April, Mr. Trump signed an executive order directing Mr. Zinke to review the boundaries of 27 areas protected under the Antiquities Act.

Mr. Zinke's recommendation to scale back the boundaries of Bears Ears does not represent the administration's final action on the matter, but it does appear to signal that the Trump administration intends to explore the idea of reducing the size of other protected areas.

"It's a victory," Hanson Perkins, 32, who lives near Bears Ears National Monument, said of the announcement. He is hoping to drill for oil in the area. "There is enough local outrage about it, they could rescind it and be within reason."

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2. **4x4 convoy transports Sand Mountain's first restroom**

The St George News, June 12 | Julie Applegate

HURRICANE – A small army of volunteers used 4x4 vehicles, trailers and military trucks to transport parts of a new composting toilet up the sand dunes to the top of Sand Mountain Sunday.

The 23,000 pounds of components for the new restroom were ferried up the mountain by 31 volunteers in 22 vehicles, including two M939 5-ton military trucks.

"This will be the first – but not the last – facility of this type on Sand Mountain," Utah Public Lands Alliance board member and project head Kim Pollock said.

The Alliance, also known as UPLA, is a St. George-based land use group dedicated to preserving public lands. The 501(c)(3) nonprofit group has been fighting a proposed land swap that would affect trail use in the Sand Mountain off-highway vehicle area.



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UPLA financed the \$58,000 purchase and installation of the toilet with a grant from the Bureau of Land Management recreation fund, which is funded through participant fees for local events such as the Winter 4×4 Jamboree, Trail Hero and others.

The new composting toilet will be assembled and installed near Competition Hill to serve the off-road, dirt bike and the all-terrain vehicle communities that use the Sand Mountain Off-highway Vehicle Area near Sand Hollow State Park.

“Getting the sub-assemblies for this restroom up to a location at the top of the Hurricane Sand Dunes was a daunting project,” Utah Public Lands Alliance President Gil Meacham said. “We were thrilled that local clubs and organizations responded to our call for volunteers.”

The area is officially the Sand Mountain Special Recreation Management Area, but is also known as the Hurricane Sand Dunes or simply “Sand Hollow.”

The composting toilet was prefabricated by Advanced Composting Systems in the company’s Montana plant and then shipped to St. George on a 30-foot trailer. Construction will begin June 12 and is expected to be completed by approximately June 22.

Advanced Composting Systems has built many similar restrooms in remote locations including Toroweep Point and several other trails on the North Rim of the Grand Canyon, Meacham said.

The two-story composting toilet building comes with solar panels, a cistern to collect rainwater, electric fans, motion lights and a porch.

The toilet is designed to use biologic activity to completely break down all human waste into a completely non-toxic residue that can be used as fertilizer when emptied. There will be no odor, and the toilet will not need to be emptied for one to two years.

UPLA has been working with BLM to identify suitable locations in the Sand Mountain area for up to five more toilets.

“We hope that the local recreation enthusiasts will continue to appreciate having these restrooms available in the remote areas on Sand Mountain,” Meacham said.

Composting toilets are ideal for remote locations; with proper usage, they require much less maintenance and are far more ecologically sound than pit toilets.



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Eight different companies and groups responded to the call for help, Meacham said, including UPLA, Desert Roads And Trails Society, Winter 4×4 Jamboree, Armstrong Radiator, Southwest Adventure Group, Just For Fun Motorsports and Eminence Offroad.

A total of 154 volunteer hours were contributed during the project. Gary Jones provided the two M939 5-ton trucks from his private collection of military vehicles.

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3. BLM-Utah announces Ahmed Mohsen as the new Color Country District Manager

The Emery County Progress, June 12 | Press Release

SALT LAKE CITY, Utah – In keeping with the Administration’s goals of better serving state and local communities, Bureau of Land Management (BLM) Utah State Director Edwin Roberson today announced the selection of Ahmed Mohsen as the new Color Country District Manager.

Mohsen, who previously served as the field manager for the Price Field Office, will report to his new position on July 9. He has over 25 years of federal service, working with the BLM and the U.S. Forest Service.

“I am proud to announce Ahmed Mohsen will serve as the new Color Country District Manager,” Roberson said. “Ahmed has a strong track record of working with local and state agencies, industry, and citizens in the management of our public lands and natural resources. I have great confidence in the experience and professionalism Ahmed brings into this vital role.”

Mohsen began his federal career in 1986 where he served in the BLM-Nevada’s Battle Mountain and Tonopah field offices. He earned degrees in geology and geophysics from the University of Nevada, Reno. Mohsen succeeds Tooter Burdick, who served as the interim Acting District Manager.

The Color Country District includes public land in the southwest quadrant of Utah, managed by the Cedar City, St. George, Kanab, and Richfield field offices and the Henry Mountains Field Station in Hanksville. The Richfield Field Office includes public land managed in Sanpete, Sevier, Piute, Wayne and Garfield counties.



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4. Snakes out earlier this year

*The Emery County Progress, June 12 | Terry Messmer, Utah State University Extension
Wildlife Specialist*

Ask an Expert – Eight Things You Should Know

Unseasonably warm temperatures this year have caused snakes to emerge early from hibernation.

So be aware that just because you didn't encounter a snake on your outdoor adventure last spring at this time doesn't mean you won't this spring.

Utah is home to 31 species of snakes. Of these, only seven are venomous and are commonly called pit vipers because of the pit located between their nostrils and eyes. Most pit vipers found in Utah have tails with a series of rattles, hence the name rattlesnake. The venomous snake species in Utah includes the sidewinder, speckled rattlesnake, Mojave rattlesnake, Western rattlesnake, Hopi rattlesnake, midget-faded rattlesnake and the Great Basin rattlesnake. The most commonly encountered of these is the Western rattlesnake.

Because most snakes in Utah are non-venomous, most human-snake encounters are generally not dangerous. However, if you encounter a venomous snake and are bitten, the consequences could be serious, so it is important to know the difference between venomous and non-venomous snakes. Consider this information.

* If you encounter a snake, your best strategy is to leave it alone. Every year, hundreds of want-to-be herpetologists and snake charmers are bitten when they try to capture or kill a snake. Even dead snakes have been known to bite by reflex action. More than 7,000 venomous snakebites are reported every year in the United States. Of these, between nine and 15 are fatal. More than half of the reported bites were a result of someone trying to handle or kill the snake. It is always best to leave the area if you encounter a venomous snake. This will greatly reduce your risk of being bitten.

* As a general rule, poisonous snakes have elliptical pupils and a single row of scales on the underside of the tail. Non-poisonous snakes have round pupils and two rows of scales on the underside of the tail.



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* When rattlesnakes are encountered or disturbed, the rapid vibration of their tails will make a characteristic rattling sound to warn the intruder of their presence. However, not all rattlesnakes will “rattle” when disturbed. For this reason, when you are in rattlesnake country, you must pay close attention to where you walk, sit and place your hands. Rattlesnakes can be found throughout Utah in sagebrush, pinyon-juniper woodlands, sand dunes, rocky hillsides, grasslands and mountain forests. They occur at elevations that range from sea level to timberline.

* If you hear a rattlesnake “rattle,” stand still until you can locate where the sound is coming from. Do not try to jump or run. If you do, you may end up within the snake’s striking range.

* Snakes are classified as non-game animals and are protected by Utah state laws. A person cannot collect or possess a live wild snake without receiving a Certificate of Registration from the Utah Division of Wildlife Resources. When there are human, domestic pet and livestock safety concerns, a venomous snake may be killed without a certificate.

* Non-venomous snakebites are harmless. The only concern may be for potential infection. If bitten, clean and sterilize the wound much like you would a cut or abrasion. Bites from venomous snakes will almost instantly show signs of swelling and discoloration of the surrounding tissue. Other symptoms include a tingling sensation, nausea, rapid pulse, loss of muscle coordination and weakness. Also, bites from rattlesnakes will show two characteristic fang marks (punctures) as well as other teeth marks.

* If someone has been bitten by a venomous snake, there are several things that should not be done. Do not allow the person to engage in physical activity such as walking or running. Carry the person if he or she needs to be moved. Do not apply a tourniquet to the area above the wound, and do not apply a cold compress to the bite area. Do not cut into the bite. Do not give the victim stimulants or pain medications unless instructed by a physician, and do not give the victim anything by mouth. Do not raise the bite area above the level of the heart, and do not try to suction the venom, as doing so may cause more harm than good.

* All venomous snakebites should be considered life threatening. When someone has been bitten by a venomous snake, time is of the essence. If possible, call ahead to the emergency room so anti-venom can be ready when the victim arrives. Until then, keep the victim calm, restrict movement and keep the affected area below heart level to reduce the flow of venom. Wash the bite area with soap and water. Remove any rings or constricting items, as the affected area will swell. Cover the bite with clean, moist dressing to reduce swelling and discomfort. Monitor the



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victim's vital signs (pulse, temperature, breathing, blood pressure). If there are signs of shock, lay the victim flat and cover with a warm blanket. Get medical help immediately. Bring the dead snake in for identification if this can be done without further risk of injury.

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5. **Trimming monument in Utah pleases Republicans, angers tribes**

The Washington Post, June 13 | Brady McCombs and Matthew Daly, AP

SALT LAKE CITY — Interior Secretary Ryan Zinke's recommendation to downsize the new Bears Ears National Monument in Utah was applauded by the state's top Republican leaders but marked a stinging setback for a coalition of Western tribes that pushed for protection of lands they consider sacred.

Zinke, a former Republican congressman from Montana, said Monday he's committed to make sure Native American culture is preserved and vowed to push for Congress to approve legislation granting tribes legal authority to "co-manage" some of the Bears Ears site.

He said he discussed the idea with the tribes and that they came away happy with the plan.

"I have enormous respect for tribes," Zinke said. "This is working hand-to-hand with the tribes as I said I would do."

Several tribal leaders balked at that characterization, saying they weren't briefed on the plan and consider the idea to be an attempt to temper their criticism. They joined environmental groups in vowing to file lawsuits if President Donald Trump accepts the recommendation and shrinks the monument.

"This was really just a cynical effort to distract Indian country from the devastating blow of reducing the size of the monument," Natalie Landreth, an attorney at the Native American Rights Fund. "Bears Ears is not for sale. It's not up for trade."

Ethel Branch, Navajo Nation attorney general, said the lands within Bears Ears are essentially holy lands that hold critical plants, minerals and powers that members of many tribes rely on to heal and strengthen themselves.

"Protection of these lands are non-negotiable," Branch said.



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Zinke made the recommendation as part of an interim report to Trump on the scenic swath of southern Utah with red rock plateaus, cliffs and canyons.

Trump signed an executive order in April directing Zinke to review the designation of 27 national monuments on federal lands, calling the protection efforts “a massive federal land grab” by previous administrations.

Trump and other Republicans have singled out former President Barack Obama’s designation of Bears Ears, calling it an unnecessary layer of federal control that hurts local economies by closing the area to new energy development. They also say it isn’t the best way to protect the land.

Zinke said he will issue a final report in late August, when he is due to make recommendations on Bears Ears and 21 other national monuments on federal land in 11 states, including Grand Staircase-Escalante in Utah, Giant Sequoia in California, Nevada’s Basin and Range and Katahdin Woods and Waters in Maine.

The review also targets five marine monuments in the Atlantic and Pacific oceans.

Zinke toured Bears Ears last month on foot, horseback and helicopter and met with Utah Gov. Gary Herbert and other state leaders who opposed Obama’s December designation of Bears Ears monument.

“There is no doubt that it is drop-dead gorgeous country and that it merits some degree of protection, but designating a monument ... where multiple-use management is hindered or prohibited is not the best use of the land,” Zinke said.

Zinke did not specify how much of the 1.3 million acres should be trimmed.

Sen. Orrin Hatch, R-Utah, called Zinke’s announcement “an unquestionable victory for Utah.”

Noting the contentious nature of the monument designation, Zinke called on Congress to approve a land-management bill for Bears Ears and other federal lands. The Republican-controlled Congress has failed to approve a significant public lands bill in recent years, but Zinke said that was because of veto threats by Obama.



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Utah rancher Zeb Dalton was among monument critics who wanted Zinke to recommend rescinding the entire monument. He and other cattle ranchers fear that their grazing rights will be impacted even though the government had said the monument designation will allow grazing to continue.

Dalton said he'll await the new boundaries to find out how much of his land is included.

"Everybody says it needs to be protected; it's already protected," said Dalton, while adding. "I guess reducing the size is better than nothing."

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6. NATIONAL MONUMENTS: Utah lawmakers in no rush to file Bears Ears legislation

E & E News, June 13 | Jennifer Yachnin

Though Interior Secretary Ryan Zinke's recommendation to shrink the Bears Ears National Monument hinges on legislative follow-up, Utah lawmakers indicated yesterday they aren't teeing up to file related bills right away.

The Beehive State's all-GOP congressional delegation told E&E News that it was either still reviewing Zinke's report to President Trump or waiting for a final assessment of dozens of national monuments due in late August.

Molly Block, a spokeswoman for House Natural Resources Chairman Rob Bishop (R-Utah), said the chairman would wait to see the final report, given that the five-page [document](#) Zinke provided to the White House did not include specific maps or acreages.

But she added, "We're confident in the likelihood of passage due to commitments from the entire Utah delegation, tribes and the Trump administration.

"As the interim report says, Congress will designate lands within original footprint as either national conservation areas or national recreational areas after the monument has shrunk," Block added.



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In his report to Trump, Zinke encouraged the president to use the "appropriate authority" under the Antiquities Act to reduce the 1.35-million-acre monument's boundaries by an unspecified amount (E&E News PM, June 12).

In addition, Zinke asked Congress to create "more appropriate conservation designations" by establishing either national recreation or national conservation areas on some of the same land. He also asked Congress to clarify management practices.

Lastly, Zinke called on Congress to create tribal co-management of cultural areas within the shrunken monument.

In a press conference with reporters yesterday, Zinke appeared most confident of legislation to create a new co-management template for the monument, suggesting such a bill could be moved before he is finished with his review in August.

"At the end of it, what I expect is, I expect to have a bill that's at least agreed upon, perhaps even through committee and then a commitment by Congress on both sides of the aisle," Zinke said.

He later added: "Between now and final report we'll provide some clarity, and the final report will be much more detailed and it will give a kind of holistic approach."

Although Congress has previously failed to pass legislation protecting the Bears Ears area via the Utah Public Lands Initiative, Zinke remained certain that it could do so in the current session, noting that Trump would exert pressure on lawmakers.

Block said that Bishop, who sponsored the PLI with retiring Rep. Jason Chaffetz (R-Utah), is also confident about reaching a legislative solution.

Bishop "remains committed to ensuring protections and allowing tribes the ability to co-manage the land. Any legislation on Bears Ears will first and foremost be about co-management," Block said.

Chaffetz, who will leave the House at the end of this month, praised Zinke's proposed reductions but did not indicate he would seek to introduce legislation or urge his successor to do so before leaving Capitol Hill.



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"A locally driven, legislative approach is the best way to strike a balance among the people who love and use the vast acreage surrounding the Bears Ears," Chaffetz said. "Now it is up to Congress to find a win-win solution that will create a balance between conservation and use."

Utah Rep. Chris Stewart (R) urged Zinke to find a balance of "conservation, recreation and economic development" as he reviews more than two dozen monuments, but likewise did not immediately offer to introduce the needed legislation.

"Secretary Zinke's recommendation takes major steps to reach this conclusion and to correct the actions of the previous administration. This is a win-win scenario for the region," Stewart said.

A spokesman for Utah Sen. Mike Lee (R) told E&E News the lawmaker would not be introducing legislation before the White House completes its review.

"But we definitely look forward to working on the issue once we know what the final order is," said spokesman Conn Carroll.

Meanwhile, Sen. Orrin Hatch (R-Utah) called the proposed changes an "unquestionable victory" but did not respond to requests for comments on the necessary legislation.

Utah Rep. Mia Love (R) did not respond to a request for comment.

'Divorced from reality'?

Congressional Democrats in Western states immediately vowed to fight any efforts to amend the monument or the Antiquities Act of 1906, which allows presidents to designate federal lands as monuments to protect areas of historical, cultural or scientific significance.

"House Republicans can probably pass whatever they want as long as they keep the tea party satisfied, but this national monuments efforts is so divorced from reality that it's going to run out of steam," said Adam Sarvana, a Democratic spokesman for the House National Resources Committee.

He pointed to the Trump administration's struggle to find legislative success during the first few months in office, adding, "The president will probably be as helpful on this as he has been in repealing the Affordable Care Act or getting an infrastructure bill together."



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Critics of the monument review have also highlighted the failure to move to the PLI, including the fact that it was not introduced in the Senate.

New Mexico Sen. Tom Udall, the ranking Democrat on the Senate Interior Appropriations Subcommittee, disparaged efforts to roll back the monument as "deeply disrespectful and insulting."

"The administration doesn't value the Bears Ears, the tribes or the million-plus people who wrote in to support it," Udall said.

He added that Trump lacks the authority to reduce the monument under the Antiquities Act, a point that Democrats and conservationists have regularly highlighted in recent months, although a minority of conservative legal scholars have said a president may do so.

"This decision will be challenged in court, and if they put this plan before Congress, I will fight him every step of the way," Udall said.

He also accused the Trump administration of working to privatize public land, an accusation that Zinke has repeatedly disputed during his tenure at Interior.

"I won't stand by and let the Trump administration open the door to selling our public lands off to the highest bidder," Udall said.

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7. **Fast start to fire season**

The Spectrum, June 13 | David DeMille

Huddled together for a morning briefing between sets of cubicles, wildland firefighters with the Color Country Interagency Fire Center in Cedar City heard last week a common forecast for early June in southwestern Utah — hot, dry and windy.

The entire area was under a “red flag” warning, explained Randy Turrill, the center’s fire operations supervisor and a 30-year veteran of fighting wildfires, taking a serious tone as he addressed his team of younger crew members.



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All the rain that helped make for an unusually green spring has left the area with an abundance of cheatgrass, smooth brome and other annual grasses — or as firefighters often refer to them, “fine fuels.”

Similar conditions have resulted in some of the area’s largest fires in recent years. In 2003, the Apex Fire west of St. George burned more than 30,000 acres and, in 2006 and 2007, wildfires burned huge swaths of western and southern Utah.

Fine grasses were the primary fuel of the Milford Flat fire in 2007, which grew to more than 360,000 acres as it blew eastward out of the desert near Milford and eventually crossed Interstate 15, causing a fatal accident that killed two motorcyclists and forced truckers to abandon their trailers on the side of the road as they fled the oncoming flames. It burned more than 567 square miles, the largest fire in Utah’s recorded history.

“Will we get more fires? I don’t know,” Turrill said. “That depends on the moisture and the lighting and the timing. We just need to make sure we’re prepared.”

Preparation is the main topic of conversation among the crew members at the Color Country center, a dispatch office cooperatively run by the Bureau of Land Management, U.S. Forest Service, National Park Service, Bureau of Indian Affairs and the State of Utah Forestry, Fire and State Lands.

At any given time, crews can be sent out to handle wildland fires anywhere the country, and because they’re based in the middle of the western U.S.’s wide swaths of public lands, at the junction of wild Great Basin forests and open deserts of the Southwest, they can almost always expect a busy fire season.

Just hours after Turrill’s talk on Thursday, a pair of crews are placed on standby, told to ready for orders to head to an active fire in Arizona.

A trio of new firefighters, all 21 or younger, discuss the possibility of heading out on their first real fire call.

Austin Rohrer, an 18-year-old from Cedar City whose father also fought fires, said he’s anxious to get his first chance, knowing the experience will be very different than fire school or training exercises.



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“It’s a lot of hard work but I’ve learned a lot and gained a lot of skills,” he said.

Jonah Lindsey, from Tucson, and Kelton Stephens, from Nibley, both 21, say they took on firefighting to earn money for college. But they also feel a sense of responsibility.

“It gives you a certain sense of importance. What you do can actually affect people, make a difference,” Lindsey said.

Nearby, engine captain Sklyer Dalton, 34, was talking with other supervisors about conditions.

The last four years have been relatively quiet as far as major fires go, mostly thanks to a combination of fortuitous weather and sheer luck.

In that time, fire officials have tried to take advantage by training more firefighters, working to develop new cooperative plans with local firefighting entities and by proactively trying to create more “fire-adapted communities” better suited to combating major fires.

In addition, crews have been working to clear out overgrown vegetation in some of the region’s more fire-prone areas, strategically setting up fire lines and giving themselves a better chance of making sure that major fires don’t lead to catastrophic damage.

Still, the potential is there for major fires, especially given the unpredictability of the human population and the various ways they tend to get the flames started.

All the high grass makes it more likely that a fire could start along the sides of roadways, for example. Some of the causes are obvious, like cigarette butts being thrown from windows, but others are less so, such as sparks thrown off roadways by trailer safety chains or the heat from a vehicle’s undercarriage starting a blaze when a car is parked over long grass.

“Everybody has the same kind of feeling like it could happen any time,” Dalton said. “I don’t think there’s anything to do but prepare for it.”

The next night, two fires were reported along the wooded mountainsides north of Pine Valley. The Grass Valley Fire and North Fire grew to more than 500 combined acres, jumping across pinyon and juniper trees along the rough terrain.



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More than 85 firefighters were sent to battle the flames, including multiple engines, air tankers and helicopters out of Cedar City. One firefighter was transported to a local hospital by helicopter after suffering a heat-related illness.

Fire safety information

For more information on fire safety, go online to <http://www.ffsl.utah.gov/index.php/fire> , <http://www.utahfireinfo.gov> or www.firewise.org.

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8. EPA had no rules for working at risky mines when spill tainted Utah rivers, investigators say

The Salt Lake Tribune, June 12 | Dan Elliott, AP

Denver • The U.S. Environmental Protection Agency had no rules for working around old mines when the agency inadvertently triggered a massive spill from a Colorado mine that polluted rivers in Utah and two other states, government investigators said Monday.

The agency started work on safety standards after the spill and expects to finish them Friday, investigators from the EPA's Office of Inspector General said.

An EPA-led contractor crew was excavating at the inactive Gold King Mine in southwestern Colorado in 2015 when a debris pile blocking the entrance collapsed. That released 3 million gallons of wastewater tainted with iron, aluminum, lead, copper, arsenic and other heavy metals into rivers in Colorado, New Mexico and Utah. Native American tribes in those states were also effected.

State, tribal and federal officials have criticized the EPA for not taking more precautions, such as drilling into the mine to determine how much water was pent up inside.

Like previous investigations, the inspector general's report said the EPA knew the Gold King — one of scores of inactive mines in the mountains around Silverton, Colo. — posed a risk of a blowout. Even before the Aug. 5, 2015, spill, the mine was spewing out 200 gallons of wastewater per minute, or about 3 million gallons every 10 days, the report said.



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Despite the risk, the EPA had "no specific standards for the level of care to be taken or how to assess a collapsed mine portal," the report said. It said the EPA gives its employees in charge of such operations, known as on-scene coordinators, wide latitude in deciding how to work on old mines, and that both coordinators assigned to the Gold King were experienced and highly trained.

The inspector general's report disputed one key element in a previous review of the Gold King spill, by the U.S. Bureau of Reclamation, which was assigned to conduct an independent, outside assessment of what went wrong.

The Bureau of Reclamation said the EPA-led crew was attempting to insert a drain pipe through a debris pile blocking the entrance of the mine, and that the on-scene coordinator had pushed that work ahead despite the reservations of the other on-scene coordinator, who was not present that day.

But the EPA inspector general said the crew was excavating loose rock around the mine entrance to see if the underlying rock was solid, not trying to insert a drain pipe. The inspector general said the crew did only work that had been planned for that day and was not rushing the schedule.

Bureau of Reclamation spokesman Peter Soeth said he could not comment on the discrepancy, but he said the bureau stands by its version of events. EPA officials did not immediately respond to a request for comment.

The inspector general said the Bureau of Reclamation engineer who lead the review "created the appearance of a lack of independence" because he had worked with EPA on plans for other mines near the Gold King. The engineer, who was not identified by name, was also scheduled to consult with EPA on the Gold King just 10 days after the blowout, and had gone to the scene to help stabilize the mine afterward.

But the inspector general concluded the Bureau of Reclamation's report was still independent. "Bureau of Reclamation reviewers indicated they were able to do their work without any interference," the inspector general report said.

Soeth said the bureau disclosed the engineer's activities in its review, released in October 2015, and that bureau officials had no doubt about his independence.



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The EPA inspector general also reviewed how the agency went about notifying state, local and tribal authorities after the spill. Some officials complained they learned about the spill hours afterward, and others said they never heard directly from the EPA.

The inspector general concluded the EPA had complied with all of its own rules for notifying downstream river users, but noted that the agency had taken steps to improve communications.

The report was at least the sixth review of the Gold King spill, including three by the EPA, one by the Bureau of Reclamation and one by federal prosecutors, based on information from the EPA inspector general.

The U.S. attorney's office in Denver declined to charge anyone in connection with the spill, even though the EPA said last year it gave prosecutors evidence that an EPA employee may have violated the Clean Water Act and given false statements. The employee's name wasn't released.

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9. NATIONAL MONUMENTS: Key Dem asks Zinke for Bears Ears comments, meetings info

E & E News, June 13 | Jennifer Yachnin and Kellie Lunney

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, is pressing Interior Secretary Ryan Zinke to release the details of individual meetings he held in Utah following his recommendation to President Trump to shrink the state's Bears Ears National Monument.

In a letter to Zinke, Grijalva also asked the Interior leader to detail public comments submitted about Bears Ears to Regulations.gov, including a "tally of positive and negative submissions."

After a 45-day review, Zinke recommended Saturday that the White House slash the size of the 1.35-million-acre monument and urged Congress to redesignate some of that land to either national conservation or national recreation areas (E&E News PM, June 12).

But Zinke did not provide specifics on how much land should be removed from the monument, stating he will do so when a review of 26 other monuments is due for submission Aug. 24.



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"As you prepare to make recommendations on the future of beloved national monuments, the American public deserves to know and understand the basis for your decisions," Grijalva wrote. "I look forward to your response."

The Arizona lawmaker requested Zinke provide a detailed itinerary and list of meetings from his visit to Utah in early May (Greenwire, May 11).

He also sought Zinke's view on the more than 100,000 submissions made on the website Regulations.gov. Conservation groups have reported those comments leaned heavily in favor of retaining the Bears Ears monument that President Obama created in the final weeks of his presidency (Greenwire, May 26).

Interior did not respond to a request for comment by publication time.

In a separate statement, Grijalva said he sought House Natural Resources Chairman Rob Bishop's (R-Utah) signature on his letter, given that the White House has reportedly told its agencies to ignore oversight requests from Democrats.

"If this 'review' process is about transparency and public accountability, let's see some transparency and public accountability from the Interior Department," Grijalva said in the statement. "Secretary Zinke hasn't even spent two months on this, and he's already urging the president to redraw Bears Ears National Monument. ... If he wants to claim public support for this poorly thought-out scheme, he should explain what public comments have actually been submitted, what the ratio of support to opposition is for Bears Ears, and tell us who he's spoken with in advance of this recommendation."

Bishop told E&E News today, however, that he was unaware Grijalva had invited him to sign the missive. The Democratic lawmaker's staff acknowledged the request was submitted to Bishop's aides.

"I didn't know there was a letter," Bishop said. "They never talked to me about a letter."

He noted that such missives are common political tactics for either party when in the minority of the House, noting that past Democratic administrations had likewise ignored his requests.



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"It happened to me when I was in the minority. Hell, I didn't get any responses from [former Obama administration Interior Secretary] Sally Jewell," Bishop said. "The kinds of things we got were always slow, always late, always redacted. So I understand that, I get that."

Nonetheless, Bishop said the administration should respond to members of both parties, so long as requests are not merely a "fishing expedition."

"There's a better way of interacting between the administration and the legislative body, but there's a whole level of activities where that interface should be better," Bishop said. "The agencies should come to the Congress with the rules before they actually implement them, too."

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E&E/NATIONAL NEWS – FULL STORY

1. **New threats to public lands endanger America's unique wildlife corridors**

The Guardian, June 12 | Oliver Milman

The life of a Wyoming mule deer is a tough one. In order to survive, thousands of the deer undertake an arduous 150-mile migration twice a year to find food. Manmade and natural hazards abound on this two-month trek.

"It's not just about getting from point A to B, they have to forage all along the way," said Matt Kauffman, a University of Wyoming zoologist. "These animals are slowly starving to death all winter. If winter is long enough or they are held up, the animals will die."

Migrating animals can wander onto highways and be flattened by trucks, or tumble through frozen lakes. Fences, mining operations and other obstacles also provide a challenge. But for the mule deer there is no choice – they must follow what Kauffman calls the "green wave" of young, lush vegetation from the mountainous greater Yellowstone area to the brush of Wyoming's interior as the seasons change. They either move or starve.

This Red Desert to Hoback migration is the longest in the contiguous US and, despite occurring for thousands of years, was only fully discovered by researchers in 2011. Its epic length is rivaled only by the "path of the pronghorn", a journey that takes America's fastest land mammal on a biannual trudge to and from Grand Teton national park in search of water.



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These migration routes take the animals through a patchwork of public and private land. The importance of publicly owned national parks was recognized long ago, but these crucial wildlife corridors linking protected areas are only starting to be understood and valued.

But the nascent movement to safeguard wildlife corridors – vital for animals as diverse as wolves, bears, elk, tortoises and ground-dwelling birds – is now at risk. In recent years congressional Republicans have pushed for federal land in the western states to be handed over for development. With Donald Trump now in the White House, these ambitions could come to fruition.

A bill put forward by Jason Chaffetz, a Utah congressman, to sell off 3.3m acres of federal land was hastily withdrawn following uproar from conservationists and the outdoor recreation industry. But with Trump voicing support for greater oil and gas drilling on public land, wildlife corridors risk being disrupted or even severed.

“When a migrating mule deer hits an energy development area, they tend to speed up or try to detour around them,” said Kauffman. “This affects their access to food and makes migrations more difficult. As these corridors become less viable, they can be lost.

“Selling off public land would risk that. We are at the infancy of understanding wildlife corridors, but we are starting to make progress. It looks like that could all be wound back.”

There may not be the tens of millions of deer and pronghorn that once roamed the western states before white settlers arrived, but these species are currently at little risk of extinction. Their abundance could be severely hit if their corridors are lost, which raises concerns for recreational hunters, as well as ecologists who study the network of life in the west.

Wolves and bears require reliable access to prey species. Unlike hooved animals that have well-worn, repeated pathways, wolves and bears disperse to adjoining lands depending on the dynamics of their groups. Young male wolves, for example, tend to leave groups in order to establish a new group elsewhere. The reintroduction of gray wolves to Yellowstone in 1995 has created a ripple effect – wolves have moved through a network of protected areas as far as Washington state.

While most land owners are happy to allow deer or elk pass through their land, wolves or bears aren't quite as welcome given their tendency to devour livestock. The population of grizzly bears



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in the Yellowstone region has rebounded six-fold since it was placed under federal protection in 1975. Surrounding states, pressured by landowners concerned about bears exiting the national park, have successfully persuaded the Fish & Wildlife Service that the species should be delisted to allow them to be hunted.

Conservationists are increasingly turning their attention to private landowners to help promote and secure wildlife corridors. In a single 20-mile search for food, a species may cross land overseen by the US Forest Service, the Bureau of Land Management and privately owned ranches.

“It’s a real mix,” said Mark Elsbree, vice-president of the Conservation Fund, which works to buy private land to avoid bottlenecks in migration routes. “Private landowners are generally interested in wildlife habitat but as the properties are sold, the generations turn over, we risk losing that connectivity. New migration routes keep coming up on our radar and we need to act upon that.”

In 2015, the Conservation Fund purchased a 364-acre property at a notorious bottleneck for the Red Desert to Hoback route, near the city of Pinedale, Wyoming. The fund then switched its attention to the greater sage grouse, known for its elaborate mating rituals and for being in the middle of an ongoing struggle between its protection and land development.

The sage grouse has been known to move up to 100 miles at a time, between its sage brush winter habitat to open meadows used to rear young. The species has lost almost half of its habitat since European settlers arrived, with 45% of its remaining domain on state and private lands.

In February, the Conservation Fund scooped up 100,000 acres of sage grouse habitat in Idaho, Wyoming and Colorado but risks remain. Senate Republicans are attempting to remove all federal involvement in sage grouse protection, which could allow the states to open up more habitat for drilling.

“The pinch points for migration typically exist on private land,” said Elsbree. “But if federal lands were to change hands, then the very platform upon which species survive will be compromised.”

Climate change provides another looming threat to wildlife corridors. Maps produced by the Nature Conservancy last year showed the stark implications for nearly 3,000 species in North



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and South America. Many are already retreating northward to cope with warming temperatures, although a pathway isn't always evident. According to a study published last year, only 41% of US land area is currently connected enough to allow species to move to more bearable climates.

Some will have nowhere to go, either hemmed in by human constructions or simply a lack of livable space. "The bottom line is that species will need to move or adapt, or die," said Brad McRae, a senior landscape ecologist at the Nature Conservancy.

"More and more people are understanding that wildlife needs protection outside distinct national parks, especially with climate change," said Elsabee. "It's important that we look at the whole system. If lands are sold and developed, we could lose some migration routes. We need to avoid that happening."

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2. Interior Department Enhances Program to Deter Drones from Wildfires

Unmanned-Aerial.com, June 13 | Betsy Lillian

Building on recent initiatives to prevent privately operated unmanned aircraft systems (UAS) from interfering with federal, state and local wildland firefighting, the U.S. Department of the Interior (DOI) is expanding its wildfire location data-sharing program for 2017.

The new service, "Current Wildland Fires," is accessible through the [Geoplatform ArcGIS Online Organization](#).

"By providing greater public access to a wider array of wildland fire location data, drone operators will 'Know Where Not To Go' in near real time," states Mark Bathrick of the DOI's Office of Aviation Services. "As the 2017 wildland fire season gets underway, this improved service should greatly reduce the incidents of drone incursions on wildfires and enhance the safety of our firefighters and the communities they work so hard to protect."



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According to the agency, the 2017 program provides location data on any wildland fire reported in the last eight days – compared to last year, when the service offered information on wildfires reported only within the previous 72 hours. The 2016 program included wildland fires reported by the DOI, the U.S. Forest Service, and two States (Alaska and Texas). However, this year’s program includes the addition of Wyoming, North Dakota and Los Angeles County. The DOI also plans to increase coverage to include more federal, state and local reported wildland fires.

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3. **Interior Department Scrubs Climate Change From Agency Website. Again.**

The Huffington Post, June 13 | Nick Visser

The Department of the Interior has removed almost all mentions of climate change from an agency website documenting efforts to address the phenomenon within government programs for Native Americans.

BuzzFeed News first noticed a webpage for the Bureau of Indian Affairs’ Tribal Climate Resilience Program, originally tasked with “mainstreaming climate change considerations into all Bureau of Indian Affairs activities,” was changed sometime over the past month. The program is now called simply the Tribal Resilience Program and has a mission statement noticeably less science-forward.

“The BIA Tribal Resilience Program provides federal-wide resources to Tribes to build capacity and resilience through leadership engagement, delivery of data and tools, training and tribal capacity building,” the site now reads.

An archive of the webpage from May 13 shows the word “climate” appearing on the page 61 times. The new page lists the word once, in a website header.

The move is not a surprising one for the department, now under the stewardship of Interior Secretary Ryan Zinke.

It has made several moves to limit or eliminate mentions of climate change from its vast array of URLs since the inauguration of President Donald Trump. The DOI’s main landing page on climate change previously listed the agency’s vast efforts to combat climate change and pointed



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to a host of troubling effects related to the issue. In April, however, the page was scrubbed of all such information and the term climate change now appears only once.

The agency has also removed images of melting glaciers and wildfires — both linked to climate change — and replaced a landing page photo of a family visiting a national park with one of a giant pile of coal.

DOI's Bureau of Indian Affairs is tasked with serving and protecting the country's 567 federally recognized tribes. But as BuzzFeed notes, the Trump administration's proposed budget for 2018 would eliminate \$9.9 million in funding for Tribal Climate Resilience Awards.

Those proposals have prompted severe backlash among some Native American communities, who have called on Congress to restore funding to climate and welfare programs, PBS Newshour reported.

The Trump administration has worked quickly to reverse almost every major environmental effort that former President Barack Obama had made. Most recently, Trump announced the United States would pull out of the landmark Paris climate accord and he tweeted his support Monday for a new coal mine in Pennsylvania.

In March, Zinke ordered the DOI to conduct a "reexamination of the mitigation and climate change policies and guidance across the Department of the Interior in order to better balance conservation strategies and policies with the equally legitimate need of creating jobs for hardworking American families."

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4. **PUBLIC LANDS: Advocates go to court as Trump unwinds climate policy**

E & E News, June 13 | Ellen M. Gilmer

In a platter of pending challenges to fossil fuel development on public lands, environmentalists in the West see an opportunity to corner the Trump administration into taking a closer look at climate impacts.



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A trio of lawsuits backed by the small but aggressive Western Environmental Law Center target oil and gas leases in Wyoming, Colorado and Utah, as well as land-use plans for the resource-rich Colorado River Valley and Powder River Basin (see sidebar).

Along with claims that the Interior Department's Bureau of Land Management failed to take a hard look at the impacts of its leasing and planning decisions, the lawsuits argue that the agency never weighed the climate effects of projects within the larger context of other BLM-approved plans for land development.

"We have all these individual data points, but they're not being aggregated in a way that is meaningful for the decision-maker on individual projects, or for the public to really understand the scope of what these emissions mean on our public lands to the broader climate crisis," said Kyle Tisdel, who leads WELC's Climate and Energy Program.

Going a step further, the lawsuits invoke the Paris accord, outlining emissions thresholds set under the international climate deal that President Trump decided the United States will start a process of exiting.

In the Colorado River Valley lawsuit, for example, the Colorado-based Wilderness Workshop and other environmental groups represented by WELC argue that the agreement "codified" the scientific understanding that climate change is an urgent threat and determined a global carbon budget designed to limit catastrophic temperature increases.

Now, the groups argue, BLM must consider climate impacts within the context of those Paris targets.

"These cumulative emissions should be measured against the remaining carbon budget, thereby providing BLM and the public the necessary context for understanding the significance of BLM's decisionmaking," the lawsuit says, pointing to environmental analyses that suggest fossil fuel development on public lands could account for more than 20 percent of U.S. greenhouse gas emissions.

Tisdel notes that although the three lawsuits were filed while President Obama was still in office, they now provide an opportunity to push the Trump White House toward meeting Paris climate targets even as the federal government works to withdraw the U.S. from the agreement.



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"The Trump administration is whittling away climate policies," he said. "There are a lot of things that are happening top-down to put their thumb on the scale in terms of further fossil fuel extraction. What this legal theory does is it holds the federal government to the climate science and to the carbon budgets from the ground up."

'Tens of millions of dollars'

The goal: a line of fresh case law emphasizing a government obligation to consider the cumulative climate impacts of its decisions.

Hogan Lovells attorney Hilary Tompkins, Interior's top lawyer during the Obama administration, said WELC's approach is likely to be repeated as courts play an "increasingly important role" in determining the proper scope of federal climate analysis.

"There is no doubt that environmental groups will continue to push for broader NEPA analysis of climate change impacts in the courts," she said. "This is not a new strategy, but Trump's recent announcement on the Paris Agreement and rollback of Obama's climate-friendly policies bring to the fore the courts' role in determining the level of climate change review for major federal actions."

And while the approach's prospects and merits are fiercely debated among experts, most agree that a win for environmental groups has the potential to transform fossil fuel development on public lands.

Michael Burger, executive director of Columbia Law School's Sabin Center for Climate Change Law, said a ruling for the groups would be significant.

"Even if the agency is going to remain deaf, dumb and blind to it, it would provide the public with a clearer sense of how these fossil fuel policies relate to our overall situation and how they relate to our overall need to address climate change," Burger said.

BLM declined to comment on the issue, citing the pending litigation.

To be sure, fossil fuel producers and their allies have taken notice of environmentalists' latest legal tack. While some in the drilling and mining industries have derided the challenges as "frivolous," their legal teams are actively working to fight them.



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Powerful oil and gas groups including the American Petroleum Institute, Western Energy Alliance and Petroleum Association of Wyoming have all joined to fight the broad WildEarth Guardians case that challenges leases in Wyoming, Colorado and Utah. Coal producers Cloud Peak Energy Inc., Peabody Energy Corp. and BTU Western Resources Inc. have intervened in the Powder River Basin lawsuit.

In court filings last year, the Western Energy Alliance and the Petroleum Association of Wyoming argued that the litigation had the potential to derail big investments and drastically reduce income to federal, state and local governments receiving revenue from leasing, severance taxes and royalties.

"The Associations' members hold federal oil and gas leases on the federal lands at issue in this case-leases in which member companies have invested tens of millions of dollars," the industry groups told a district court. "Clearly, these valid existing rights and economic interests are significantly and legally protectable interests."

States that depend on revenue from oil and gas development on public lands are also taking notice. Colorado, Wyoming and Utah have intervened in the WildEarth Guardians case. Wyoming also joined the Powder River Basin suit.

Western Energy Alliance President Kathleen Sgamma said a win for the environmental groups would dramatically change the way agencies comply with the National Environmental Policy Act.

"There would be no sideboards to NEPA, which could be used to speculatively analyze any impact along the whole value chain," she said, adding that extensive climate analysis at the leasing stage would be unreliable because many leases are never actually developed.

"It's impossible to know at the leasing stage how many wells will be developed on the lease, if any," she said. "In fact, many leases are not developed, so the government could waste significant time analyzing speculative impacts that never come to fruition. Of course, the environmental lobby knows this and is perfectly happy wasting government resources on futile effort because the goal is stopping oil and natural gas development."

NEPA and carbon budgeting



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The conservation groups' legal approach hinges on NEPA, a bedrock environmental law that requires decision-makers to weigh the impacts of major federal actions.

Federal regulations instruct agencies to include direct, indirect and cumulative impacts in their NEPA analyses. The recent public lands lawsuits argue that BLM dropped the ball on the latter two requirements.

In particular, the environmental groups say the agency shrugged off climate impacts as minimal because it viewed them only in the context of individual projects. The agency concluded that quantifying cumulative climate impacts was beyond the scope of the reviews.

"That's problematic because the nature of climate change is that emissions come from millions of different sources and together all of that makes up a very significant chunk of emissions and actually leads to the climate catastrophe that we're in the midst of," Tisdell said.

The lawsuits push the global carbon budget imagined under the Paris accord — an estimated emissions cap for keeping global temperature rise below 2 degrees Celsius — as a simple tool for weighing the impacts of fossil fuel development.

The budget is not a mandatory target under the climate accord, and moreover, the United States has announced plans to exit the agreement. But advocates say the system offers the clearest science-backed approach to weighing the broader impacts of individual development approvals.

Environmental groups and many researchers have backed a similar tool, the "social cost of carbon" calculation, even after President Trump used his "energy independence" executive order in March to scrap the Obama-era metric.

"It's data, it's information," said University of Colorado Law School professor Mark Squillace. "It's at least the best we have in terms of what the climate effects of decisions are, and I think it's likely that courts are going to continue to use that information to see whether the government has properly considered the impacts of climate change."

If, for example, an agency conducts a cost-benefit analysis that emphasizes economic impacts but ignores costs associated with climate change — despite having calculation tools available — its decision could be legally vulnerable, Squillace said.



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Critics have pushed back on environmentalists' approach, arguing that the groups are effectively asking a land management agency like BLM to act as a climate science agency.

"To expect an agency to become a climate specialist agency like [the National Oceanic and Atmospheric Administration], for example, is to bark up the wrong tree," Bracewell LLP attorney Kevin Ewing said. "They don't have that expertise, they're not supposed to have that expertise, they cannot be held to the expectation of having the expertise, and it is deeply misguided to require them to perform analyses as though they did have that expertise."

Ewing says such analysis by a nonexpert agency would undermine the two purposes of NEPA: to inform the decision-maker and to inform the public.

"Is this analysis so probative and reliable that it justly should inform the agency's decision?" he asked. "If it is not because you don't have the expertise to do the analysis or you don't have enough facts to do the analysis or the interrelation of facts is so speculative, then it is neither probative nor reliable, and therefore it should not — and under NEPA it does not — influence the decision of the agency."

Courtroom challenges

Environmental law experts note that the plaintiffs will face some hurdles in the courtroom.

For one, said the Sabin Center's Burger, agencies are entitled to wide deference on the scope of their NEPA analyses, so the groups will have to persuade a court that BLM was unreasonable in the way it carried out its environmental reviews.

Courts have weighed similar questions about climate impacts before. In a series of cases against the Federal Energy Regulatory Commission in recent years, the Sierra Club and other groups argued that regulators were required to consider the indirect climate impacts of liquefied natural gas exports.

Environmentalists lost those cases, with federal judges ruling that the Department of Energy, not FERC, had final jurisdiction over gas exports. Sierra Club lawyers followed with a new line of claims against DOE, and the appellate court handling the cases has not yet ruled.



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Climate litigation focused on public lands has been moving forward on its own track, yielding some wins for the environmental community in cases dealing with indirect impacts of coal development.

"Courts have been pretty receptive to the indirect impacts claims, and I could see them being receptive to cumulative impacts claims," Sabin Center attorney Jessica Wentz said.

Burger and Wentz wrote in a recent Harvard Environmental Law Review article that since 2014, district courts have found four times that federal regulators needed to take a closer look at the indirect emissions that result from burning coal produced on public lands. Government officials behind those decisions had countered that they did not have to consider downstream emissions because federal production would not increase coal consumption, or that emissions "were too speculative to be forecasted."

"The courts have disagreed, finding that there is a sufficient causal connection between the extraction of coal and the downstream greenhouse gas emissions from the end use of the extracted coal," Burger and Wentz wrote.

Oil and gas is a bit trickier. While most coal produced on public lands is destined for combustion, it's tougher to draw a direct line from oil volumes to their various potential end uses, making it more difficult to quantify emissions. Natural gas presents another complexity: The fuel is often used as a cleaner-burning replacement for coal at power plants, leading some agencies to conclude that gas production has a net benefit for the climate.

Further complications can arise in the public lands context. Tompkins, the former Interior lawyer, noted recent traction for the "perfect substitute" theory, which asserts that federal fossil fuel development will not increase consumption because any foregone production would simply be replaced by development on private land.

A federal court in Colorado rejected the argument in a 2014 case dealing with coal production, but a court in Wyoming accepted the theory in a similar case the following year. The Wyoming case was appealed to the 10th U.S. Circuit Court of Appeals, which has not yet issued a decision.

Western Energy Alliance's Sgamma said the same claims apply to the oil and gas development challenged in the latest cases.



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"Without those sales and ensuing development, U.S. energy demand would be met by production on private lands or imports from overseas," she said in an email. "The relatively small amount of greenhouse gas emissions from production on federal lands would merely be shifted elsewhere."

'Bête noire of energy development'

Burger weighs the likelihood of success for the recent climate lawsuits from two angles: the "purist/doctrinal" outlook and the legal realist outlook.

From the doctrinal perspective, he said, courts' tendency to defer to agency discretion on these types of reviews puts the environmental groups at a disadvantage. But realistically, he added, judges concerned about the Trump administration's rapid unraveling of environmental regulations might be more open to the groups' arguments.

"From the legal realist bent, you have to look at the political, cultural and socioeconomic context and the environmental context in which these decisions are being made," he said. "We currently have an administration that is hell-bent on doing nothing about climate change, and judges are certainly going to be aware of that."

Wentz added, however, that a legal victory in any of the cases may be short-lived.

"I can certainly imagine district court decisions that might come out in favor of these plaintiffs," she said. "But then at the appellate level, you might see a reversal."

Industry attorneys put long odds on the environmental groups prevailing on any level.

Norton Rose Fulbright's Bob Comer, an attorney for Interior from 2002 to 2010, says courts are likely to recognize environmentalists' position as a mere policy preference that is "unworkable" from a practical standpoint. BakerHostetler attorney Mark Barron, who is not involved in these cases but frequently represents oil and gas operators, agreed, noting that WELC, WildEarth Guardians and the other groups are taking a risk by pushing NEPA so aggressively.

"Throwing your eggs in the NEPA basket is a flawed approach because NEPA doesn't mandate any particular policy outcome," he said. "All the courts could say is that the decision-makers need to be more explicit about the climate consequences of the particular development. The courts can't force the executive branch to adopt any specific climate policy."



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But Tisdel and others say an increase in government analysis of climate impacts is essential even if the administration approves fossil fuel development anyway. That's because NEPA is designed to inform both decision-makers and the public — plus, it can guide other agencies, including state- and local-level policymakers.

"NEPA is the *bête noire* of energy development," said Lewis & Clark Law School professor Michael Blumm, an expert in public lands issues. "They call it red tape because they don't like it, but it's really the only way the public gets an idea what's going on in a lot of these leasing decisions and what the real effects of them are."

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5. **LAW: Law pros urge court to continue fracking rule case**

E & E News, June 13 | Ellen M. Gilmer

Dozens of law professors are urging a federal court to move ahead with a legal battle that calls into question the federal government's authority to regulate hydraulic fracturing.

In a friend-of-the-court [brief](#) submitted yesterday, more than two dozen energy, public lands and environmental law experts urged the 10th U.S. Circuit Court of Appeals to continue weighing a case stemming from the Obama administration's rule for fracking on public and tribal lands.

A Wyoming district court tossed the rule last summer, ruling that fracking is beyond the federal government's authority. The decision is on appeal at the 10th Circuit, but the case was sidetracked earlier this year when the Trump administration announced plans to reconsider the rule.

Twenty-nine law professors urged the court to continue the case and issue a decision reversing the lower court. They argued that freezing the case now — which the Trump administration has requested — would leave on the books a fundamentally incorrect decision.

"The Order contains fundamentally erroneous legal principles of statutory interpretation and administrative law," their brief said. "Yet under an abeyance and potentially drawn-out new rulemaking, the Order would remain extant and could solidify further incorrect precedent in other cases even if it were ultimately vacated and rendered moot."



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They noted that litigants in an unrelated mining case have already used the lower court's fracking decision as ammunition against a regulation issued under the Surface Mining Control and Reclamation Act.

Most of the same professors filed a similar brief last summer, arguing that the Wyoming judge misapplied relevant federal laws in the fracking rule case (Energywire, Aug. 18, 2016). The court ruled that the Safe Drinking Water Act and Energy Policy Act of 2005 effectively remove fracking from the jurisdiction of federal agencies, leaving regulation of the oil and gas production technique to the states.

The group includes many prominent environmental law scholars, including Vermont Law School's Patrick Parenteau, Columbia Law School's Michael Burger and many others. Hannah Wiseman, a Florida State University professor who wrote a law review article that was cited in the Wyoming decision, helped organize the effort.

A group of former Interior Department officials also filed a friend-of-the-court brief yesterday urging the 10th Circuit to continue the case (Energywire, June 12).

Interior is expected to issue a proposed rulemaking to consider whether to rescind or revise the fracking rule today.

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6. **LANGUAGE: Trump started using 'dominance.' Now his Cabinet is**

E & E News, June 13 | Brittany Patterson

"Energy independence" is out, and "energy dominance" is in.

Trump administration officials are using a new term to describe America's energy policy that aggressively pushes past the decades-old aspiration in the United States to break free from its addiction to imported energy.

On Friday, Energy Secretary Rick Perry was the latest administration official to opine on "energy dominance."



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Following an announcement that for the first time, the United States had successfully shipped liquefied natural gas to the Netherlands and Poland, Perry tweeted, "The United States will use our resources to advance energy security. This is another step toward #EnergyDominance."

Interior Secretary Ryan Zinke has also been a major supporter of the burgeoning phrase, citing it in multiple speeches and even using it in testimony to House appropriators last week.

It appears both officials draw their inspiration from candidate Donald Trump. In his first major energy policy speech, Trump told a crowd in North Dakota last May that he was thinking "bigly" about fossil fuels.

"American energy dominance will be declared a strategic, economic and foreign policy goal of the United States," he said. "It's about time."

Academics and energy experts struggled to define what actualizing "energy dominance" would look like and cautioned that such a brusque policy stance could destabilize America's position on the global stage. Industry groups, on the other hand, expressed excitement about the new direction and stressed the importance of having a liberal democracy like the United States leading on energy policy.

With the United States currently producing record levels of oil and gas due to the hydraulic fracturing revolution — a recent U.S. Energy Information Administration report projected the country could be energy independent by 2026 — some experts speculated that the new term is less a policy prescription and more a linguistic manifestation of a president who values "winning" at all costs.

Nixon and 'Project Independence'

The new term supplants "energy independence," a decades-old phrase and de facto energy policy of the United States that took hold during the gasoline crisis of 1973.

Every president since Richard Nixon has lauded "energy independence" as the goal, but Peter Shulman, an associate professor at Case Western Reserve University and an energy historian who researched the term's origin, found that the catchphrase didn't originate in the White House — or even as a political expression.



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Carroll Wilson, an eccentric Massachusetts Institute of Technology professor with a defense and nuclear background, coined the term. Shulman found "energy independence" first appeared in a speech Wilson gave to the Council on Foreign Relations in the early spring of 1973, before OPEC imposed an oil embargo against the United States in retaliation for its decision to support the Israeli army during the Arab-Israeli War.

Wilson, a technocrat, proposed increasing investment into technology and energy infrastructure as a way to tamp down rising gas prices.

"He was focused on the effects of this crisis on consumers," Shulman said. "Invest in new ports, new facilities, use engineering to become energy independent."

Foreign Affairs magazine wrote about Wilson's speech, and, unsolicited, the professor sent his idea to Congress, fellow academics, journalists and the White House, which showed tepid interest, Shulman said.

Then OPEC cut off oil exports to the United States.

"Basically, once the OPEC embargo hits in October, all of a sudden, President Nixon is out there talking about 'Project Independence,' his big plan for making the country energy independent by 1980, which sounded very similar to what Carroll Wilson had been taking out," Shulman said.

Nixon's program fizzled, and within months, he was out of office. President Ford soon spent much of his tenure dealing with energy issues. So did President Carter.

"Everybody's talking about energy independence, and the phrase just continues in use," Shulman said.

But as Wilson's phrase gained recognition, it also took on a political agenda deeply rooted in protecting America's national security and providing a lever to push back against growing environmental regulation, said Meg Jacobs, a research scholar at the Woodrow Wilson School of Public and International Affairs at Princeton University.

Today, America is as close as it has ever been to reaching "energy independence." According to EIA data, the United States is on track to export 1 million barrels of oil a day. In the 1970s, the United States was importing about one-third of its energy needs. By the time the first Gulf War hit, imports had jumped to nearly 50 percent.



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Jacobs views "energy dominance" as a rebuke to the oil dependence of the '70s, a way to reassert America's position as a "winning" superpower — a concept central to Trump's ideology.

"In a way, what 'energy dominance' looks like is a frank recognition ... of the fracking revolution that has allowed the U.S. to be the chief player on a global stage," she said. "The linkage between the assertion of American dominance in energy and dominance as a superpower linked to a broader anti-government, America-first agenda, none of that surprises me."

Jacobs added, "This is the articulation of where Trump has been all along."

'Doesn't make any sense'

Dan Naatz, senior vice president of government relations and political affairs with the Independent Petroleum Association of America (IPAA), agreed that fracking has changed the calculus for the United States, calling the proliferation of shale energy over the last 10 years "phenomenal."

"It's had huge impacts on American security, the economy, jobs, and now you're starting to see the impact it could have on the world," he said.

While "dominance" is not a word Naatz said IPAA would use, he said the trade group has embraced the sentiment behind the language shift. The world benefits when the United States is a major energy producer and can act as a "balancing force" against Russia or the Middle East, he said.

"It's important for the U.S. to be an energy superpower," he said. "It's a good thing to have a country that is dedicated to free markets and free trade and dedicated to opening up new markets."

Shulman at Case Western Reserve University pushed back against that assertion, arguing that it's not clear that being an energy exporter makes a country secure. The negative connotation associated with "dominance" could further alienate foreign allies, many of which are already reeling from the United States' shift away from climate action. It could also create tension with U.S. trading partners, he said.

"Frankly, I have to chuckle when I hear it, because it just doesn't make any sense," said Maximilian Auffhammer an environmental economist and professor at the University of



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California, Berkeley. "The word dominance is not generally used in a good context, and it always means there's a big person on the playground shoving around a smaller person."

Auffhammer described another way in which the United States could be energy dominant with little political fallout: leading in clean energy technologies.

Many of Trump's Cabinet secretaries have said the administration supports an "all of the above" energy strategy; however, the White House's proposed budget seeks deep cuts to U.S. EPA and Energy Department programs that invest in renewable energy technology.

DOE's Office of Energy Efficiency and Renewable Energy faces a 70 percent cut under the proposal, and programs that support early stage research and development, like the Advanced Research Projects Agency-Energy, are targeted for elimination.

"We've developed the new solar technologies, new technologies for storage," Auffhammer said. "Instead of going back to old technologies, I'd like to see them use this term in a forward-looking manner."

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7. SAFETY: Colo. may tighten pipeline testing, impose other requirements

E & E News, June 13 | Mike Lee

Colorado oil and gas regulators are considering tougher pipeline testing rules, a mapping requirement and leak surveys using drones or ground vehicles in the wake of an oil-field-related explosion that killed two people.

The April 17 explosion in Firestone, Colo., was caused by a flow line that had been cut off just a few feet from a newly built home. The Colorado Oil and Gas Conservation Commission (COGCC) has already issued an emergency order requiring energy companies to verify the location of their flow lines and take other steps by the end of June (Energywire, May 3).

Those steps should prevent recurrences of incidents like the one in Firestone, and the state agency is considering other ideas to provide further protection, Director Matt Lepore said during a meeting of the commission.



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The state already requires flow lines to be pressure-tested every year, but it exempts certain low-pressure lines. That exemption is one of several changes the COGCC is considering, Lepore said.

"Mapping the flow lines has been kind of foremost on everyone's minds," Lepore told the commission during its monthly meeting.

"We talked about drones, we talked about driving surveys, then you have to talk about resources and figure out which neighborhoods get to go first."

Lepore stressed that the incident was caused by an unusual combination of circumstances and there's no widespread danger to other homes. Colorado is one of only two oil-producing states that require periodic testing of flow lines, which are used to move oil, gas and waste fluids from well sites to storage tanks and other equipment (Energywire, May 5).

At the same time, Firestone, about 35 miles north of Denver, is one of several communities that were built near and around existing oil fields. The area has seen both a homebuilding boom as Denver's population grows and an oil boom as companies use the existing sites to drill into the Niobrara Shale.

The pipeline in Firestone was built to serve a gas well, known as the Coors V 6-14Ji, which was drilled in 1993. The well has had three previous owners and was acquired by Anadarko Petroleum Corp. in 2014.

Beginning in about 1999, a subdivision grew up in the same area, and records show that the pipeline was scheduled to be removed, Lepore said.

The pipeline was likely cut as streets and utilities were built, Lepore said.

"You have these sewers being put in; probably the line is being cut as those happen," he said.

The National Transportation Safety Board, along with police in Firestone, is still investigating how and when the pipe was cut. An NTSB spokesman said the pipeline will be tested in the agency's laboratory and that it's too soon to determine the cause.

In 2015, a home was built 178 feet from the Coors well, and the pipeline was cut off a few feet from the home's basement. The pipeline may have avoided the pressure-test requirement because the well was shut down during 2016, a COGCC spokesman said.



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The cutoff pipe was still connected to the Coors well when the well returned to service this year. Investigators said gas from the severed line seeped into the soil, then into the home's basement.

The explosion killed Mark Martinez and his brother-in-law, Joey Irwin, who were in the home's basement. Martinez's wife, Erin, was severely injured, and the couple's 11-year-old son was blown through a second-floor window but escaped serious injury, Lepore said.

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8. **SAGE GROUSE: Key habitat rarely overlaps with energy potential — report**

E & E News, June 13 | Jennifer Yachnin

A new analysis of greater sage grouse habitat across seven Western states shows little overlap with areas with the potential for energy development, according to a report released today by Backcountry Hunters & Anglers.

The sportsmen's group released its new survey, prepared by Western EcoSystems Technology, in the wake of Interior Secretary Ryan Zinke's decision last week to open a review of federal sage grouse conservation plans.

The Trump administration wants to determine whether the Obama-era changes are hindering energy production on public lands (Greenwire, June 7). The Interior and Agriculture departments finalized their greater sage grouse plans in 2015 — covering grouse habitat across 70 million acres in 10 Western states — including amendments and revisions to 98 Bureau of Land Management and Forest Service land-use plans.

The BHA analysis compared energy development leases from BLM with sage grouse priority habitat management areas in Colorado, Idaho, Montana, Nevada, Oregon, Utah and Wyoming.

The sage grouse conservation plans also include California, North Dakota and South Dakota, but the study excluded those lands that comprise less than 4 percent of the priority habitat areas.

Among the seven states studied, the BHA survey found 71 percent of federal lands or minerals that are rated as having medium to high development potential fall outside of sage grouse priority habitat areas.



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Additionally, within the priority habitat areas, 79 percent of federal lands and minerals have a zero to low assumed development potential.

"Energy development is an appropriate and necessary use of our public lands, particularly in the West, yet it must be pursued responsibly and in the right places," BHA Conservation Director John Gale said in a statement. "Our report shows that the vast majority of greater sage grouse habitat is ill-suited to energy development of any kind, now or in the future — and that more than three-quarters of areas potentially suited to energy production [are] located outside areas important to sage grouse."

The report also found a 4 percent overlap between sage grouse habitat and existing coal or oil and gas leases on federal land.

Click here for the [full report](#).

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9. **ADVOCACY: Gas industry unveils campaign to counter activist 'assaults'**

E & E News, June 13 | Hannah Northey

The natural gas industry has launched a national campaign beginning in Connecticut and Virginia to counter a growing "keep it in the ground" grass-roots movement aimed at halting the spread of gas production, infrastructure and exports.

The American Gas Association kicked off "Your Energy," a consumer education push about the benefits of natural gas.

The industry group on its website claimed a need to strike back at activists opposed to gas development and infrastructure and to tell the "truth" about gas.

"Your Energy was created to speak out against a misguided movement that assaults our way of life," the group wrote. "This movement is based on the simplistic belief that keeping our natural resources in the ground is the only solution to climate change. This isn't just false — it's dangerous to our quality of life, economy and energy security."

The website casts natural gas as the primary driver of emission reductions in the United States.



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AGA's website also urges visitors to join its "movement" supporting natural gas.

"We have to fight back against those who want to deprive us of clean, affordable energy," the website says. "That's why we have Your Energy. Join us to support natural gas — the clean energy that makes our way of life possible."

The campaign, for which AGA declined to provide a cost, is first being launched in Virginia and Connecticut, two states where residents are facing the construction of natural gas pipeline projects that have drawn the ire of some landowners and made for tricky political footing in upcoming gubernatorial elections (E&E Daily, April 26).

AGA said that the campaign will include "community outreach, social media engagement, advertising, and other promotions" and that "resources for policy makers, elected officials, the media and consumers will also be made available via specific state based programming that will highlight the positive impact natural gas can have for families, communities and state economies throughout the country, beginning in Connecticut and Virginia."

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10. **PUBLIC LANDS: Advocates go to court as Trump unwinds climate policy**

E & E News, June 13 | Ellen M. Gilmer

In a platter of pending challenges to fossil fuel development on public lands, environmentalists in the West see an opportunity to corner the Trump administration into taking a closer look at climate impacts.

A trio of lawsuits backed by the small but aggressive Western Environmental Law Center target oil and gas leases in Wyoming, Colorado and Utah, as well as land-use plans for the resource-rich Colorado River Valley and Powder River Basin (see sidebar).

Along with claims that the Interior Department's Bureau of Land Management failed to take a hard look at the impacts of its leasing and planning decisions, the lawsuits argue that the agency never weighed the climate effects of projects within the larger context of other BLM-approved plans for land development.



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"We have all these individual data points, but they're not being aggregated in a way that is meaningful for the decision-maker on individual projects, or for the public to really understand the scope of what these emissions mean on our public lands to the broader climate crisis," said Kyle Tisdel, who leads WELC's Climate and Energy Program.

Going a step further, the lawsuits invoke the Paris accord, outlining emissions thresholds set under the international climate deal that President Trump decided the United States will start a process of exiting.

In the Colorado River Valley lawsuit, for example, the Colorado-based Wilderness Workshop and other environmental groups represented by WELC argue that the agreement "codified" the scientific understanding that climate change is an urgent threat and determined a global carbon budget designed to limit catastrophic temperature increases.

Now, the groups argue, BLM must consider climate impacts within the context of those Paris targets.

"These cumulative emissions should be measured against the remaining carbon budget, thereby providing BLM and the public the necessary context for understanding the significance of BLM's decisionmaking," the lawsuit says, pointing to environmental analyses that suggest fossil fuel development on public lands could account for more than 20 percent of U.S. greenhouse gas emissions.

Tisdel notes that although the three lawsuits were filed while President Obama was still in office, they now provide an opportunity to push the Trump White House toward meeting Paris climate targets even as the federal government works to withdraw the U.S. from the agreement.

"The Trump administration is whittling away climate policies," he said. "There are a lot of things that are happening top-down to put their thumb on the scale in terms of further fossil fuel extraction. What this legal theory does is it holds the federal government to the climate science and to the carbon budgets from the ground up."

'Tens of millions of dollars'

The goal: a line of fresh case law emphasizing a government obligation to consider the cumulative climate impacts of its decisions.



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Hogan Lovells attorney Hilary Tompkins, Interior's top lawyer during the Obama administration, said WELC's approach is likely to be repeated as courts play an "increasingly important role" in determining the proper scope of federal climate analysis.

"There is no doubt that environmental groups will continue to push for broader NEPA analysis of climate change impacts in the courts," she said. "This is not a new strategy, but Trump's recent announcement on the Paris Agreement and rollback of Obama's climate-friendly policies bring to the fore the courts' role in determining the level of climate change review for major federal actions."

And while the approach's prospects and merits are fiercely debated among experts, most agree that a win for environmental groups has the potential to transform fossil fuel development on public lands.

Michael Burger, executive director of Columbia Law School's Sabin Center for Climate Change Law, said a ruling for the groups would be significant.

"Even if the agency is going to remain deaf, dumb and blind to it, it would provide the public with a clearer sense of how these fossil fuel policies relate to our overall situation and how they relate to our overall need to address climate change," Burger said.

BLM declined to comment on the issue, citing the pending litigation.

To be sure, fossil fuel producers and their allies have taken notice of environmentalists' latest legal tack. While some in the drilling and mining industries have derided the challenges as "frivolous," their legal teams are actively working to fight them.

Powerful oil and gas groups including the American Petroleum Institute, Western Energy Alliance and Petroleum Association of Wyoming have all joined to fight the broad WildEarth Guardians case that challenges leases in Wyoming, Colorado and Utah. Coal producers Cloud Peak Energy Inc., Peabody Energy Corp. and BTU Western Resources Inc. have intervened in the Powder River Basin lawsuit.

In court filings last year, the Western Energy Alliance and the Petroleum Association of Wyoming argued that the litigation had the potential to derail big investments and drastically reduce income to federal, state and local governments receiving revenue from leasing, severance taxes and royalties.



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"The Associations' members hold federal oil and gas leases on the federal lands at issue in this case-leases in which member companies have invested tens of millions of dollars," the industry groups told a district court. "Clearly, these valid existing rights and economic interests are significantly and legally protectable interests."

States that depend on revenue from oil and gas development on public lands are also taking notice. Colorado, Wyoming and Utah have intervened in the WildEarth Guardians case. Wyoming also joined the Powder River Basin suit.

Western Energy Alliance President Kathleen Sgamma said a win for the environmental groups would dramatically change the way agencies comply with the National Environmental Policy Act.

"There would be no sideboards to NEPA, which could be used to speculatively analyze any impact along the whole value chain," she said, adding that extensive climate analysis at the leasing stage would be unreliable because many leases are never actually developed.

"It's impossible to know at the leasing stage how many wells will be developed on the lease, if any," she said. "In fact, many leases are not developed, so the government could waste significant time analyzing speculative impacts that never come to fruition. Of course, the environmental lobby knows this and is perfectly happy wasting government resources on futile effort because the goal is stopping oil and natural gas development."

NEPA and carbon budgeting

The conservation groups' legal approach hinges on NEPA, a bedrock environmental law that requires decision-makers to weigh the impacts of major federal actions.

Federal regulations instruct agencies to include direct, indirect and cumulative impacts in their NEPA analyses. The recent public lands lawsuits argue that BLM dropped the ball on the latter two requirements.

In particular, the environmental groups say the agency shrugged off climate impacts as minimal because it viewed them only in the context of individual projects. The agency concluded that quantifying cumulative climate impacts was beyond the scope of the reviews.



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"That's problematic because the nature of climate change is that emissions come from millions of different sources and together all of that makes up a very significant chunk of emissions and actually leads to the climate catastrophe that we're in the midst of," Tisdell said.

The lawsuits push the global carbon budget imagined under the Paris accord — an estimated emissions cap for keeping global temperature rise below 2 degrees Celsius — as a simple tool for weighing the impacts of fossil fuel development.

The budget is not a mandatory target under the climate accord, and moreover, the United States has announced plans to exit the agreement. But advocates say the system offers the clearest science-backed approach to weighing the broader impacts of individual development approvals.

Environmental groups and many researchers have backed a similar tool, the "social cost of carbon" calculation, even after President Trump used his "energy independence" executive order in March to scrap the Obama-era metric.

"It's data, it's information," said University of Colorado Law School professor Mark Squillace. "It's at least the best we have in terms of what the climate effects of decisions are, and I think it's likely that courts are going to continue to use that information to see whether the government has properly considered the impacts of climate change."

If, for example, an agency conducts a cost-benefit analysis that emphasizes economic impacts but ignores costs associated with climate change — despite having calculation tools available — its decision could be legally vulnerable, Squillace said.

Critics have pushed back on environmentalists' approach, arguing that the groups are effectively asking a land management agency like BLM to act as a climate science agency.

"To expect an agency to become a climate specialist agency like [the National Oceanic and Atmospheric Administration], for example, is to bark up the wrong tree," Bracewell LLP attorney Kevin Ewing said. "They don't have that expertise, they're not supposed to have that expertise, they cannot be held to the expectation of having the expertise, and it is deeply misguided to require them to perform analyses as though they did have that expertise."

Ewing says such analysis by a nonexpert agency would undermine the two purposes of NEPA: to inform the decision-maker and to inform the public.



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"Is this analysis so probative and reliable that it justly should inform the agency's decision?" he asked. "If it is not because you don't have the expertise to do the analysis or you don't have enough facts to do the analysis or the interrelation of facts is so speculative, then it is neither probative nor reliable, and therefore it should not — and under NEPA it does not — influence the decision of the agency."

Courtroom challenges

Environmental law experts note that the plaintiffs will face some hurdles in the courtroom.

For one, said the Sabin Center's Burger, agencies are entitled to wide deference on the scope of their NEPA analyses, so the groups will have to persuade a court that BLM was unreasonable in the way it carried out its environmental reviews.

Courts have weighed similar questions about climate impacts before. In a series of cases against the Federal Energy Regulatory Commission in recent years, the Sierra Club and other groups argued that regulators were required to consider the indirect climate impacts of liquefied natural gas exports.

Environmentalists lost those cases, with federal judges ruling that the Department of Energy, not FERC, had final jurisdiction over gas exports. Sierra Club lawyers followed with a new line of claims against DOE, and the appellate court handling the cases has not yet ruled.

Climate litigation focused on public lands has been moving forward on its own track, yielding some wins for the environmental community in cases dealing with indirect impacts of coal development.

"Courts have been pretty receptive to the indirect impacts claims, and I could see them being receptive to cumulative impacts claims," Sabin Center attorney Jessica Wentz said.

Burger and Wentz wrote in a recent Harvard Environmental Law Review article that since 2014, district courts have found four times that federal regulators needed to take a closer look at the indirect emissions that result from burning coal produced on public lands. Government officials behind those decisions had countered that they did not have to consider downstream emissions because federal production would not increase coal consumption, or that emissions "were too speculative to be forecasted."



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"The courts have disagreed, finding that there is a sufficient causal connection between the extraction of coal and the downstream greenhouse gas emissions from the end use of the extracted coal," Burger and Wentz wrote.

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"Without those sales and ensuing development, U.S. energy demand would be met by production on private lands or imports from overseas," she said in an email. "The relatively small amount of greenhouse gas emissions from production on federal lands would merely be shifted elsewhere."

'Bête noire of energy development'

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"From the legal realist bent, you have to look at the political, cultural and socioeconomic context and the environmental context in which these decisions are being made," he said. "We currently have an administration that is hell-bent on doing nothing about climate change, and judges are certainly going to be aware of that."

Wentz added, however, that a legal victory in any of the cases may be short-lived.

"I can certainly imagine district court decisions that might come out in favor of these plaintiffs," she said. "But then at the appellate level, you might see a reversal."

Industry attorneys put long odds on the environmental groups prevailing on any level.

Norton Rose Fulbright's Bob Comer, an attorney for Interior from 2002 to 2010, says courts are likely to recognize environmentalists' position as a mere policy preference that is "unworkable" from a practical standpoint. BakerHostetler attorney Mark Barron, who is not involved in these cases but frequently represents oil and gas operators, agreed, noting that WELC, WildEarth Guardians and the other groups are taking a risk by pushing NEPA so aggressively.

"Throwing your eggs in the NEPA basket is a flawed approach because NEPA doesn't mandate any particular policy outcome," he said. "All the courts could say is that the decision-makers need to be more explicit about the climate consequences of the particular development. The courts can't force the executive branch to adopt any specific climate policy."

But Tisdell and others say an increase in government analysis of climate impacts is essential even if the administration approves fossil fuel development anyway. That's because NEPA is designed to inform both decision-makers and the public — plus, it can guide other agencies, including state- and local-level policymakers.

"NEPA is the *bête noire* of energy development," said Lewis & Clark Law School professor Michael Blumm, an expert in public lands issues. "They call it red tape because they don't like it, but it's really the only way the public gets an idea what's going on in a lot of these leasing decisions and what the real effects of them are."

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BUREAU OF LAND MANAGEMENT

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11. **APPROPRIATIONS: Shutdown may be 'right outcome' — Mnuchin**

E & E News, June 13 | George Cahlink

The Trump administration is not ruling out closing federal agencies this fall if it can't reach a spending accord with Congress.

Treasury Secretary Steven Mnuchin today declined to take a government shutdown off the table in upcoming negotiations, saying it might be the "right outcome."

"At times there could be a good shutdown, at times there could not be a good shutdown," Mnuchin said at a Senate Budget Committee hearing this morning. He stressed the Trump administration's "primary objective" is not to force a government shutdown.

Mnuchin's remarks came in response to a question from Sen. Tim Kaine (D-Va.), who referenced a tweet from President Trump earlier this year that "our country needs a good shutdown."

Those comments sparked bipartisan criticism, and the White House eventually softened them, suggesting Trump was using the threat as leverage for upcoming budget talks.

Congress will need to have new fiscal 2018 spending in place when the fiscal year begins Oct. 1, or most federal agencies would be forced to shut down.

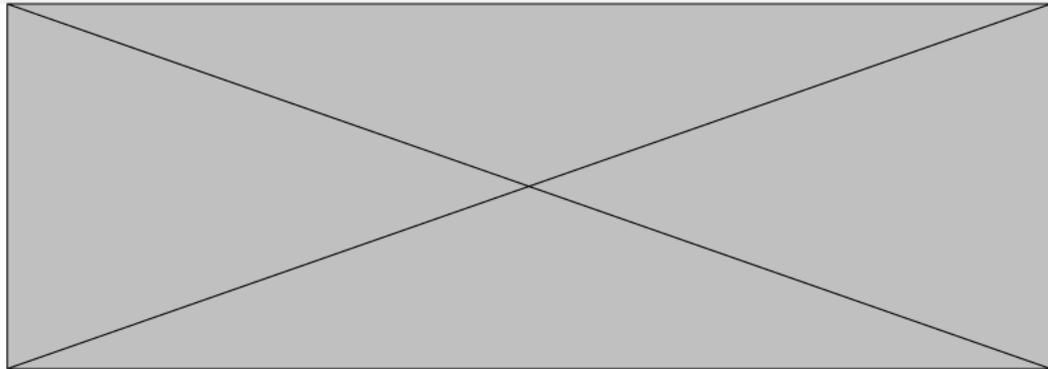
Mnuchin stressed the administration would "never" allow for a shutdown of "critical government infrastructure" but did not define what agencies and operations that would cover. In the past, national security and federal emergency work has continued during government funding lapses.

Additionally, Mnuchin reiterated his earlier view that Congress should raise the debt ceiling before August recess but also said the nation won't reach its borrowing limit until the end of September. He said acting sooner rather than later would avoid unsettling global markets.

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To: astyles@blm.gov[astyles@blm.gov]
From: Sam Goldman, Conservation Lands Foundation, Ben Gabriel, Friends of Organ Mountains-Desert Peaks
Sent: 2017-06-13T18:43:19-04:00
Importance: Normal
Subject: Field call Thursday: New CLF staff, defending monuments, your updates
Received: 2017-06-13T18:43:28-04:00

Join the next network call: Thursday June 15, 2017



Dear Friends Grassroots Network and Partners:

Please join our Friends Grassroots Network call on Thursday to discuss Sec. Zinke's interim report that includes a recommendation to dramatically eliminate lands from Bears Ears National Monument. Get an update on how we're working together to fight to defend national monuments and the National Conservation Lands.

Thursday, June 15, 2017

Noon (MDT)/11:00 AM Pacific

Call-in information:
(855) 212-0212 or (530) 881-1212
Access Code: 573-616-683

Agenda:

- Welcome new CLF staff: Brian Sybert, Executive Director and David Feinman, Director of Government Affairs
 - Bears Ears "Review Period" update from Utah and next steps
 - Substantive comments submission on all monuments under review
 - Updates from partners working on other important efforts outside of defensive campaigns
-

More Information:

A new, informative press release from Friends of Organ Mountain-Desert Peaks can be found [here](#). To adapt for your local area, just fill in your own information and add in local quotes and you have a terrific press release about the ongoing "review period" and how people can stand up against this attack on all of our National Monuments. Let us know if you need assistance.

Remember, it is important that people know that if this ill-informed recommendation can be made for Bears Ears, the national monuments in your state could be next.

For more information on the legal rationale on **why shrinking or rescinding monuments is illegal**, please take a look at this [informative document](#).

The deadline to submit public comments for the other national monuments highlighted in the Executive Order is **July 10**. Let people know they can still go to www.MonumentsforAll.org to make their voice heard.

Social Media Guidance:

Below are some sample social media posts that you can use, as well as talking points if you want to send an email to your board or volunteers, or submit a letter to the editor of your local paper.

- Google folder of additional images: <https://drive.google.com/drive/folders/0B1y3vwBbZ-cFbmEyX0FIWWp0UWc?usp=sharing>
- Facebook profile photo tool (put the Bears Ears logo over your profile picture this week!): <https://actionsprout.io/F0A06F>
- Twitter tool (brings up a sample tweet to Zinke): <http://bit.ly/2mRibsD>

Sample tweets:

READ: #BearsEars Inter-Tribal Coalition condemns @SecretaryZinke plan to eviscerate monument: <http://bit.ly/2rc9BpH#StandWithBearsEars>

Tearing apart #BearsEars would be an illegal act - and a slap in the face to sovereign Tribal Nations. #StandWithBearsEars! #MonumentsForAll

Monuments "review" officially a sham: 1 million+ comments support #MonumentsForAll but @SecretaryZinke refuses to #StandWithBearsEars

#StandWithBearsEars! Change your Facebook profile photo to oppose the Administration's attack <https://actionsprout.io/F0A06F> #MonumentsForAll

Sample Facebook post:

Protected landscapes where we hunt, fish, camp and hike are part of what makes our country great. Tearing apart Bears Ears National Monument would be against the wishes

of more than 1 million public comments in support of our #MonumentsForAll. We can't stay silent when America's heritage is at stake. Change your Facebook profile photo to stand with Bears Ears. <https://actionsprout.io/F0A06F>

Sample Instagram post:

An attack on our national monuments is an attack on all of our public lands and America's national heritage. The #BearsEars landscape contains tens of thousands of cultural sites, spectacular natural features, and world-class opportunities for outdoor recreation. But will future generations have the chance to experience its wonders? #MonumentsForAll @usinterior @whitehouse @usinterior @mypubliclands @usdagov

Talking Points:

To be clear, Zinke is recommending that President Trump eliminate important parts of Bears Ears National Monument - a move that is illegal, undermines tribal sovereignty and ignores the will of the American people.

National parks and protected public lands and waters help define who we are as a nation. Attempts to rip apart the fabric of national monuments are an assault on our nation's historical, cultural and natural heritage.

Utahans and the majority of Americans support national monuments and oppose removing protections.

- Despite the woefully short initial 15-day comment period, the response from Utah and across the nation was loud and clear. More than 700,000 Americans voiced support for the Bears Ears, with 99% of the comments in support of the national monument. [Click here](#) to read this article regarding the outpouring of support generated.
- National parks, monuments, public lands and waters are a critical part of the nation's economy - especially for rural and Western communities that benefit from the tourism, outdoor recreation and quality of life associated with healthy public lands.

An Attack on Bears Ears is an Attack on All Monuments

- With all national monuments designated since 1996 still under "review" this recommendation confirms the Trump Administration is on a disturbing path to undermine our National Conservation Lands. We still have until July 10 to make our voices heard in support of our other national monuments.

-

STAY CONNECTED:

Conservation Lands Foundation, 835 E. 2nd Ave., Suite 314, Durango, CO 81301

SafeUnsubscribe™_astyles@blm.gov

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