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Attached is the daily news report for July 6.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – JULY 6, 2017

1. 10,900 Year-Old Mashed Potatoes Found in Utah by Archaeologists

Science Alert, July 5 | David Nield

Out-of-the-ordinary archaeological finds never fail to fascinate us as we dig into the past – like the prehistoric potato granules unearthed in Utah, which experts say could be up to 10,900 years old.

2. Fire restrictions expanded as fire managers hope to curtail human-caused fires

The St George News, July 5 | Mori Kessler

ST. GEORGE – Throughout June and even before then, local, state and federal fire managers have implemented fire restrictions across the region in the hopes it would help curtail human-caused fires this season.

3. To Prepare For Mars Settlement, Simulated Missions Explore Utah's Desert

NPR News, July 6 | Rae Ellen Bichell

Victoria LaBarre was climbing out of a canyon and into a bright, vast, seemingly lifeless landscape when she started to experience an astronaut's nightmare.

4. BLM seeks comment on 3-D seismic project

The (Moab) Time-Independent, July 6 | Press Release

The Bureau of Land Management (BLM) Moab Field Office is seeking public comment on an environmental assessment (EA) analyzing the potential impacts of a geophysical exploration project. Dawson Geophysical Company and Rose Petroleum, LLC propose to conduct a 3-D seismic study on approximately 38,700 acres located about 26 miles northwest of Moab, in an area south of Interstate 70, between Ruby Ranch Road and the Green River. The project area includes lands administered by the BLM, Utah School and Trust Lands Administration, and private lands within Grand County



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5. Coalition takes first steps toward building road through Book Cliffs

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Grand County has told its county engineer of record, Horrocks Engineers, Inc., that there will be no political conflict if the firm seeks a contract with the Seven County Infrastructure Coalition (SCIC) for work related to a potential road/utility corridor through the Book Cliffs.

6. PUBLIC LANDS: BLM considers leasing parcels near Utah's Recapture Canyon

E & E News, July 6 | Scott Streater

The Bureau of Land Management is considering offering parcels for oil and natural gas leasing in a sensitive Utah canyon that has been at the center of some of the most heated protests in recent years over BLM's land management practices.

7. ATV Adventures: New maps track the saga of the Prospector trails

The Standard-Examiner, July 6 | Lynn R. Blamires, ATV Adventures columnist

The saga continues as the Prospector OHV Backway Complex evolves. New maps are now available showing the 847 miles of trail promised 15 years ago when the process started. A connection with the town of Eureka is a significant addition to the new map.

E&E/NATIONAL NEWS – TOP STORIES

1. Montana seeks to intervene in multistate lawsuit over Interior Department coal leases

Legal News Line, July 5 | Mark Iandolo

HELENA, Mont. (Legal Newslne) — Montana Attorney General Tim Fox announced June 29 that he has filed for intervention on behalf of Montana in a lawsuit filed in federal court against the U.S. Department of the Interior.



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2. It's official: massive Outdoor Retailer trade shows coming to Denver starting in 2018

The Denver Post, July 6 | Jason Blevins and Ethan Millman

Denver will host the prestigious Outdoor Retailer gatherings for the next five years, with a trio of shows drawing upwards of 85,000 people a year, delivering the city a \$110 million economic impact.

3. Bundy Ranch gunmen face retrial in Las Vegas

High Country News, July 6 | Tay Wiles

Four men who took part in the 2014 standoff between the Bureau of Land Management and the rancher Cliven Bundy face a retrial next week. The defendants, who are accused of helping thwart the government's attempts to impound Bundy's cattle, received a hung jury in April. U.S. attorneys now get another shot at proving their case against the four men — Eric Parker, Steven Stewart, Ricky Lovelien and Scott Drexler — who face a raft of charges, including conspiracy, obstruction of justice, and assaulting federal agents. They face up to 100 years in prison

4. Op-Ed It's magical legal thinking to say Trump can't reverse Obama's national monuments

The Los Angeles Times, July 6 | Todd Gaziano and John Yoo

Suppose President Trump declared much of California, Nevada and Oregon — states that just happened to vote against him — off-limits to economic development and recreational use. Suppose he barred all mining, grazing, agriculture and even camping from these states' federal lands (roughly 46% of California, 85% of Nevada and 53% of Oregon) under a law to preserve national monuments of scientific and historical interest.

5. Op-ed: The Abandoned Mine Land fund should not be treated as a slush fund

The Hill, July 6 | Arthur R. Wardle

Big money attracts big interests in Washington, D.C. The Abandoned Mine Land fund (AML), which collects and disburses billions of dollars to reclaim abandoned coal mines, is no exception.



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6. **ENDANGERED SPECIES: 400+ groups urge congressional leaders to fully fund key law**

E & E News, July 6 | Kellie Lunney

More than 400 conservation groups across the country are urging House and Senate leaders to fully fund the Endangered Species Act and oppose any efforts to weaken the landmark law.

7. **NATIONAL MONUMENTS: Legal experts say shrinking sites illegal; lobbying heats up**

E & E News, July 6 | Jennifer Yachnin and Nick Bowlin

Interior Secretary Ryan Zinke advocated for an "illegal and unconstitutional action" when he proposed reductions to Bears Ears National Monument last month, according to a new assessment endorsed by more than 120 academics with expertise in environmental, natural resources and administrative law.

8. **ENERGY POLICY: Trump's export push has surprising climate angle**

E & E News, July 6 | Hannah Northey

President Trump doubled down on his sales pitch today for European leaders to embrace the United States' massive shale supplies — a message that inadvertently dovetails with some former Obama administration officials who are seeking climate action.

9. **REGULATIONS: Court tests loom for Trump rule delays**

E & E News, July 6 | Amanda Reilly

The Trump administration's strategy of delaying compliance deadlines for Obama-era environmental rules is facing tests in federal courts.

10. **INTERIOR: Zinke orders 30-day oil and gas permit approvals**

E & E News, July 6 | Jennifer Yachnin

Interior Secretary Ryan Zinke announced today that he will sign an order directing his agency to follow its mandate of holding quarterly lease sales, in an effort to boost fossil fuel extraction on federal lands.



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11. PUBLIC LANDS: Grijalva wants Zinke to clarify 'energy dominance'

E & E News, July 6 | Kellie Lunney

The top Democrat on the House Natural Resources panel wants Interior Secretary Ryan Zinke to explain how the administration plans to balance its "energy dominance" strategy with environmental and multiple-use requirements for public lands under a key law.

12. INTERIOR: Zinke signs order to ensure quarterly lease sales

E & E News, July 6 | Jennifer Yachnin

The Western Energy Alliance acknowledged today it could end its lawsuit against the federal government over canceled or delayed lease sales as Interior Secretary Ryan Zinke signed a new secretarial order aimed at ensuring they occur quarterly.

13. METHANE: Appeals court ruling spells compliance confusion

E & E News, July 6 | Mike Soraghan

So much for regulatory certainty.

The appellate ruling reinstating Obama-era regulations on methane emissions from new oil and gas operations has put the industry on a compliance roller coaster. The U.S. Court of Appeals for the District of Columbia Circuit agreed with environmentalists and nixed a stay U.S. EPA Administrator Scott Pruitt had put in place.

14. METHANE: EPA ruling is not precedent for new lawsuit on BLM delay

E & E News, July 6 | Pamela King

A decision this week to restart an Obama-era U.S. EPA regulation capping methane emissions from new oil and gas sources offers few clues as to where a district court may fall on a new challenge around the Interior Department's postponement of limits on the same greenhouse gas on public lands.



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15. **PUBLIC LANDS: Cessna tours give 'the land a voice'**

E & E News, July 6 | Jennifer Yachnin

KALISPELL, Mont. — Seen from high above the Flathead Valley, the area's namesake river cuts across the rich green summer landscape, and its national forest blends seamlessly into neighboring Glacier National Park.

16. **WHITE HOUSE: LNG a test case for Trump's energy 'dominance'**

E & E News, July 6 | Peter Behr and Jenny Mandel

In his visit to the Energy Department last week, President Trump reveled in the "America First" image of the United States as the new global energy superpower, with rising cargoes of U.S. oil, coal, natural gas and petroleum products criss-crossing the seas.



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UTAH – FULL STORY

1. **10,900 Year-Old Mashed Potatoes Found in Utah by Archaeologists**

Science Alert, July 5 | David Nield

Out-of-the-ordinary archaeological finds never fail to fascinate us as we dig into the past – like the prehistoric potato granules unearthed in Utah, which experts say could be up to 10,900 years old.

To be more precise, these are starch granules from the *Solanum jamesii* plant, which produces small wild potatoes, and they could help us make the potatoes of today more resistant to drought and disease.

On top of that, this looks to be the first example of a domesticated potato plant (one made safe to eat) appearing in North America, giving historians new insight into the diets and cooking methods used by our ancient ancestors.

"This potato could be just as important as those we eat today not only in terms of a food plant from the past, but as a potential food source for the future," says lead researcher Lisbeth Louderback from the University of Utah.

Potatoes from *S. jamesii* aren't like the ones you'll be used to buying from the grocery store, which are descended from the *Solanum tuberosum* plant first domesticated in the South American Andes more than 7,000 years ago.

Though they're rare, *S. jamesii* potatoes are still grown and eaten in Utah's Escalante region today, and have a nutty flavour when properly prepared – it's just that no one realised how far their history went back.

The starch granules were discovered on ancient stone cooking tools dug up at the North Creek Shelter site in the Escalante valley. Having initially puzzled experts, the microscopic concentric circles on the granules were eventually matched to *S. jamesii*.

We know that these types of potato were eaten by several Native American tribes, including the Apache, the Navajo and the Hopi. They're also highly nutritious, packing in more protein, zinc, calcium, and iron than *S. tuberosum*.



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However, In Utah the potato plant is only found in isolated sites close to archaeological digs, which suggests the tubers were brought to the area by outsiders.

All of this new information helps archaeologists and historians in their studies of life as it might have been tens of thousands of years ago, with studies up until this point putting the first potato use in this part of the world at a later date.

Now the researchers want to make sure the *S. jamesii* plant survives for future generations, as well as mine its DNA to look for genes resistant to drought and disease, which could be helpful in diversifying our current potato crops.

"It's hard to persuade the general public to care about rare plants," says one of the team, Bruce Pavlik from the University of Utah. "But this one has a real history associated with native people, with pioneers, with folks living through the depression and with the residents in Escalante today."

Indeed the region was known as "Potato Valley" to early settlers, a name and a meaning that's been lost down the generations.

"The potato has become a forgotten part of Escalante's history," says Louderback. "Our work is to help rediscover this heritage."

The research has been published in PNAS.

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2. Fire restrictions expanded as fire managers hope to curtail human-caused fires

The St George News, July 5 | Mori Kessler

ST. GEORGE – Throughout June and even before then, local, state and federal fire managers have implemented fire restrictions across the region in the hopes it would help curtail human-caused fires this season.

The largest fire burning in Utah and the United States right now is the Brian Head Fire, a human-caused fire. Though containment has reached 70 percent as of the 4th of July, the fire has



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also grown to over 67,000 acres since June 17 when it ignited. The fire was reportedly started by a man using a torch to burn weeds.

Last month, Color County Interagency released expanded fire restrictions for all Kane, Iron and Washington counties, most of Beaver County and parts of Garfield, Wayne and San Juan counties, as well as Mohave and Coconino counties in Arizona.

“Lands not in fire restrictions are becoming increasingly dry and fire danger is increasing daily,” Interagency fire managers said Friday.

“Please ensure your campfire is completely out before you leave and all ignition sources are a safe distance away from vegetation to mitigate unwanted wildfires.”

The restrictions will remain in place until further notice.

Impacted areas

The restrictions cover unincorporated privately-owned and all state-administered lands.

Bureau of Land Management

- Utah/Arizona Strip
- Dixie National Forest
- Pine Valley, Cedar City, Powell and Escalante Ranger districts.

National Park Service

- Zion National Park, Bryce Canyon National Park, Cedar Breaks National Monument, Pipe Springs National Monument, Glen Canyon National Recreation Area and Rainbow Bridge National Monument.

Bureau of Indian Affairs

- Trust Lands of the Shivwits, Cedar, Indian Peaks and Kaibab Band Reservations.
- Incorporated towns and cities are not included in these restrictions. Contact your local fire department for municipal restrictions.

The following acts are prohibited until further notice



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- Igniting, building, maintaining or using a fire, including charcoal and briquettes, outside a fire structure provided by the agency within a designated area is prohibited. Campfires and charcoal fires are prohibited in Zion National Park's Watchman and South Campgrounds.
 - o All developed recreation sites, campgrounds, picnic areas and home sites that are maintained and administered by the agency, or home sites where running water is present are allowed. Stoves or grills that are fueled solely by liquid petroleum fuels are also allowed.
 - o Campfires and charcoal fires are allowed at Zion National Park's Lava Point Campground.
 - o In Glen Canyon National Recreation Area, campfires are also permitted below the high water mark of the lake in areas devoid of vegetation. Holders of Forest Service Special Use Authorizations are exempt from first restriction; provided such fires are within a fire structure and are within their permitted area.
 - It should be noted that abandoned campfires that aren't completely extinguished are also a concern for fire officials in Utah.
 - Improperly extinguished campfires can flare up once more, and with no one around to put it out, a second time they can get out of control. Campfires, even if they appear to be out, should be cold to the touch before leaving them stir the dirt with water until it is cold.
- Discharging, or using any kind of fireworks on unincorporated private land is always prohibited on state and federal lands.
- Operating or using any internal or external combustion engine without a spark arresting device properly installed, maintained and in effective working order as determined by the Society of Automotive Engineers (SAE) recommended practices J335 and J350.
- Detonating of explosives, incendiary or chemical devices, pyrotechnics, or exploding targets, or tracer ammunition always prohibited on federal land.
- Cutting, welding or grinding of metal in areas of dry vegetation.
- Smoking except in an enclosed vehicle or building, or a developed recreation site or areas of a minimum of three three feet in diameter cleared down to mineral soil.

Violation of restrictions on federal lands is punishable as a Class B misdemeanor by fine, imprisonment or both. Violators also may be held personally responsible for reimbursement of fire suppression costs.



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Southern Utah: Restrictions in Washington, Iron, Kane Garfield, Beaver and San Juan counties

- Setting, building, maintaining, attending or using open fires of any kind, except within the facilities designated for them in improved campgrounds, picnic areas or home sites where running water is present.
- Smoking, except within an enclosed vehicle, trailer or building, a developed recreation site or while stopped in an area that is paved or free from dry vegetation.
- Discharging or using any kind of fireworks, tracer ammunition or other pyrotechnic devices including exploding targets.
- Cutting, welding or grinding metal in areas of dry vegetation.
- Operating a motorcycle, chainsaw, ATV, or other small internal combustion engine without an approved and working spark arrestor.

Any of the above acts is a violation of state law and punishable by up to six months in jail and a fine of up to \$1,000.

The following persons are exempted from the above prohibitions:

- Persons with a permit or waiver specifically authorizing a specified act at a specific location.
- Any on-duty firefighter in the performance of an official duty.

Additional fire restrictions for Utah overall can be found on UtahFireInfo.gov.

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3. To Prepare For Mars Settlement, Simulated Missions Explore Utah's Desert

NPR News, July 6 | Rae Ellen Bichell

Victoria LaBarre was climbing out of a canyon and into a bright, vast, seemingly lifeless landscape when she started to experience an astronaut's nightmare.

"Suddenly," she said, "I couldn't breathe."

The symptoms were real — maybe from claustrophobia, or from exertion at high altitude. But LaBarre didn't unlatch her helmet to get a breath of fresh air because, in this simulated Mars exercise in the Utah desert, she was supposed to be an astronaut. The canyon was standing in for Candor Chasma, a 5-mile-



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deep gash in the Red Planet's surface. On Mars, there's no oxygen in the air — you do not take off your helmet.

So, instead, LaBarre radioed for help from fellow members of Crew 177. The team of students and teachers from a Texas community college had applied together to live and work for a week this spring in a two-story metal cylinder at the privately run Mars Desert Research Station near Hanksville, Utah.

Elijah Espinoza, a freshman assigned to be a crew engineer and geologist for the week, heard LaBarre's call and walked her through some breathing exercises.

"I think that's really one of the best things about Mars — the teamwork," said LaBarre. "I don't think you could live without it."

For 16 years, this facility surrounded by red hills, deep canyons and very few signs of life has been a kind of testing ground for learning what life on the Red Planet might be like.

Some think of Mars as the next frontier for human exploration; in March, Donald Trump signed a bill reiterating NASA's plan to send people to orbit Mars in the 2030s, with a goal of studying the possibility of "living off the land" there. Some view Mars as a necessary Plan B — a place to go if, or when, Earth is no longer habitable. Others view getting there as a milestone in a mission to make humans an interplanetary species.

Some combination of the above prompted the Mars Society — a nonprofit funded by grants, private donations, membership fees and, in the past, by donations from the Musk Foundation — to start this site in Utah in 2001.

The Mars Society and its research station aren't affiliated with NASA, which has its own simulation site in Hawaii. Missions last as long as 12 months there. And the crews, composed of top professional scientists and engineers, perform tasks in the NASA simulations that are very close to the agency's expectations for Mars exploration.

In contrast, missions at the Mars Society's Utah site tend to last two to three weeks. Volunteer crews, which are often sponsored by universities and occasionally companies — IKEA recently sponsored a group of the firm's furniture designers — cycle through from October to May on simulated missions of their own design.



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The sponsoring institutions pay the Mars Society between \$300 and \$550 per participant per week. Applicants propose Mars-specific scientific projects that they hope the Society will judge, according to its guidelines, to be useful in "promoting the human settlement of the planet Mars."

Each simulated mission requires its crew members to live in isolation in a harsh environment where water and energy must be carefully budgeted, and where storms can knock out communication with Capsule Communications — their only connection to the outside world.

A sticker on the hatch to the capsule that serves as the crew's home reads, "Whatever it takes."

Most teams that come here are made up of scientists from around the world. Crew 176 came from Poland, and Crew 178 from Belgium. Crew 177 is a little different. Six members are students at McLennan Community College in Waco, Texas. Their astronaut credentials include robotics clubs, Boy Scouts, and high school chemistry.

Some students are the first in their families to go to college; at least one had never been to a state other than Texas before taking part in this simulated Mars mission.

Their projects include testing soil samples for microbial life, using a stationary bike to charge batteries and testing a miniature prototype of an emergency response rover.

On the day I visited, part of the group went on a simulated spacewalk, which they called an "EVA" for extravehicular activity.

Their goal was to survey the area for signs of water and geologic history, and to collect rock samples, which they'd later test for things like iron, potassium and uranium.

"We want to find what's available on Mars and utilize it, instead of bringing supplies from Earth," said Pitchayapa Jingjit, Crew 177's designated biologist and photographer. Jingjit is entering her second year at McLennan.

"It also gives us a glimpse of what was once here in the past," added Esteban Ramirez, the crew gardener and astronomer, who's studying biomedical engineering.

Jingjit, Ramirez, and two other team members stepped into cloth bodysuits, clicking their spherical plastic helmets in place and putting on gloves and shin guards (to shield them from notably non-Martian threats, such as rattlesnakes).



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"Good luck. Be safe," Otsmar Villarroel advised them from the other side of the door. He's a professor of chemistry at McLennan, but for Crew 177, he's "Commander V."

The four suited-up explorers opened the hatch to another small room, dubbed the airlock. The airlock's wall was decorated with a flag made of three vertical rectangles in red, green and blue.

"I guess when we land on Mars, that's what's gonna be planted," said Espinoza, pointing out the popular but unofficial flag. It's meant to represent the theoretical transformation of Mars from a hostile, red environment to a livable, Earth-like planet of green and blue.

The four team members squeezed into the airlock and counted down 60 seconds. They were simulating depressurization, a process that would be necessary on Mars to keep people from get sucked out into the low-pressure atmosphere — like ants yanked up a vacuum cleaner — as soon as they cracked open a door.

Then the explorers stepped out onto the surface of simulated Mars-in-Utah, boarded a couple of ATVs, and, used GPS to navigate their way to a pre-determined rock outcropping, zooming between hills with stripes of maroon, white, red and yellow.

The landscape looked ancient. When they stepped off their vehicles to collect a sample, the ground crumbled underfoot like stale muffins.

"These are all ancient sand dunes," said Espinoza, before hammering off a chunk of sandstone and sealing it in a plastic baggie. "There used to be an ocean where we're standing."

The students all had different backgrounds and reasons for coming here. What united them is a college class called Mars 101, and a belief that it's necessary for humans to set foot on the planet.

Actually traveling to Mars is "something that I feel like we have to do as a human race," said Espinoza, who's studying mechanical engineering. "Four or five generations down the road, there may be a point in time where Earth isn't suitable anymore. You have to leave. And it's either the human race can end, or the human race can progress on another planet."

LaBarre, who has been to MDRS twice and is Crew 177's executive officer and chemist, said she's excited about the technological advances that will come in the process of readying humans for life on Mars. "Oh man, it's going to be amazing," she said.



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She views her time at the MDRS as the ultimate test of her robotics skills. It takes creativity in tight situations to succeed on Mars, said LaBarre, who is so enthusiastic about the Utah experience that she routinely refers to the site as "Mars." When her prototype rover broke, LaBarre soldered together two cell phone chargers to get it going again.

"I think that's why I ended up coming to Mars and falling in love with Mars," she said. "There's not a single person out there who can go 'Victoria, you can't be an engineer.' It's like, 'Really? Watch me.' "

"There's so much that we can gain as a people," Ramirez said of the simulated mission, "and I really want to be a part of that, even if it's just staying in a little tin can for a week. Anything I can do to help."

The group made a taco dinner that night from dehydrated ingredients so dry they rattled in the containers.

They sent a report of the day's accomplishments to Cap Comm, mentioning that everyone was doing well, but the toilet was malfunctioning, and that worried them — just as it might on Mars.

They watched the sunset from the capsule's portholes, and spotted crystals of gypsum on the hills, which LaBarre said "glitter like diamonds."

And then, after a few days, they stepped out of the capsule again — this time not wearing spacesuits — and went back to breathing the outside air. They traveled back to Waco, Texas, to classes and homework and dreams of graduate school.

If all goes as planned, by the time the members of this crew are in their late 30s, NASA will have sent humans to the Red Planet. The real one.

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4. **BLM seeks comment on 3-D seismic project**

The (Moab) Time-Independent, July 6 | Press Release

The Bureau of Land Management (BLM) Moab Field Office is seeking public comment on an environmental assessment (EA) analyzing the potential impacts of a geophysical exploration project. Dawson Geophysical Company and Rose Petroleum, LLC propose to conduct a 3-D seismic study on



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approximately 38,700 acres located about 26 miles northwest of Moab, in an area south of Interstate 70, between Ruby Ranch Road and the Green River. The project area includes lands administered by the BLM, Utah School and Trust Lands Administration, and private lands within Grand County

A public comment period for this EA was held earlier this spring. In response to comments received, the company revised its proposal and BLM updated the analysis. The BLM is seeking comment on the revised proposal and EA, which provides a description of the project and provides an analysis of issues such as potential impacts to soils and water quality.

The EA and specific project information, including maps, is available for review at the BLM ePlanning website, <http://go.usa.gov/x8d7G>. Comments must be submitted by close of business July 14. Comments may be submitted electronically through the ePlanning website or submitted by mail to: Bureau of Land Management, Moab Field Office, Attn: Gunnison Valley Seismic Survey, 82 E. Dogwood Ave., Moab, UT 84532.

Commenters should be aware their entire comment, including personal identifying information, may be made publicly available.

For further information about the project, contact Doug Rowles at the Moab BLM office at 435-259-2100 and ask to speak with Doug Rowles.

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5. **Coalition takes first steps toward building road through Book Cliffs**

The (Moab) Time-Independent, July 6 | Molly Marcello

Grand County has told its county engineer of record, Horrocks Engineers, Inc., that there will be no political conflict if the firm seeks a contract with the Seven County Infrastructure Coalition (SCIC) for work related to a potential road/utility corridor through the Book Cliffs.

The SCIC recently released a request for qualifications asking for professional pre-development plans for a 41-mile route through East Canyon in the Book Cliffs. The project would be located entirely within Grand County.

County-contracted engineer Dave Dillman discussed the matter with the council June 27, describing the SCIC contract as an opportunity for his company to reap a “significant amount of work.”



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Dillman said Horrocks Engineers simply wants to provide engineering services for the project, but does not want to implicate Grand County politically, alluding to previous councils' stated opposition to any transportation corridor through the Book Cliffs.

"There's a lot of political ramifications and opinions on this road, on that project," Dillman said. "We just want to be fully transparent, that if we are to pursue it, we are not in conflict with the desires of the council in any way."

On July 6, Dillman told The Times-Independent that Horrocks Engineers ultimately decided not to submit the RFQ for the first phase of the project.

"We are not going to pursue the RFQ at this point in time," Dillman said. "The coalition is moving forward on the project regardless. ... We just wanted to be fully transparent with the county that if we decided to pursue it that nobody had a conflict."

He said there were "multiple reasons" for the company's decision, although he declined to discuss them. However, Dillman said Horrocks has not ruled out seeking a contract for future work on the project.

"We're not going to pursue that work at this time," he said, adding that "there's a possibility that we may in the future."

SCIC membership includes Carbon, Daggett, Duchesne, Emery, San Juan, Sevier and Uintah counties. Grand County was invited to join the coalition in 2014, and the council members at that time voted 6-1 in favor. But in January 2015, newly elected council members voted 5-2 to opt out of the group, citing concerns about the language of the SCIC agreement. Some council members and citizens also voiced concerns that the SCIC would push for a road or utility corridor in the Book Cliffs even if Grand County did not want it.

The SCIC has been collaborating on "sustainable infrastructure projects" in the state and has listed the road/utility corridor in Grand County as a "priority project."

Last year, the coalition received \$1 million in funding — split between the Utah Permanent Community Impact Fund Board and Uintah County's Transportation Special Service District — for "phase one" of the project.

Phase one includes conceptual design and alignment data for a 41-mile corridor connecting Seep Ridge Road at the southern end of Uintah County through East Canyon in Grand County to Interstate 70.



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According to a 2016 economic study funded by several counties and the state, the road/utility corridor could facilitate the extraction of an estimated 1.1 million barrels of oil by 2040, with Uintah County seeing \$85 million in energy-related production and taxable sales.

“The improved corridor will help alleviate regional transportation capacity constraints and thereby contribute to the expansion of the oil and gas industry,” the SCIC states on its website.

When the project received phase one funding last year, Grand County’s previous council sent a letter notifying the Bureau of Land Management (BLM) and the SCIC of its opposition to the development of any transportation corridor through the Book Cliffs. That letter requested that the BLM not consider any land transfers for the project’s development.

Setting aside that issue on June 27, the council essentially gave the go-ahead to Dillman and Horrocks Engineers to respond to the phase one RFQ. Council members said there will be no conflict — or hard feelings — if the company is awarded the SCIC contract.

“I think most people know where I stand on the road issue,” said Grand County Council chairwoman Jaylyn Hawks, who voted to send the opposition letter in 2016. “But I do respect the work Dave Dillman and his associates have given in Grand County and I would trust he would give fair assessment if he were selected.”

Council member Curtis Wells said the council should not act “vindictively” towards an independent contractor.

“In my own opinion, it wouldn’t be wise to withhold them for political reasons to not be able to get some work for their business,” he said.

The June 27 conversation over the project did remind the council — and some members of the public — that other regional and state entities may be lending significant support to a project that has met mixed reviews in Grand County.

SCIC Executive Director Mike McKee told The Times-Independent that he feels the project already has support in the state Legislature.

When the SCIC is ready to move into “phase two” of the project, which would involve a \$3 million to \$4 million environmental assessment or impact study under NEPA [National Environmental Policy Act] guidelines, the coalition will likely seek funding at the legislative level, McKee said.

“It’s not a for sure deal, but we have good reason to believe that this [project] has got some legs,” he said. “There’s a good chance of getting additional funding from the Legislature.”



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With expected state-level support, Castle Valley Mayor Dave Erley cautioned the Grand County Council about the corridor's development. The 2016 economic study estimated that a route through East Canyon would cost approximately \$157 million to build, and Erley said maintenance costs for such a road could potentially put Grand County at severe financial risk.

"Just from a simple taxpayers point of view, it is suicide for this county if we get stuck with that bill to maintain it," Erley said. "Be pragmatic; get beyond the philosophy of which side you're on and let's get an honest answer [about the cost]."

But McKee said it is absolutely not the intention of the coalition to stick Grand County with those costs.

"If this project moves forward, it is not with the proposition that Grand or Uintah County gets stuck with paying for the road — that's not the plan," McKee said. "Moving forward, this would need to be a state highway, and it would need to be funded in that way."

During the June 27 meeting, Dillman "strongly recommended" that the county keep abreast of the project, noting that the opportunity for council members to voice their concerns will come during the phase two NEPA process.

As the SCIC moves forward on the road/utility corridor, McKee said the group is "100 percent committed" to working with Grand County.

"At some point, there's going to be a full public process and as many meetings in Grand County as needed so that questions and issues can be discussed and resolved," McKee said. "... It's our intent to work very closely with Grand County."

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6. PUBLIC LANDS: BLM considers leasing parcels near Utah's Recapture Canyon

E & E News, July 6 | Scott Streater

The Bureau of Land Management is considering offering parcels for oil and natural gas leasing in a sensitive Utah canyon that has been at the center of some of the most heated protests in recent years over BLM's land management practices.

At issue are 45 parcels covering 57,000 acres in southeast Utah that have been nominated by the industry for a March 2018 lease sale.



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Three of the parcels are in the southern end of Recapture Canyon, which contains ancient Pueblo cliff dwellings that BLM says "are essential to understanding the story of the earliest inhabitants of the American Southwest."

Others run near the canyon, which in recent years has become a flashpoint for complaints about the Obama administration's lands management policies that some said were too restrictive. A Utah county commissioner served a brief stint in jail for organizing an illegal all-terrain vehicle ride through the canyon in 2014 to protest BLM's decision to close it to motorized travel and other supposed heavy-handed regulations.

BLM recently overturned a 2007 decision to close 1,871 acres in Recapture Canyon to ATVs, allowing limited access in and around the area but still closing the bottom of the canyon to motorized travel (E&E News PM, April 10).

In addition, 13 parcels nominated for the lease sale are within the recently completed Moab master leasing plan (MLP), which identified where oil, gas and minerals development will be allowed within the 785,000-acre planning area. Another 19 parcels are within the pending San Rafael Desert MLP.

MLPs are designed, among other things, to guide energy development away from sensitive cultural and environmental sites and are a key component of Obama-era onshore leasing reforms adopted in 2010.

BLM stated in an email that in "previous years" the parcels would "have been automatically deferred before an environmental review."

But with the Trump administration's new priority for oil and gas leasing on federal lands, "BLM is including these parcels in the environmental review for this lease sale, and through that process will determine which are appropriate for leasing and under what terms and conditions."

Environmental groups, including the Southern Utah Wilderness Alliance and Friends of Cedar Mesa, blasted the decision to even consider leasing the parcels at issue, according to an article in The Salt Lake Tribune. Representatives of both groups did not respond to requests for comment on this story in time for publication.

BLM is analyzing the parcels in an environmental assessment and has opened a public scoping period running through July 27 to gather public comment that will be used in the analysis.

"The BLM is aware there are sensitive resources here and will be carefully reviewing each parcel, consulting with tribes and cultural resource experts, and reaching out to the public as part of our environmental review process and responsibilities under the National Historic Preservation Act," Robin Naeve, BLM Utah's fluid minerals branch chief, said in an emailed statement.



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Ryan Sutherland, a BLM spokesman in Utah, said there are regulatory "stipulations" in place regarding the three parcels inside the canyon that "would push any exploration outside of the canyon."

What's more, all 45 parcels would include lease stipulations allowing BLM to modify development proposals or "disapprove any activity that is likely to result in adverse effects that cannot be successfully avoided, minimized or mitigated."

"Please remember this is our initial scoping phase," said Lisa Bryant, a BLM spokeswoman in Utah.

Christina Price, the manager of BLM's Moab Field Office, said the agency is respectful of "the ties many Native American tribes and Utah's pioneer families maintain with the lands as a shared community value."

But she added, "We are also committed to be a good neighbor to the communities we serve, providing opportunities for economic growth, energy development, recreation, grazing, and hunting and fishing."

Controversial history

The proposed lease sale is just the latest development in a yearslong debate over how best to manage the sensitive canyon area.

The proposed leases cover southern portions of the canyon, from Browns Canyon south to Perkins Road, which harbors Recapture's most vulnerable archaeological sites, according to The Salt Lake Tribune.

In addition to Pueblo cliff dwellings, the canyon also contains important wildlife habitat, including sensitive riparian areas for the endangered southwestern willow flycatcher and crucial winter range for mule deer and Rocky Mountain elk.

But when BLM closed it to motorized travel in 2007, many leaders in San Juan County, where the canyon is located, as well as Utah's congressional delegation, were upset.

BLM said it closed the canyon after two Utah men used picks, shovels and other tools to blaze an illegal 7-mile off-highway-vehicle trail through it, damaging ancient Anasazi and Pueblo ruins. The agency said there are 2,800 miles of other trails open to OHVs in southeast Utah.

But San Juan County Commissioner Phil Lyman in 2014 led an illegal ATV ride through a closed section of the canyon in violation of BLM's prohibition on motorized travel. He did so as a protest of federal land-use restrictions and what he said was BLM's slow pace in addressing the county's request to reopen it.



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While Lyman had asked riders to stay on a pipeline road where the San Juan Water Conservancy District holds a right of way, roughly 32 vehicles defied him by riding farther south, damaging at least eight archaeological sites.

A federal judge later sentenced Lyman to 10 days in jail, three years' probation and a \$10,000 fine for organizing the illegal ride (E&E News PM, Dec. 18, 2015).

"The BLM takes seriously its responsibility for protection of America's natural heritage and the cultural resources entrusted to our care," Naeve said in her email.

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7. **ATV Adventures: New maps track the saga of the Prospector trails**

The Standard-Examiner, July 6 | Lynn R. Blamires, ATV Adventures columnist

The saga continues as the Prospector OHV Backway Complex evolves. New maps are now available showing the 847 miles of trail promised 15 years ago when the process started. A connection with the town of Eureka is a significant addition to the new map.

I talked with David Brown, the Tooele County Trails Coordinator, who explained some of the issues he worked through to get this trail on the map.

"Working with the two federal agencies who manage land the complex covers has been a challenge," Brown said. "The Forest Service and the BLM manage lands differently."

"In addition to that, I have had to work with NEPA and archaeological studies that seem to have no time limits," Brown added.

Although those challenges are behind him, he now faces problems the Division of Wildlife Resources (DWR) is presenting as they're trying to introduce sage grouse into the area.

"They have released the third covey of 40 birds into the area the complex covers to try and increase sage grouse numbers along with addressing habitat and water resources," he said. "I think it will be necessary to address the predator problem before they will be successful."

Brown is watching to see if any other problems develop from this project.

A study of the new map will reveal the addition of trails in the area of Eureka. I talked to Mayor Nick Castleton who is excited about welcoming ATVs.



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“The town council has just passed an ordinance that opens all city streets to ATV travel with a speed limit of 20 mph,” he said. “I have watched trucks pulling ATVs passing through Eureka on the way to the sand dunes for years. I have always wanted to give riders a reason to stop here and enjoy some of our trails.”

Commenting further, he said, “We are working on a Eureka Trails map that will invite riders to see historic sites like the Humbug Mine, the foundation of the old school Jesse Knight built in Knightsville and some of the old cemeteries in the area.”

The mayor asked me to share his email address as he welcomes questions and comments. He can be reached at mayorcastleton@yahoo.com. As a personal note, there’s a good place to get lunch in Eureka that will enhance your riding experience.

Vernon is situated in the middle of the system. With a population of just over 250, the only retail business in town is the Silver Sage convenience store and filling station. You can get anything you need there from diapers to donuts.

This little bright spot in Utah’s high western desert has noticed a significant increase in business from ATV traffic. I have eaten at the cafe, and it’s worth going back to again.

As I have stated before, the Prospector Complex is a work in progress. This map completes the outline of the system, which includes 847 miles of rideable trails. When you ride this system, you will notice many trails that are not on the map. That is the next step in the development of the complex.

The map shows County B roads — those that are usually 68 feet wide and maintained by the county. The County D trails are owned by the county but not maintained. Twenty-one counties in Utah are involved in litigation over rights to these trails.

When that’s settled, new maps will show an intricate lattice of trails adding hundreds of miles to the Prospector Complex. It will be one of the most significant trail systems in the country.

At this time, those trails are there for exploration, but they can’t be marked until the case in the courts is settled. Although these trails are best ridden in the spring and fall, the winters are mild and this system is open to ride year round.

New maps are available. If you have difficulty finding one, let me know. I will get them to an ATV dealer near you. When you go, take plenty of water, keep the rubber side down and watch this complex as it develops.

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E&E/NATIONAL NEWS – FULL STORY

1. Montana seeks to intervene in multistate lawsuit over Interior Department coal leases

Legal News Line, July 5 | Mark Iandolo

HELENA, Mont. (Legal Newsline) — Montana Attorney General Tim Fox announced June 29 that he has filed for intervention on behalf of Montana in a lawsuit filed in federal court against the U.S. Department of the Interior.

The lawsuit was brought forth by New Mexico, California, New York and Washington, as well as multiple environmental groups. They seek to reverse a March secretarial order issued by U.S. Department of Interior Secretary Ryan Zinke that ended a moratorium on issuing coal mining leases on federal land.

“Secretary Zinke acted within his authority under the law to reverse a discretionary policy of the previous administration, and the lawsuits objecting to the new policy are purely political and ideological in nature,” said Attorney General Tim Fox. “The state of Montana has a significant stake in the continuation of federal coal leases, and is well-positioned to benefit from increased coal mining on our federal lands.”

Montana has roughly 25 percent of the United States’ recoverable reserves of coal. Fox argues that Montana deserves a say in the case as it has a significant stake in the outcome.

“Montana seeks to intervene in this case because it has a significant interest in ensuring that federal coal leasing located within the state continues,” Fox said. “Montana would be grievously harmed if the interest groups and plaintiff states prevail.”

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2. **It's official: massive Outdoor Retailer trade shows coming to Denver starting in 2018**

The Denver Post, July 6 | Jason Blevins and Ethan Millman

Denver will host the prestigious Outdoor Retailer gatherings for the next five years, with a trio of shows drawing upwards of 85,000 people a year, delivering the city a \$110 million economic impact.

City and state officials and industry leaders made the announcement Thursday during a press conference in Denver's City Park.

"If you look at what this means, that's a huge benefit, but that's not what deserves to be mentioned," Colorado Gov. John Hickenlooper said in announcing the much-anticipated deal. "State parks, wildlife areas. All this stuff comes as an accumulative attraction. It is part of the defining characteristic of Colorado.

"What we're saying today is that we're in this for the long term. We're going to continue to try and talk about the importance of outdoor recreation in Colorado. Henry David Thoreau once said all good things are wild and free. We believe that in Colorado," Hickenlooper said.

Thursday's announcement was about more than a trade show.

It's a dawning for a galvanized, energized recreation community that will grow from Colorado, fomenting political, social and cultural support for public lands, environmental health and the outdoor recreation industry.

Denver's hard-won negotiations to land the Outdoor Retailer rallies — a combined Outdoor Retailer – SnowSports Industries America Snow Snow in January, a summer show in June and a winter show in November — is a tipping point for Colorado's surging outdoor recreation industry, a wide community that blends all types of outdoor players in an economy that stirs \$28 billion in spending in the state.

"Colorado and Denver has always looked at this as more than a trade event or how it delivers a one-time bump the city's economy," said Kim Miller, the chief of Boulder's SCARPA North America who serves on both the SnowSports Industries America and Outdoor Industry Association boards, the two groups that joined with Outdoor Retailer trade show owner Emerald Expositions to create a combined winter trade show. "This was, on the highest level, an alignment of values and visions and characteristics relative to the way the outdoor recreation industry wants to be and the way the state wants to be. To me, this is the definition of a true



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partnership. This was the moment for Colorado and it all tipped, in my opinion, toward the logical conclusion that these shows belong here.”

In a short 18 months, leaders from Colorado, Denver, OIA, SIA and Emerald — the largest business-to-business trade show operator in North America — hammered out a deal that typically takes several years. The agreement will put the Outdoor Retailer summer and winter trade shows in the Colorado Convention Center for the next five years, consolidating SIA’s Snow Show — which was booked in Denver through 2030 — with the Outdoor Retailer Winter Market show into a single gathering in January. The summer show shifts from its typical early August date to June and the Outdoor Retailer winter market moves to November.

Denver bested several other cities vying for the coveted Outdoor Retailer trade shows, which announced they were leaving Salt Lake City earlier this year.

Marisa Nicholson, Emerald Exposition’s director of the Outdoor Retailer shows, said “a tremendous amount of cities” vied to host the events.

“Ultimately when deciding on our final venue, the ethos of Colorado just aligned really well with our industry and its vision and values,” she said.

The divorce from Salt Lake, where the shows have been for more than 20 years, was ugly. The maturing outdoor industry was unhappy with Utah officials lobbying to reduce the size of the recently designated Bears Ears National Monument, which the Trump Administration is reviewing with the notion of downsizing the 1.35 million-acre monument. When Utah officials refused to back off their push, the industry galvanized and began searching for a new home.

Colorado was one of the first states to offer itself as a host for the summer and winter shows.

But summer is the busy season at the Colorado Convention Center and carving a hole in a meticulously assembled calendar was a challenge, especially for convention bookers who begin negotiating with large groups several years out.

Amy Roberts, the head of OIA, which partners with publicly traded Emerald to host the Outdoor Retailer trade shows, said Denver stood out among the potential hosts. It’s international airports and train to downtown, wide array of hotels and restaurants and large convention center were key.



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But the state's leadership when it comes to outdoor recreation was equally important, Roberts said.

Hickenlooper's embrace of outdoor recreation — like his celebration of public lands, his plan for a statewide bike path and the creation of an outdoor recreation office — was a deciding factor as well, Roberts said. So was Denver's blossoming recreation amenities like the new Colorado Classic bike race, revamped whitewater park and myriad trails.

"I think you will see Denver and Colorado pushing us on the innovation side, which we are really looking forward to. I think the industry, by its nature, is innovative and I think our sustainability work shows we are able to bring together collaboration on big issues that are important to the outdoor industry," Roberts said. "I think Colorado will be a partner in driving the change we are looking for."

Shifting the dates of the show has a business appeal for retailers and manufacturers dealing with increasingly shorter ordering and manufacturing cycles. Those early dates for shop owners placing their orders and manufacturers arranging with overseas factories has led to fewer actual business transactions at outdoor trade shows in recent years. Moving the summer show from August to June, hosting a winter event in November and combining the often-competing SIA Snow Show and Outdoor Retailer winter show into a single rally will help both retailers and manufacturers, Roberts said.

"It just makes sense for the industry," she said. "I think a new city is going to breathe new life into the shows and moving to these new dates are going to change the purpose of the show. I think the location will be well received and the overall return on investment on the trade show will go up."

Bill Gamber, the Steamboat Springs boss of both Honey Stinger and Big Agnes, said moving the show to Denver will work well for his team. Not only is it convenient, but he won't have to pay for two booths and two trips for his crew in January, as he has for years traveling to both the Outdoor Retailer and Snow Show winter gatherings.

"We're pumped. Colorado takes one more step as the leader," said Gamber, who hopes to ski on his way to Denver for the January Snow Show and fish on the trip down in the summer.

The hope all along has been that the Outdoor Retailer trade show would elevate Colorado the epicenter of all things outdoor recreation. The state already owns skiing, with its 26 resorts



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drawing more than a fifth of all the country's skier visits. It's rivers are among the most rafted in the country. It's network of bike trails is a national leader. With Outdoor Retailer, Colorado can take the next step from hosting recreation, to advocating for recreation as a cultural, social and economic force for good.

"We recognize the value of the outdoor recreation industry not just for the economy but also as a platform for conservation, stewardship, economic development, health and wellness," said Luis Benitez, the head of the Colorado Outdoor Recreation Industry Office. "This will become our political bully pulpit and we will do everything in our power to capitalize off this opportunity and partnership."

Salt Lake City and its Utah neighbor Ogden have blossomed over the last 20 years, with a collection of major brands in the outdoor recreation industry — like Salomon, Rossignol, Black Diamond, DPS Skis and backcountry.com — that has positioned Utah as a national leader.

"We want to go deeper with outdoor industry conversations around climate and public lands," Benitez said, noting how educational opportunities in Denver's bid — like a proposal to deploy Colorado State University professors sharing the latest research and industry trends — could open the Outdoor Retailer trade shows to an audience beyond industry insiders.

It might take more than trade shows to get outdoor companies to set up a home base in Colorado though, said Gamber. Last summer he opened a Big Agnes distribution facility in Salt Lake City after warehouses were unavailable in Denver and Grand Junction warehouses lacked direct rail access.

"The government here in Colorado is so pro-outdoors but it's behind the curve as far as having the infrastructure. Ogden has been aggressive for a long time and they have stepped up," Gamber said. "The Outdoor Retailer shows will bring more attention for the outdoor industry to come to Colorado, but things like warehouse availability, rail access, access to the mountains and Interstate 70 traffic don't change with a trade show."

Outdoor Retailer's Denver dates:

SIA Industry + Intelligence Day January 24, 2018

Outdoor Retailer + Snow Show January 25-28, 2018



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SIA On-Snow Demo January 29-30, 2018, Copper Mountain

Outdoor Retailer Summer Market July 23-26, 2018

Outdoor Retailer Winter Market November 8-11, 2018

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3. Bundy Ranch gunmen face retrial in Las Vegas

High Country News, July 6 | Tay Wiles

Four men who took part in the 2014 standoff between the Bureau of Land Management and the rancher Cliven Bundy face a retrial next week. The defendants, who are accused of helping thwart the government's attempts to impound Bundy's cattle, received a hung jury in April. U.S. attorneys now get another shot at proving their case against the four men — Eric Parker, Steven Stewart, Ricky Lovelien and Scott Drexler — who face a raft of charges, including conspiracy, obstruction of justice, and assaulting federal agents. They face up to 100 years in prison

Their trial may become even more complicated this time around. New evidence that prosecutors might bring in suggests the standoff in Bunkerville, Nevada, was not an isolated incident but a piece of a larger phenomenon. Prosecutors aim to show that the defendants have ongoing ties to militia groups, by describing two similar incidents in Oregon and Montana in 2015. According to court documents, prosecutors allege that the participation of Drexler and Parker in these events is "inextricably intertwined" with the conspiracy charges in the Bunkerville trial.

One of the events, in Josephine County, Oregon, centered on a dispute between two owners of the Sugar Pine gold claim and the BLM. When the agency told the miners their claim was out of compliance, and they needed to file a plan of operations, the two men asked for help from a local chapter of the Oath Keepers, a militant anti-government group.

That April, the Oath Keepers launched what they called "Operation Gold Rush." They gathered for several weeks and used armed patrols to guard the mining claim because they said they feared the government would try to seize the property. The group put out calls on social media for others to join. Hundreds of people from around the country, many of whom were part of the so-called "patriot" movement, came to support the cause. Drexler and Parker were among them, as members of the Idaho III%, another militant group, according to court documents.



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The second event prosecutors say they might introduce an event that took place just a few months after the Sugar Pine standoff. When two owners of the White Hope Mine claim outside the town of Lincoln, Montana, entered into a dispute with the Forest Service, Oath Keepers and Idaho III% again showed up. Drexler and Parker were allegedly among them. (The Forest Service argued that the miners had “illegally opened a road, cut down trees, built a garage and denied the public the right to access the White Hope mine.”)

These events may seem far removed from the 2014 standoff in the southern Nevada desert, in which Bundy supporters forced the BLM to abandon its impoundment of trespass cattle. In fact, the Sugar Pine and White Hope gatherings were outgrowths of Bunkerville, in part made possible by social networks forged at Bundy Ranch. Many of the same groups and individuals showed up in person or offered support via social media. All three incidents were an expression of a growing anti-federalist movement that often erupts around public land and natural resource disputes.

By casting this net across the broader movement, prosecutors might be able to prove defendants’ longstanding intentions to undermine the government. According to court documents, the evidence may help convince jurors that the defendants did not show up to Bundy Ranch on a whim.

Meanwhile, the government is also trying to preclude defendants from testifying on their personal beliefs, to explain their “state of mind” at the time of the Nevada standoff, including “their beliefs about the First Amendment, the BLM, their alternative reality view of the world, and a host of other irrelevant matters,” according to court documents. In response, defense attorneys said that prohibiting discussion of their clients’ state of mind “undermines fundamental fairness and due process, while prohibiting the defendants from presenting their theory of defense.” The judge has yet to rule on the government’s motion.

In a trial last fall related to the armed occupation of Oregon’s Malheur National Wildlife Refuge, Ammon Bundy spent nearly 10 hours on the witness stand describing his beliefs on topics ranging from the Constitution to public-lands management. The jury in that case found Bundy, who lead the occupation, not guilty.

The Nevada retrial begins July 10 and is expected to last between seven and nine weeks. Two additional defendants originally charged in the case — Gregory Burleson and Todd Engel — were convicted of eight and two charges each, in April, and will not be retried. The current trial



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is the first of three related to the Bunkerville standoff. The second trial will not begin until the first is concluded. It will feature Cliven Bundy and his sons, Ryan and Ammon. Six more Bundy supporters who participated in the Nevada standoff will be tried in a third case, for which a date has yet to be set.

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4. **Op-Ed It's magical legal thinking to say Trump can't reverse Obama's national monuments**

The Los Angeles Times, July 6 | Todd Gaziano and John Yoo

Suppose President Trump declared much of California, Nevada and Oregon — states that just happened to vote against him — off-limits to economic development and recreational use. Suppose he barred all mining, grazing, agriculture and even camping from these states' federal lands (roughly 46% of California, 85% of Nevada and 53% of Oregon) under a law to preserve national monuments of scientific and historical interest.

According to some environmentalists and legal scholars, we would have to live with this result. They believe a president can permanently designate federal land as a monument and restrict its uses — even if we're talking about millions of acres (138 million acres in the example above), far removed from any real historical or scientific significance, and over the objections of the states involved.

But a presidential power to create permanent national monuments flies in the face of the plain text of federal law, the conventional relationship between presidents and Congress and historical understandings of executive power. Trump has the right to reverse the national monuments created by previous presidents without an act of Congress, but by the same token, the Constitution creates a check by allowing future presidents to reverse Trump too.

In late April, Trump announced a plan to reconsider the size of recently designated national monuments, principally those that withdrew vast amounts of land in the West and in the oceans near Hawaii and New England from some forms of economic development. His orders sparked a firestorm of criticism from environmentalists and sympathetic public officials, who have argued in these pages that Trump cannot undo a national monument once declared by a past president.



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The power to create national monuments derives from the Antiquities Act of 1906. It's a broad presidential power, although monuments must be limited to the smallest area necessary to preserve landmarks and other objects of interest. Like many federal laws, the Antiquities Act delegates authority to the executive branch but does not address how to undo the use of the power. Those who defend permanent, unchangeable national monuments argue that the act's silence on reversal means reversal is impossible. But there is no reason to believe that the Antiquities Act can uniquely evade the fundamental principles that apply throughout our government and laws.

Almost every grant of power, by Constitution or statute, implicitly also includes the power of reversal. Congress has no express authority in the Constitution to repeal a law, but it does so by passing new laws. The Supreme Court doesn't have express authority to overrule a past precedent, but it does so in a later decision. As the federal courts have recognized, the president can fire Cabinet officers or abrogate treaties (both of which require Senate advice and consent), even though the Constitution doesn't mention it. No Congress, Supreme Court or president can bind their successors from using their branch's constitutional powers.

The courts have applied the same legal principle of reversal when Congress delegates lawmaking power to the executive branch, as in the Antiquities Act. For example, agencies granted authority to issue regulations also can revoke or modify them, and presidents often repeal executive orders, many of which are based on statutory powers. The courts have never held that the underlying statutory authority once used cannot be revoked.

Indeed, those who claim that the Antiquities Act does not grant a reversal power cannot find a single case in another area of federal law that supports that contention. To override the norm, legislators have to clearly limit reversal powers in the original law; the plain text of the Antiquities Act includes no such limits.

Those who consider monument proclamations sacrosanct place most of their hopes in a cursory legal opinion issued by U.S. Atty. Gen. Homer Cummings in 1938. No court has ever approved of the Cummings opinion. Our research explains the many holes in its reasoning, including Cummings' mistaken reliance on an 1862 attorney general opinion that interpreted a different law, with utterly different facts, and, in any case, reached a conclusion contrary to Cummings' position.



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In a letter to the Interior Department, California Atty. Gen. Xavier Becerra asserts that Trump cannot legally revoke or reduce six national monuments in California. Besides his reliance on Cummings' flawed opinion, Becerra's statutory citations don't help his case. He primarily cites ambiguous comments made in House committee deliberations related to the Federal Land Policy and Management Act of 1976. But that is a separate statute, on a different subject, that did not alter the text or plain meaning of the Antiquities Act. If that's the best that California officials have on their side in this debate, they should lose.

Californians and others who want to maintain national monuments without change should focus on the merits of the designations rather than magical legal thinking. No president is likely to significantly disturb a national monument that enjoys strong local support. The public comment period for land-based monuments, including all those in California identified for review, is open until July 10. Comments on marine monuments under review are due by July 26.

Prior presidents acted unilaterally to create or vastly expand several national monuments. It's simply unrealistic to pretend that acts created by unilateral presidential decrees cannot be undone in the same manner.

Todd Gaziano is the executive director of the Pacific Legal Foundation's D.C. Center and its senior fellow in constitutional law. John Yoo is a law professor at UC Berkeley and a visiting scholar at the American Enterprise Institute. They are the authors of an AEI paper on national monuments.

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5. **Op-ed: The Abandoned Mine Land fund should not be treated as a slush fund**

The Hill, July 6 | Arthur R. Wardle

Big money attracts big interests in Washington, D.C. The Abandoned Mine Land fund (AML), which collects and disburses billions of dollars to reclaim abandoned coal mines, is no exception.

Congress, unions and other special interests have repeatedly attempted to tap into the fund's large reserves for their own benefit. Congress is currently attempting to throw funding mean for abandoned mines toward "economic revitalization," which would threaten the fund's reclamation objective. Vigilant resistance to these changes is the only thing preventing the AML from turning into a slush fund.



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Congress built the fund as part of the Surface Mining Control and Reclamation Act in response to mounting environmental problems stemming from the nation's many abandoned coal mine sites. The fund uses money collected from a tax on coal production to fund state reclamation programs.

Though not as ideal as charging the original polluters, the AML does a nice job of placing responsibility for environmental problems in the hands of those closest to the problem's origin. Surface mining coal companies of today pay for the degradation resulting from surface coal mining of the past, when environmental protections from corporate environmental policies and government regulation were not nearly as robust. The legitimacy of the fund is based on that principle of internalizing the industry's damages.

The fund has been instrumental in cleaning up the messes of mining yesteryear. Nearly 800,000 acres of U.S. land and water have benefitted from AML-funded cleanup. Although that progress is impressive, plenty of work remains. Bureau of Land Management property in California alone still contains over 19,000 abandoned sites that present a danger to physical safety. There are so many sites requiring reclamations that many states do not even have a complete list.

Expansion of the fund's use for economic development projects, as Congressional leaders have recently advocated, reduces the money available for reclamation projects. Small reforms like allowing a wider array of reclamation projects or cutting the coal production tax rate would draw down the current fund reserves without disrupting the fund's original and important purpose.

Misusing the fund is a tantalizing prospect for a variety of special interests. For example, Congress punished the state of Wyoming for spending its reclamation funding on unrelated public works projects. Mine workers' unions have successfully managed to wheedle Congress into diverting abandoned mine funds to their benefits programs and have recently sought to divert even more. Fortunately, these abuses make up only a small amount of the fund's disbursements. Everything considered, the AML has largely maintained its integrity.

Turning the Abandoned Mine Land fund into a slush fund jeopardizes ongoing reclamation work for short-term political favors. The fund is good policy because it focuses its taxation on a specific industry to remedy a specific problem caused by that industry. Even if the potential beneficiaries of AML fund diversions legitimately deserve public funding, that money needs to come from elsewhere. Our reclamation work is not done. If we allow political gamesmanship to imperil the fund, it may never be.



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Arthur R. Wardle is a research associate at Strata Policy, a public policy think tank in Logan, Utah.

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6. ENDANGERED SPECIES: 400+ groups urge congressional leaders to fully fund key law

E & E News, July 6 | Kellie Lunney

More than 400 conservation groups across the country are urging House and Senate leaders to fully fund the Endangered Species Act and oppose any efforts to weaken the landmark law.

"Given the hostile record of many members of the current Congress to the Endangered Species Act, efforts to rewrite this law would prove disastrous for imperiled wildlife and should be strongly opposed," the organizations wrote in yesterday's [letter](#). It was sent to Republican and Democratic leaders in both chambers, as well as to the chairmen and ranking members of the House Natural Resources Committee and the Senate Environment and Public Works Committee.

Led by the Endangered Species Coalition, the letter included large organizations like Sierra Club and Greenpeace USA, as well as smaller outfits like the Lehigh Valley Audubon Society, and had signers from all 50 states.

It also called on congressional leaders to oppose any policy riders or other proposals that would reduce protections for endangered species and habitats.

House Natural Resources Chairman Rob Bishop (R-Utah) and Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) both want to reform parts of the ESA, which hasn't been significantly updated since 1988 (Greenwire, April 17). Several outside groups have weighed in on the debate, including the Western Governors' Association, which developed recommendations on how to improve implementation of the ESA (Greenwire, June 30).

But the conservation groups are worried that industry and "other wildlife opponents" will influence congressional Republicans to use their majority to gut the ESA under the "guise" of reform.

"The Act faces unprecedented threat," the letter said. "Using misleading words such as 'update,' 'modernize,' or 'reform,' the Act's opponents ultimately seek to undermine its core principles, gut its scientific basis and abandon its common-sense approach to conserving imperiled wildlife."



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7. NATIONAL MONUMENTS: Legal experts say shrinking sites illegal; lobbying heats up

E & E News, July 6 | Jennifer Yachnin and Nick Bowlin

Interior Secretary Ryan Zinke advocated for an "illegal and unconstitutional action" when he proposed reductions to Bears Ears National Monument last month, according to a new assessment endorsed by more than 120 academics with expertise in environmental, natural resources and administrative law. The scholars also raised questions over a half-dozen legal issues in President Trump's late-April order mandating a review of dozens of national monuments with an eye toward eliminating or reducing the size of those sites.

The arguments are outlined in a letter submitted today to the Interior Department via the public comment process for its ongoing review of 27 national monuments that includes Bears Ears. The missive is also addressed to Commerce Secretary Wilbur Ross.

"It is beyond question that the proclamations creating the national monuments under review — both the terrestrial monuments and the marine monuments — identify a wealth of unique and precious resources that qualify as 'objects of historic and scientific interest,' throughout the reserved federal lands," says the letter.

It's signed by people including University of Colorado Natural Resources Law Center Director Mark Squillace, University of California Berkeley School of Law professor Eric Biber and UCLA Environmental Law Clinic Co-Director Sean Hecht.

The 75-page submission, which includes supporting materials, notes that while presidents may designate national monuments under the Antiquities Act of 1906, only Congress claims the authority to manage public lands under the Constitution.

"If the new administration believes that those objects and the lands containing them do not warrant protection, or that factors external to the Antiquities Act should be considered in evaluating national monument designations, the administration must turn to Congress for a remedy," the letter says.

When Zinke recommended in an interim report on his review that the Bears Ears monument be sharply reduced from its existing 1.35-million-acre boundaries, he was advocating for an illegal action, the letter added (E&E News PM, June 12).



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The letter goes on to say that Trump erred in his executive order mandating the review by directing Zinke to consider "a broad range of policy considerations entirely unmoored from the Antiquities Act."

Although Congress could consider issues such as the impact of monument protections on the use of adjacent federal lands or the economic impact of new sites, the Antiquities Act allows a president to consider only the historic, scientific or cultural value of a site, the scholars say. They also note that the 1906 law contains no requirement for public input, although some presidents have sought commentary before designating monuments.

"The President expressed an intent to give power 'back to the states and to the people.' This misunderstands the nature of federal public lands law," the letter adds. "Congress possesses plenary power over federal public lands, managing them on behalf of the American people. Congress has delegated some of its authority to the executive branch, subject to specific processes and constraints. The President and federal land management agencies have no authority to abdicate those responsibilities and give states control over federal lands."

Zinke is scheduled to file a final report with his recommendations on Aug. 24.

Ore. site

Oregon Sens. Jeff Merkley and Ron Wyden released their own missive to Zinke yesterday, in which the Democratic duo once again urged the secretary to refrain from recommending any changes to the Cascade-Siskiyou National Monument.

The 100,000-acre site, which spans Northern California and southern Oregon, was created by President Clinton in 2000 and expanded by President Obama last year.

"We hope that you will consider the diverse public support and the public input process that led to expanding the Cascade-Siskiyou National Monument as you review national monument designations," wrote Merkley, who serves on the Environment and Public Works Committee, and Wyden, who sits on the Energy and Natural Resources Committee.

The letter marks the second plea from the Democratic lawmakers, who in an early May letter to Zinke likewise touted the "extensive public process" that preceded the monument's expansion (Greenwire, May 9).

LCV campaign



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The League of Conservation Voters today launched a \$75,000 digital ad campaign to urge Western Republican senators to withdraw their support of Interior's monument review.

With the public comment period on the reviews set to close Monday, the environmental advocacy group is targeting GOP Sens. Dean Heller of Nevada, Jeff Flake of Arizona, and Jim Risch and Mike Crapo of Idaho, who have previously voiced support for the review.

The effort includes social media ads, local Snapchat filters, Spanish-language spots, and ads on the Arizona Republic and Reno Gazette-Journal websites.

"Senators who support this unprecedented assault on our national monuments are gambling with the future of not just these places, but all of our majestic national parks and monuments," LCV President Gene Karpinski said in a statement.

Each senator hails from a state with at least one reviewed monument: Basin and Range and Gold Butte in Nevada; Bears Ears and Grand Staircase-Escalante in Utah; Craters of the Moon in Idaho; and Grand Canyon-Parashant, Ironwood Forest, Sonoran Desert and Vermilion Cliffs in Arizona.

The LCV has a separate effort called "Our Lands, Our Vote," intended to flood Interior with pro-monument public comments. According to the group, it has rallied 250,000 comments and intends to reach 300,000 by Monday.

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8. **ENERGY POLICY: Trump's export push has surprising climate angle**

E & E News, July 6 | Hannah Northey

President Trump doubled down on his sales pitch today for European leaders to embrace the United States' massive shale supplies — a message that inadvertently dovetails with some former Obama administration officials who are seeking climate action.

Speaking to a crowd in Warsaw, Poland, Trump called on Eastern European leaders to buy American gas to elbow out Russian influence.

While never uttering the words "climate" or "emissions," Trump at a meeting of the Three Seas Initiative Summit cast the United States as a trustworthy energy exporter that will come through on the fly.



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"We are sitting on massive energy, and we are now exporters of energy," Trump said. "So if one of you need energy, just give us a call."

Although Trump is likely to face pushback for withdrawing from the Paris climate agreement when he arrives in Germany for the Group of 20 summit this week, the president while in Poland kept the message squarely on geopolitics and took a swipe at Russia, vowing to never use U.S. energy exports to coerce or dominate another nation.

"You don't want to have a monopoly or a monopolistic situation," Trump said. "We are committed to securing your access to alternate sources of energy, so Poland and its neighbors are never again held hostage to a single supplier of energy."

Trump's message will also resonate at his first face-to-face meeting with Russian President Vladimir Putin, scheduled to take place on the sidelines of the G-20 summit.

Despite Trump's silence on climate, some Obama veterans see liquefied natural gas exports as inextricably linked to the issue. Promoting exports, they say, also falls squarely in line with the Obama administration's past policies of combating Russian aggression while addressing emissions.

LNG "offers a unique chance to both further some of the environmental goals that we pushed in the Obama administration to reduce pollution, especially carbon pollution, because LNG is a good way to displace coal and fuel oil," said Eben Burnham-Snyder, a former Energy Department official under the Obama administration now serving as Cheniere Energy Inc.'s vice president of communications.

"Taking the reforms that occurred under the Obama administration to help unleash U.S. LNG and now taking the obvious positive attention coming from that Trump administration ... [that can] help other countries mimic what's been a success story in the U.S.," Burnham-Snyder continued.

Despite pushback from groups like Sierra Club that are suing to halt the approval and construction of export terminals and are raising concerns about hydraulic fracturing and methane, export shops continue to draw former Obama stars.

"I don't think LNG exports have much in the way of ideological baggage," said Eric Washburn, the president and CEO of Windward Strategies, an energy and environment lobby shop.

Heather Zichal, President Obama's formal climate adviser, is now sitting on Cheniere's board of directors, and Amos Hochstein, Obama's former top international energy envoy, is serving as vice president and senior



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adviser at Tellurian Inc., a company established by former Cheniere CEO Charif Souki that's developing a massive LNG export terminal in Louisiana (Greenwire, June 9).

Robert Fee, who previously served as chief of staff and senior adviser in DOE's Office of Fossil Energy, is serving as Cheniere's chief of staff. Yet another is Timothy Glassco, who worked on Obama's 2008 campaign and is now lobbying for the Golden Pass LNG project on the Gulf Coast from his Austin, Texas-based firm (Greenwire, Feb. 23).

David Goldwyn, chairman of the Atlantic Council's Energy Advisory Group, called it a "happy coincidence" that LNG exports supported under the Obama administration serve the multipronged purposes of furthering European independence, supporting the U.S. economy and meeting the Trump administration's goal of adjusting trade balance.

As for climate change and the Trump agenda? "It will be positive for climate to increase gas penetration, particularly in Central Asia and Europe, because it will substitute for coal and make gas affordable," Goldwyn said. "But I don't believe that's what's behind the president's message."

Goldwyn said climate and air quality concerns — alongside energy security — are driving purchases of LNG throughout Central and South America, Asia, and parts of the Middle East, but that movement has little to do with government action. "We're landing those markets abroad because we're competing commercially, not because the government is paving the way," he said.

Fred Hutchison, who leads LNG Allies, a group that advocates for expanding LNG shipments, agreed climate is driving demand for LNG abroad, calling it a "dominant narrative," and suggested the Trump administration's cheerleading for exports is sending signals to energy-hungry governments and companies abroad.

"Those companies look to their government for signals, and their government looks to our government for signals," Hutchison said. "There are limited specific government [actions] that can be taken, but from a promotion standpoint ... this administration is doing it."

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9. **REGULATIONS: Court tests loom for Trump rule delays**

E & E News, July 6 | Amanda Reilly

The Trump administration's strategy of delaying compliance deadlines for Obama-era environmental rules is facing tests in federal courts.

Environmentalists won big Monday when a court vacated the Trump EPA's 90-day delay of a rule curbing methane emissions from new oil and gas operations.

The litigation is one of at least four lawsuits that environmentalists have filed over administrative stays at EPA, questioning the scope of the agency's authority to delay compliance.

Yesterday, California and New Mexico filed suit against the Interior Department for employing a similar tactic to stall an Obama administration rule for capturing methane from oil and gas operations.

Environmentalists and state opponents view the rule delays as a way of skirting the formal rulemaking process.

"It really is this global strategy to back away from these important protections of various kinds — clean air, clean water, chemical safety," said Patrice Simms, vice president of litigation at Earthjustice. "And in each instance, with an utter failure to address the implications for public safety and public health."

Simms said environmentalists are worried that if they don't sue, the Trump administration will continue stacking delays upon delays, leading to an indefinite regulatory hiatus.

Some delays are for a set time, such as 90 days; in other cases, agencies announced indefinite stays of rules.

"Ordinarily, when an agency delays taking a particular action, it's difficult to get a court to force the agency to take that action," said Emily Hammond, a professor at the George Washington University Law School, in a recent interview. "The exception is where a statute provides a deadline, or where an agency has bound itself by its own regulation. The challenge for the Trump administration is, for many of these regulations, the regulations themselves include compliance deadlines."

Monday's decision in the methane case was the first victory for environmentalists in their legal fight against the strategy.



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The U.S. Court of Appeals for the District of Columbia Circuit found that EPA Administrator Scott Pruitt unlawfully delayed key provisions of the methane rule, including its fugitive emissions requirements, by 90 days (Greenwire, July 3).

The Trump administration premised the stay on a provision in the Clean Air Act that allows EPA to pause certain regulatory requirements when it has granted a petition for reconsideration of a rule.

But in its 2-1 opinion, a panel of the D.C. Circuit agreed with environmentalists that EPA lacked the authority to issue the stay because the reconsideration petition raised issues that had been hashed out extensively during the Obama administration rulemaking process.

"Under some statutes like the Clean Air Act, there are very specific provisions that set forth criteria for regulatory adjustments from previous regulatory action," said William Buzbee, a professor at Georgetown University Law Center, in a recent interview.

Environmentalists cast the decision as the first of many court defeats for the Trump administration.

"The ruling recognizes that EPA lacks the authority to simply scrap these critical protections. And it shows the courts are going to enforce the rule of law on health and environment," said David Doniger, director of the climate and clean air program at the Natural Resources Defense Council.

'Elections have consequences'

But each administrative delay and accompanying lawsuit raises slightly different legal issues, and legal experts said it's difficult to generalize how courts might react to each one. A victory in one might not mean a victory in another.

"The reality is — it's the 'elections have consequences' thing. There are zones where agencies have discretion, and there are limits to that discretion," said Michael Livermore, a professor at the University of Virginia School of Law. "But even when agencies pass those limits, it's not always easy to get a judicial remedy."

He added, "Even if you win and the court says the agency shouldn't have delayed, still a bunch of time has elapsed."

A lawsuit over EPA's decision to stay accident-prevention rules at chemical plants will also test the scope of the agency's authority to issue stays under the Clean Air Act.



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Published in January, the Obama rules aimed to protect emergency responders from chemical exposure, prevent accidents at plants and help facility operators learn from accidents that do occur. The effective date was March 20, but Pruitt stayed the rules for 90 days, citing the Clean Air Act reconsideration authority as with the methane rule.

EPA followed up in June by announcing a nearly two-year delay to Feb. 19, 2019, after holding a public comment period (E&E News PM, June 12).

Environmentalists and labor unions sued over the longer delay, arguing the Clean Air Act provision provides only for a three-month delay under limited circumstances.

"EPA does not have such unfettered discretion to nullify air rules through delay," the environmental and labor groups told the D.C. Circuit.

Simms of Earthjustice said EPA's decision also raised concerns under the Administrative Procedure Act.

The rule is part of an "end-run around the proper rulemaking process," he said. "Undertaking changes to regulatory programs in the manner that is contemplated by federal law requires acknowledging what you're doing and providing opportunities for the public to participate in that decisionmaking process.

"And they don't want to do that because they know that they will expose their retrograde nature," Simms said.

Administrative Procedure Act

The Administrative Procedure Act (APA) is also at the center of litigation over EPA's delay of a 2015 rule that requires power plants to install and operate wastewater treatment technology to remove heavy metals from their discharge streams.

In an April 11 letter to the Environmental Council of the States, Pruitt announced EPA would rethink the rule, which was expected to prevent more than a billion tons of pollutants from entering waterways each year.

The agency followed up by issuing an indefinite stay of the Obama standards, basing it on Section 705 of the APA, which allows for delaying compliance deadlines pending judicial review.

EPA noted that the regulations had been challenged in the 5th U.S. Circuit Court of Appeals, although the court has stayed the litigation while the agency figures out what to do with the rule.



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Interior likewise cited Section 705 in delaying Obama-era standards for reducing methane emissions from oil and gas sources on public lands (Energywire, July 6).

In their litigation over the power plant discharge rule in the U.S. District Court for the District of Columbia, environmentalists argue EPA violated the procedural law in several ways, including failing to provide an opportunity for public comment and failing to make necessary findings to support its decision (Greenwire, June 15).

Hammond of George Washington University said the APA is meant to give agencies a lot of flexibility but still hold them to their legal obligations.

In general, indefinite stays are more vulnerable to judicial review, she said.

"When agencies announce indefinite stays of compliance deadlines, particularly where we don't have a reconsideration petition and do have some kind of deadline in a regulation," she said, "you're looking at something that's more vulnerable to a holding that the agency is unlawful."

Environmentalists achieved a small victory last week when Judge Ketanji Brown Jackson denied both EPA's motion to dismiss without prejudice and the agency's motion to stay proceedings on their summary judgment motion. The judge set a schedule for all issues to be briefed at once.

The Trump administration is facing yet another lawsuit over its decision in May to delay by a year new regulations on the certification and training of pesticide applicators.

The Obama administration published the rule in January, shortly before leaving office. It was originally supposed to take effect in March.

In their lawsuit in the U.S. District Court for the Northern District of California, environmentalists and farmworker groups say the rule is necessary for EPA to comply with its obligations under pesticide law. EPA's decision to allow only four days of public comment was also an APA violation, the groups say (E&E News PM, June 14).

Another lawsuit in the D.C. Circuit challenges EPA's decision to delay by 90 days standards to reduce methane emissions from landfills (Greenwire, May 23).



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While environmentalists have not filed any litigation yet, it's possible that EPA's recent decision to delay by a year the October deadline for designating areas of the country that don't meet the national ozone standard could soon be added to the list.

Other sets of lawsuits challenge agencies' delay in publishing rules in the Federal Register, including new energy efficiency standards (E&E News PM, June 13).

'De facto policy reversals'?

In a blog post last week, NRDC's Doniger slammed the full set of rule delays and administrative stays as "misrule of law."

"With the barest exceptions that don't apply here, the EPA administrator may not yank existing safeguards out of operation while he mulls over changing them," he said. "It doesn't matter who is asking, industry or environmentalists. He has no authority to do this."

Environmental agencies are not the only governmental bodies delaying compliance deadlines for Obama-era regulations.

The Labor Department, for example, delayed an investor protection rule, while the Department of Education delayed implementation of rules for for-profit colleges. States and public interest groups today just filed a lawsuit over the Education rule.

Legal experts said the administrative stays are part of a broader strategy by the Trump administration to gum up the regulatory gears.

"It seems to be across several agencies — many, many agencies — a number of strategies which are effectively regulatory pullbacks, and maybe and what really may be de facto policy reversals," said Buzbee of Georgetown Law.

In the environmental arena, he said, other strategies include all-out repeal of hot-button rules such as the Clean Water Rule and Clean Power Plan, and requests to courts to suspend litigation to buy time to decide how to ax Obama-era rules.

Courts may become more skeptical of federal agencies as the number of lawsuits over rule delays grows, said Livermore of the University of Virginia.



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"If it becomes a course of conduct, if the agency is in essence rescinding the rule, if you can make that argument successfully to the court, you'd have their attention," he said. "It's already starting to become a pretty widespread thing."

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10. **INTERIOR: Zinke orders 30-day oil and gas permit approvals**

E & E News, July 6 | Jennifer Yachnin

Interior Secretary Ryan Zinke announced today that he will sign an order directing his agency to follow its mandate of holding quarterly lease sales, in an effort to boost fossil fuel extraction on federal lands.

The decision is the latest in a series of orders aimed at increasing oil and gas production on federal lands, or, in the parlance of the Trump administration, establishing "energy dominance" (Climatewire, June 13).

The secretarial order will also direct Interior officials to issue new permits within only 30 days, rather than the 257-day average it achieved last year.

"The amount of bureaucracy the federal government has put into place has provided some uncertainty," Zinke said. He added, "We're going to be a fair and prudent partner, but we're not going to be an adversary to creating wealth and opportunity on public lands."

Zinke acknowledged that Interior officials must still determine how to do reduce the agency's permitting timeline to the shorter 30-day window.

"It's not just putting more people or money into the permitting process," Zinke said. "It's also looking at how we do permits."

He added: "We have really smart people. We just want to make sure the process reflects today's environment rather than last century's."

Zinke later said that the agency would not be able to immediately reduce its review period and said that he could ask Congress to review that mandate. Currently, once an application for permit to drill is approved and all National Environmental Policy Act requirements are met, the agency has 30 days to approve or deny a permit.



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"We're not ready to meet the 30-day marker. I think we have to look at our system more closely," Zinke said. He also noted: "This is not going to be done overnight, because what we don't want is unintended consequences."

Zinke said his secretarial order "directs BLM to follow the law," noting that 11 lease sales were canceled in 2016. "A lot of these areas that are available for leasing are known reserves. The geology is pretty well advanced. There are wells within the area. ... When you have to look at the process that views a new well as if a well has never been drilled before in an existing basin, that's been part of the problem."

He added, "We're looking at all permits, but we want to do it fairly. The president's guidance has been, make sure that we're energy independent and energy dominant."

The order comes on the heels of President Trump's "energy week" last week, during which he touted actions that would increase domestic energy development (Climatewire, June 30).

Those actions include Trump's executive order issued in late April, in which he vowed to open the U.S. outer continental shelf in the Atlantic to Pacific oceans as well as areas in the Arctic Ocean to energy extraction.

That order has prompted the Interior Department to rewrite the five-year plan that governs which areas of the outer continental shelf can be leased for offshore oil and gas development.

Last month, Zinke also announced plans to update the government's resource assessment for the Arctic National Wildlife Refuge and to open new sections of the National Petroleum Reserve-Alaska to oil and gas leasing (Climatewire, June 1).

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11. **PUBLIC LANDS: Grijalva wants Zinke to clarify 'energy dominance'**

E & E News, July 6 | Kellie Lunney

The top Democrat on the House Natural Resources panel wants Interior Secretary Ryan Zinke to explain how the administration plans to balance its "energy dominance" strategy with environmental and multiple-use requirements for public lands under a key law.



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Arizona Rep. Raúl Grijalva is worried that the Interior Department's emphasis on energy development will undermine the Federal Land Policy and Management Act, which requires a multiple-use approach to public lands, by eating away at environmental protections as well as diminishing scenic and historical value.

"Not all federal land is appropriate for coal, oil, or gas development and certain areas should be managed to protect the value they provide outside of their energy resource potential," the Democrat wrote in a [letter](#) to Zinke today. "Federal lands generate billions of dollars and support millions of jobs through an outdoor recreation economy comprised of camping, hiking, hunting, and off-roading businesses."

Earlier today, Zinke announced a secretarial order aimed at furthering the administration's energy dominance initiative. It directs the department to follow its mandate of holding quarterly lease sales as a way to increase fossil fuel extraction on federal lands (Greenwire, July 6). It also seeks to expedite the permitting process for new leases to 30 days, down from last year's average of 257 days.

The Interior secretary in [testimony](#) before Congress last month said that the administration's proposed fiscal 2018 budget for the department supports an "all-of-the-above" energy development strategy, "increasing funding for onshore and offshore oil and gas, strengthening coal management activities, and sustaining the current pace of renewable energy development."

Grijalva argued in today's letter that the department appears to be "inappropriately interpreting 'multiple use' to mean that energy development should be allowed on all lands." In addition to ensuring that the administration's approach to energy development adheres to FLPMA, the Democrat asked Zinke to provide a more quantifiable measure for energy dominance: "Is there an end state at which the department would be able to state that 'energy dominance' has been achieved?"

Interior did not immediately respond to a request for comment on Grijalva's letter.

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12. **INTERIOR: Zinke signs order to ensure quarterly lease sales**

E & E News, July 6 | Jennifer Yachnin

The Western Energy Alliance acknowledged today it could end its lawsuit against the federal government over canceled or delayed lease sales as Interior Secretary Ryan Zinke signed a new secretarial order aimed at ensuring they occur quarterly.



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But Zinke's action, which also aims to expedite the issuance of drilling permits, could prompt a new legal challenge from conservationists who charge the order oversteps the secretary's authority.

In Order 3354, Zinke directs the Bureau of Land Management to conduct quarterly lease sales and aims to reduce the permit approval or denial period to 30 days, down from the 257-day average in fiscal 2016.

"We are also looking at opportunities to bring support to our front line offices who are facing the brunt of this workload," Zinke said in a statement. "This is just good government and will further support the president's goal of American energy dominance."

In a press call with reporters, Zinke declined to comment specifically on the WEA lawsuit, but the organization's president, Kathleen Sgamma, told E&E News that the secretarial order closely tracks the group's complaint.

The WEA lawsuit asserts the Interior Department violated federal law by canceling or delaying oil and gas lease sales in recent years, in violation of the Mineral Leasing Act requirement for quarterly sales. Zinke noted that 11 lease sales had been canceled last year.

If Interior executes the order as planned, Sgamma said, WEA could move to settle its lawsuit.

"We're open to seeing how this is actually implemented and settling hopefully in the near future," Sgamma said.

But she added that the process is more complicated than simply holding quarterly lease sales.

"The process that was put in place with the 2010 leasing reforms needs to be unraveled," Sgamma said. "They need to pull back policies put in place with the stroke of a pen ... and get on with a rational leasing process."

She added: "There are layers of red tape below the surface that need to be addressed."

Sgamma specifically pointed to rotational lease sales, which she said limit sales in areas like the Permian Basin to an annual event.

"They need to get away from that. They need to get away from holding things up indefinitely," Sgamma said.



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While conservationists have argued that additional lease sales are unnecessary given that oil and gas industry representatives have bid on fewer than a third of leases offered in the last year, Sgamma rejected that criticism, characterizing the unsold leases as being located in "unpopular" areas.

"Of course you're going to have lease sales where things aren't sold," she said.

The Independent Petroleum Association of America and American Petroleum Institute also praised the secretarial order today.

"We applaud the administration's steps to help strengthen the United States' energy position," API Upstream and Industry Operations Group Director Erik Milito said in a statement. "A key component of a successful policy is repairing the federal permitting process so that companies have the confidence to invest and see their projects move forward."

House Natural Resources Chairman Rob Bishop (R-Utah) likewise cheered Zinke's announcement.

"Secretary Zinke's commitment to foster regulatory certainty and unleash our energy potential is a welcome shift in priorities at Interior," Bishop said. "We will be working in close coordination with the secretary to provide the department with the statutory tools to ensure that responsible energy development on federal lands is no longer held hostage to intransigent bureaucracy and ludicrous permitting delays."

But WildEarth Guardians' Jeremy Nichols suggested that conservation organizations could challenge Zinke's new order in court.

"He's trying to tear down any and all checks on oil and gas development on public lands," Nichols said of the announcement. "We're going to be weighing our legal options."

In particular, Nichols argued that the secretary lacks the ability to limit BLM's own discretion on when and where to offer leases for oil and gas development.

"The law does not allow an Interior secretary to bind the discretion of the BLM in such an extreme way," Nichols said.

He also questioned Zinke's stated goal of increasing energy production, suggesting that merely offering more leases won't prompt a spike in extraction.

"Right now, the main obstacle seems to be the industry's own economic quagmire. They don't seem to be in a position to develop the way Zinke says they are," he said.



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13. **METHANE: Appeals court ruling spells compliance confusion**

E & E News, July 6 | Mike Soraghan

So much for regulatory certainty.

The appellate ruling reinstating Obama-era regulations on methane emissions from new oil and gas operations has put the industry on a compliance roller coaster. The U.S. Court of Appeals for the District of Columbia Circuit agreed with environmentalists and nixed a stay U.S. EPA Administrator Scott Pruitt had put in place.

Right now, methane restrictions and reporting requirements are in effect. But EPA is likely to impose a two-year stay in August or September. Environmentalists will almost certainly challenge that stay, too. If they're successful, the restrictions will be back in place.

"This is the quagmire EPA was trying to avoid," said Whit Swift, an energy lawyer who advises companies on air quality matters for Bracewell LLP. "It's a giant headache for those trying to figure out what their obligations are."

Environmentalists say the answer is simple — the law is in effect, so companies should comply.

"Administrator Pruitt has talked a lot about rule of law. EPA is required by law to enforce the law. So we expect that they will enforce it," said Darin Schroeder, an attorney with the Clean Air Task Force, which is representing Earthworks in the case.

But the work involved might be for naught if, in the fall, the rules are stayed again. And the Trump administration, Swift said, is not likely to aggressively enforce a rule it clearly disdains.

"A lot of it depends on the company's appetite for risk," Swift said.

The appellate ruling was the first loss in court for President Trump's deregulatory agenda. And it was the first stumble in Pruitt's drive to lift Obama-era regulations from the oil and gas industry.

Environmentalists say it showed that courts are going to closely monitor the procedures that Trump and Pruitt use as they seek to dismantle regulations.



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"What we saw here is the courts considering whether the agency is complying with the rules," said Meleah Geertsma, an attorney for the Natural Resources Defense Council.

But others say the ruling doesn't necessarily spell trouble for the administration's deregulatory efforts.

Kevin Book, analyst at Washington, D.C.-based ClearView Energy Partners LLC, notes that EPA's reconsideration process for the methane rules is continuing, and the agency has proposed two other stays, one for 90 days and another for two years.

Swift said the two-year stay is the important one for industry. And he said EPA has justified it with a different legal authority than the stay that the appeals court nixed.

But environmental groups consider the two-year stay to be simply an extension of the one rejected by the appeals court. So they think the longer stay should be rejected, as well.

The Obama administration issued the standards in 2016 to halt leaks of methane, a potent greenhouse gas, from new oil and gas operations. The rule also aimed to reduce emissions of volatile organic compounds that contribute to the formation of smog.

But in May, Pruitt granted a request by energy industry trade groups to reconsider parts of the rule.

Green groups — the Clean Air Council, Earthworks, the Environmental Defense Fund, the Environmental Integrity Project, NRDC and the Sierra Club — filed a lawsuit over the first delay, along with an emergency motion to overturn EPA's decision and put the standards back in place.

Judges David Tatel and Robert Wilkins, two Democratic appointees, heard the case with Judge Janice Rogers Brown, a George W. Bush appointee.

Brown issued a dissenting opinion, disagreeing with her colleagues that the court had jurisdiction to hear the case in the first place.

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14. **METHANE: EPA ruling is not precedent for new lawsuit on BLM delay**

E & E News, July 6 | Pamela King

A decision this week to restart an Obama-era U.S. EPA regulation capping methane emissions from new oil and gas sources offers few clues as to where a district court may fall on a new challenge around the Interior Department's postponement of limits on the same greenhouse gas on public lands.

The states of California and New Mexico — respondents in an industry lawsuit to scrap the Bureau of Land Management's Methane and Waste Prevention Rule as it first stood — yesterday sued the Trump administration for delaying the regulation introduced under President Obama. The complaint for declaratory and injunctive relief, filed in the U.S. District Court for the Northern District of California, contends that Trump's Interior improperly put off forthcoming compliance dates under the rule, which went into effect earlier this year.

"President Trump should put the health of the American people over the profits of private companies," California Attorney General Xavier Becerra said in a statement yesterday. "This is a commonsense rule that both helps our children breathe cleaner air and protects our planet. It should be implemented as is legally required. We refuse to let blatant violations of the law go unchallenged."

Judge Scott Skavdahl last week cited uncertainty around the rule's fate as a reason to delay briefing deadlines in litigation before the U.S. District Court for the District of Wyoming (Energywire, June 28).

"The states clearly waited until the delay to the litigation was granted before filing their complaint in a cynical maneuver to get to a more sympathetic court," said Kathleen Sgamma, president of the Western Energy Alliance. "The Northern District of California doesn't have the federal oil and gas expertise of the Wyoming court, and this tactic will not be looked upon favorably by Judge Skavdahl."

"On the other hand, this does present us with a reason to go back to Judge Skavdahl and push forward to briefing on the merits," she added.

The lawsuit came just days after a trio of judges for the U.S. Court of Appeals for the District of Columbia Circuit found that EPA's decision to stay its own methane rule for 90 days was "arbitrary and capricious" (Greenwire, July 3).

But whereas Trump's EPA leaned on the Clean Air Act to postpone its methane controls, BLM invoked the Administrative Procedure Act to suspend its rule.



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Because BLM and EPA relied on different laws to support their delays, the legal analysis in each case is completely separate, according to attorneys involved in the pending industry challenge of the original BLM rule.

"From a policy perspective, the EPA and BLM rules and how they were rolled back are all intertwined," said Eric Waeckerlin, a Holland & Hart LLP attorney representing the Western Energy Alliance and the Independent Petroleum Association of America.

But from a legal standpoint, "there's quite a big difference" between the APA and the Clean Air Act, he said.

Section 307 of the Clean Air Act provides that any petition to reconsider a final EPA rule or action does not postpone its effectiveness, unless additional evidence — such as the discovery of a new technology — comes to light that could not have been considered during the initial rulemaking.

Lawyers for oil and gas trade groups cited that provision in their argument supporting a stay of the EPA rule.

But the D.C. Circuit ruled that industry was simply rehashing issues that had been previously raised and addressed.

The court did not preclude EPA from delaying its rule under a formal rulemaking process like the one BLM has proposed for provisions of its methane rule that took effect earlier this year (Energywire, June 22).

That rulemaking could also include an extension of the rule's future deadlines, nullifying concerns about improper delays from BLM, Waeckerlin said.

"It's going to be broader than the 705 notice because that only purports to extend compliance deadlines that haven't yet hit under the rule," he said.

Under Section 705 of the APA, an agency is granted power to postpone the effective date of actions under judicial review. Critics of the move to suspend BLM's methane rule say this section does not apply to the regulation because the rule itself has already taken effect, even if it contains compliance deadlines to be phased in at some future date (Energywire, June 15).

"Legally, EPA's action, which purported to rely on the Clean Air Act, is distinct from BLM's action, which purported to rely on the APA," said Earthjustice attorney Joel Minor.



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"I am confident that the courts will hold all agencies accountable to the law," he said.

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15. **PUBLIC LANDS: Cessna tours give 'the land a voice'**

E & E News, July 6 | Jennifer Yachnin

KALISPELL, Mont. — Seen from high above the Flathead Valley, the area's namesake river cuts across the rich green summer landscape, and its national forest blends seamlessly into neighboring Glacier National Park.

That unified vision of the landscape is something that EcoFlight Executive Director Bruce Gordon wants his passengers to absorb during his regular tours of public lands across the West. He pilots a fixed-wing, single-engine 1978 Cessna.

"Our mission is to educate and to advocate for the environment using small planes," Gordon told E&E News after a recent tour for reporters and conservationists here in Montana.

In his more than 35 years conducting such flights, Gordon said, he has focused on including politicians, reporters, concerned citizens, scientists and anyone else who might benefit from an "aerial perspective" in his six-seat plane.

"When we take people up in the air, we hope they don't look at the left or look at the right, but they look at the land," said Gordon, who founded the nonprofit EcoFlight in 2002. "It gives the land a voice."

More recently, Gordon has focused on national monuments as Interior Secretary Ryan Zinke reviews dozens of sites for potential reductions or management changes.

During Zinke's visit in May to Bears Ears National Monument — which he has since recommended be significantly reduced from its 1.35 million acres — Gordon conducted flights over the southeast Utah site.

"We pride ourselves to really responding to the pertinent issues of the day," Gordon said. He noted that he is personally opposed to efforts to reduce or eliminate national monuments.

"To me, if you don't like what it is, go forward, try to change things, but don't go back and second-guess everybody," he added. Gordon pointed to the fact that many former monuments have been converted to national parks in arguing that the Antiquities Act has been used appropriately by past presidents.



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While Zinke and other elected officials took a private aerial tour of Bears Ears and the Grand Staircase-Escalante National Monument during his visit to Utah, Gordon said he remains hopeful that his efforts will change the views of others interested in public lands.

He recalled flying loggers during the debate over preserving spotted owl habitat in the 1980s and '90s.

"The airplane would get you away from those scenic corridors that you would see on the ground, and people would realize the place was clearcut," Gordon said. He has also flown people tied to the oil and gas industry to try to instruct them on watersheds.

"My goal is to get everybody up in the air, talk about the issues and have a conversation. I like to call it conservation conversations in the cockpit," he said after a recent flight.

'There are no roads'

Peter Aengst, who serves as the Wilderness Society's senior regional director for the Northern Rockies, said he likewise hopes that passengers on EcoFlight's tours walk away with an understanding of the landscape as a whole — rather than a "color-coded map."

"There is something about being in the air to — at least with certain issues — to really show effectively the connections from a landscape perspective about how different jurisdictional boundaries really don't matter if you're concerned with the health of a watershed or effective wildlife habitat or the migration route of a certain species," said Aengst. He's been accompanying Gordon on flights for about 15 years, including his recent flight in Montana.

"It's a great way of synthesizing all the issues in a way you would never get off a fact sheet, you would never get studying maps," he added. "That's the power of doing flight."

In addition to Gordon's recent work on national monuments, Aengst pointed to his experience with EcoFlight surveying the 200-mile migration route of the pronghorn antelope in Wyoming.

"You're basically flying like you're doing the migration," Aengst explained, noting that the animals cross from Grand Teton National Park through areas including the Upper Green River Basin. They must also pass through a bottleneck created by housing before ending in Bureau of Land Management lands with gas fields. "You can't drive this stuff. There are no roads."



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But it's not just the 20 minutes to one hour in the cockpit with Gordon that can change minds, Aengst said; it's also the time on the ground before and after flights.

"He clearly cares about the issues," Aengst said. He noted that the nonprofit covers costs including its fuel, equipment and fees, rather than asking its passengers to do so. (E&E News reporters have participated in several such flights.)

While the target audiences can range from governors to county commissioners as well as reporters, Aengst noted that the groups also include community and business leaders who can serve as advocates for public lands.

Business for Montana's Outdoors Executive Director Marne Hayes said her organization has worked with EcoFlight to build awareness about public lands and educate its own members and others.

The group recently sponsored flights in Kalispell to coincide with the Western Governors' Association's annual meeting in nearby Whitefish.

"It was a really natural partnership to team up with them, especially when we could take advantage of the WGA, and deliver this really powerful experience of our landscapes," Hayes said.

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16. **WHITE HOUSE: LNG a test case for Trump's energy 'dominance'**

E & E News, July 6 | Peter Behr and Jenny Mandel

In his visit to the Energy Department last week, President Trump reveled in the "America First" image of the United States as the new global energy superpower, with rising cargoes of U.S. oil, coal, natural gas and petroleum products criss-crossing the seas.

"We are now on the cusp of a true energy revolution," Trump said, speaking to an audience of energy industry leaders and union officials who, he said, "have gone through eight years of hell" at the hands of the Obama administration. "Our team is working to right the wrongs," he said, cutting through energy regulations and development restrictions that he said has stifled energy development across the country.

At this point, however, the president and Energy Secretary Rick Perry find themselves riding a wave of increased U.S. oil and natural gas production from unconventional drilling operations that has been growing for a decade, despite the "stifling" environment and climate policies of President Obama.



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"I don't know what he thinks we were doing in 2014, 2015, 2016 when we became the largest combined oil and gas producer in the world," said former Energy Secretary Ernest Moniz, speaking of Trump's rhetoric. At the same time, wind and solar power have expanded tremendously, and even U.S. coal production, down substantially, is still second largest in the world. "If you want to call that energy dominance, we've been doing it for a while," Moniz said in an interview last month.

There is no doubt that the coal, oil and gas industry executives who applauded Trump at DOE anticipate that his administration will deliver more opportunities to drill and build.

"The direction that Perry and Trump are headed is a good direction, streamlining regulations and lowering costs," said John Auers, executive vice president of Turner, Mason & Co., a Dallas-based energy consulting firm.

Playing an LNG card

A true test for Trump is what his administration can actually do to dramatically accelerate penetration of U.S. energy exports in glutted global markets that are ruled by low prices and stiff competition.

One telling opportunity is on the White House's doorstep — and China's, too. That is the possibility, broached by Commerce Secretary Wilbur Ross, that China will sign long-term commitments to buy a game-changing supply of U.S. liquefied natural gas and double down by investing part of the capital needed to start a new round of LNG export terminal expansion in this country.

A May 11 trade agreement between the Trump administration and China's government sets the stage for expanding LNG shipments. It described China on favorable terms as a buyer invited to strike gas-export deals with U.S. exporters, a confidence builder after Trump's targeting of China's trade and currency policies.

U.S. companies ship about 7 percent of China's LNG imports, according to a Wood MacKenzie analysis. And with Chinese LNG demand perhaps tripling by 2030, the opportunities are enormous, according to an analysis by the firm.

Nicholas Potter and Blerina Uruci, analysts with Barclays Research, wrote recently that "Chinese buyers have been noticeably absent from the first round of U.S. LNG contracting," deferring to buyers from Japan, South Korea and India. A clear welcome from the Trump administration could change that, they said. The ability of Chinese companies not only to sign long-term purchase contracts but also to contribute billions



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of dollars of investment capital to the huge costs of new LNG facilities, could move some projects from plans to construction, they said.

Gary Cohn, director of Trump's National Economic Council, has pointed to the potential for U.S. LNG output, noting that it offers European customers security of supply in contrast to Russia's past use of its gas exports as a political weapon. But last week, Cohn also downplayed Trump's personal role in promoting U.S. LNG exports.

"It's not the president's job to broker LNG supply contracts," he said. "It's the president's job to make sure that the U.S. authorizes facilities to be built in the United States because they need federal approval. And then once those facilities are built, hopefully those facilities enter into long-term supply contracts around the world. Because, uniquely, the rest of the world needs something we have, which is our huge supply of LNG."

But deals with China could headline the "dominance" storyline. New U.S. companies' agreements with China on LNG could be a "tit for tat" consequence in a more complex negotiation with China, Auers said, providing much-welcomed new capital to the U.S. LNG industry, which has see-sawed in recent months between agonizing over a global "supply glut" that is holding prices down and warning of future shortfalls unless the long process of sanctioning new projects begins soon.

The current oversupply stems from a wave of new export terminals that have come online in Australia, along with one in the U.S. and another four domestic terminals under construction. But multibillion-dollar export terminals take years to permit, finance and construct, and many analysts expect the global supply-demand balance to shift toward shortfall in the mid-2020s as global demand for natural gas gradually grows.

Part of the sellers' problems now, as the world's biggest LNG buyers pause to consider their options for the future, stem from a newly liberalized market for natural gas.

Crude oil has long been a highly liquid market, with tankers full of product sold and resold on open markets and with ships known at times to even turn at sea as their cargoes change hands from one intended buyer to another. LNG has been a different story, with sales managed largely through contracts spanning 20 years that pinned buyers to particular ports for delivery, often without a possibility of resale. Such take-or-pay contracts underpinned the financing mechanisms that allowed multibillion-dollar LNG plants to be built.

Over the last decade, a flood of diverted LNG cargoes that U.S. buyers were no longer importing as domestic production boomed and the advent of more flexibly structured U.S. LNG supplies on world markets have pushed the industry toward deals pegged to spot-market prices. These contracts give more power and flexibility to buyers to pick up gas supplies as their needs require. They have also given



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significant heartburn to would-be sellers who question how they can line up enough contracted demand to support loan underwriting for new projects (Energywire, March 29).

Limited policy tools?

Charlie Riedl, who represents major U.S. LNG exporters as head of the Center for LNG, said the domestic industry has not publicly called for Chinese investment but may have shied away from the optics of it. At a recent LNG summit in Houston, he said, an official from PetroChina suggested that the company was actively seeking the right U.S. opportunity to invest.

Christopher Smith, who led DOE's Office of Fossil Energy at the end of the Obama administration and is now a fellow at Rice University's Baker Institute for Public Policy, sees the current talk on China as largely for show.

"Of the 20 billion cubic feet per day [of LNG exports] that have been authorized by DOE to date, all of that is authorized free of restrictions to be sent to China," Smith noted.

"Now, it could be a sign that DOE is going to look more at energy as a bilateral, party-to-party set of negotiations, rather than a holistic system," he added. "If you're of the opinion that this is a signal of a new type of energy diplomacy coming from the White House, I'm really strongly of the belief that an open, transparent system ... is important for American stakeholders to have a very clear view of how the administration is making decisions."

Smith said if Perry is charged with expanding U.S. LNG exports, his tools to do so are limited. "What the department can do is they can authorize even more gas [exports]. Does that change the amount of capital that gets allocated, the amount of concrete that gets poured? No," he said. The U.S. will certainly be a force in LNG markets, but "that's really at this point a decision that the private sector is going to have to make," he said.

Smith said any mandate to expand opportunities for U.S. companies in China will be hurt by the Trump administration's failure to nominate anyone below the secretary level to serve at DOE. "If you want to do things, if you want to execute in a way that drives things the way you want them to go, then you've got to have your team on board. You can't do it with one person," he said.

The ability of any U.S. president to shape the outcome of world energy markets has definite limits. Auers and other analysts point out that U.S. producers will have to beat out global competitors to capture larger shares of world energy markets. "World demand is going to be a key part for all three — gas, product and crude — in determining how fast U.S. exports will grow," Auers said.



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And the competition is not only external. Rather than presenting a united front to the world, U.S. oil and gas producers have risen to global prominence in part by beating each other's brains out, Auers adds. Currently, gasoline and other refinery products are the most potent U.S. energy exports. "We have the most competitive refining system in the world," he said. "Through a process of survival-of-the-fittest dynamics, the most efficient refiners have become stronger and more efficient, and the weaker ones have shut down."

Ironically, the effect of environmental controls on U.S. refiners has increased their capacity to deliver lower sulfur content fuels, Auers said, and that will create a competitive advantage as more countries tighten their own environmental regulations. "At this point it's positive," Auers said of the environmental rules in this country. "Sure, it has imposed costs on the industry. But it provides additional opportunities for the U.S. We can make those products."

That the U.S. is in the crude oil export game at all is due to an amendment in 2015 spending legislation that lifted a 40-year-old ban on oil exports, which became politically palatable to Democrats when Republicans agreed to extend tax credits for wind and solar power until the end of the decade. "Nobody expected that," Auers said. "Give credit to [President] Obama and Congress for that."

Trump's narrow election victory has put him in a position to reverse Obama's energy and environmental priorities. Off the table now is the question of whether the U.S. long-term interest is advanced by pushing fossil fuel exports into a world where most nations recognize a threat from carbon emissions.

"Sure, there is presently a market for fossil energy elsewhere in the world, especially as the developing world seeks to ramp up electricity production to meet the new expectations of their citizens for an electricity-based lifestyle," said Dan Delurey, president of the Wedgemere Group, an energy consultancy, in a recent blog.

"If clean energy is going to be the dominant source, shouldn't we want to have dominance of that which will be dominant? Well, in terms of federal leadership, that does not appear to be the hill to be king of," Delurey said. "Which means that the top of the clean energy hill is going to be occupied by someone else."

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