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Attached is the daily news report for March 17.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – MARCH 17, 2017

1. Interior Sec Approves \$22M coal lease for central Utah

KSL News, March 16 | Amy Joi O'Donoghue

SALT LAKE CITY — Newly confirmed Interior Secretary Ryan Zinke approved a \$22 million coal lease for central Utah on Wednesday and made it clear his agency is in the "energy business."

2. Bears Ears designation upends proposed ATV trail in San Juan County

KSL News, March 16 | Amy Joi O'Donoghue

SALT LAKE CITY — The new Bears Ears National Monument is already impacting land use in the region after a judge said an 12-year-old proposal to build an off-road trail is contrary to the presidential proclamation.

3. Climate Change: The biocrust conundrum

High Country News, March 17 | Maya L. Kapoor

In the high desert of Castle Valley outside of Moab, Utah, famous redrock spires and mesas tower against bright blue sky. Not everyone notices another set of strange formations stretching up from the desert floor: biological soil crusts, or "biocrusts," tangled masses of mosses, lichens and cyanobacteria.

4. NATIONAL MONUMENTS: New tribal commission asks Zinke to discuss Bears Ears

E & E News, March 17 | Jennifer Yachnin

The newly appointed Bears Ears Commission today urged Interior Secretary Ryan Zinke to meet with Native American representatives to discuss the future of the 1.35-million-acre national monument, asserting that any decisions by the Trump administration to eliminate or reduce the southeastern Utah site would be "absolute tragedies."



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5. Tribal Group Says Elimination of Bears Ears Would Be Tragic

US News, March 15 | Brady McCombs, Associated Press

SALT LAKE CITY (AP) — Members of a newly formed tribal advisory commission for the Bears Ears National Monument reminded Interior Secretary Ryan Zinke in a letter Friday that his agency must partner with them, and warned him that rescinding or shrinking the monument would be "absolute tragedies."

E&E/NATIONAL NEWS – TOP STORIES

1. Chevron Pipeline Spills 4,800 Gallons of Oil on Public Land, Kills Wildlife

EcoWatch, March 16 | Lorraine Chow

Cleanup efforts are underway after a failed Chevron Corporation pipeline released about 4,800 gallons of oil into an intermittent stream on public land in northwestern Colorado and killed some wildlife.

2. PUBLIC LANDS: How Congress Is Rolling Back Public Input On Public Lands

Mens Journal, March 16 | Emily J. Gertz

A congressional move to rescind the Bureau of Land Management's "Planning 2.0" rule is on its way to President Trump's desk. The Senate voted on March 7 to approve H.J. Res. 44, which passed in February, to overturn the rule.

3. ADVOCACY: 'Keep it in the ground' shifts tactics for Trump era

E & E News, March 17 | Jennifer Yachnin

In the run-up to the 2016 presidential election, proponents of the "keep it in the ground" movement appeared to be on a roll: The Paris climate agreement had been signed, President Obama had enacted a moratorium on new coal leases, and activists regularly made headlines for their efforts to push Democratic presidential nominee Hillary Clinton to commit to their cause.



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4. OIL AND GAS: 'More to come' from Trump, GOP regulatory agenda — Gerard

E & E News, March 17 | Ellen M. Gilmer

Jack Gerard, the nation's top oil and gas lobbyist, foresees lots of action from the Trump administration and Congress on energy issues in the next six weeks.

5. PROPERTY RIGHTS: Supreme Court to hear precedent-setting case

E & E News, March 16 | Amanda Reilly

The Supreme Court on Monday will hear arguments in a high-stakes legal battle over a tiny waterfront lot that could affect how courts weigh whether government has illegally taken private property.

6. INTERIOR: Agency denies Trump Jr.'s pal will be sportsmen liaison

E & E News, March 17 | Jennifer Yachnin and Scott Streater

Although one of Donald Trump Jr.'s hunting buddies announced this week that he will accept a new post at the Interior Department — serving as a liaison between the sportsmen's community and the White House — the agency denied the creation of the position and said it had not hired anyone in that capacity.

7. NATIONAL PARKS: Budget cuts overshadow hearing on maintenance backlog

E & E News, March 17 | Emily Yehle

Proposed cuts to the National Park Service's budget stole the spotlight at a hearing yesterday billed as a look at "innovate infrastructure ideas" for federal parks and forests.

8. EPA: Enforcement advocates call budget a 'death blow'

E & E News, March 17 | Mike Soraghan

Deep cuts to environmental enforcement proposed by the Trump administration, experts say, would translate into fewer U.S. EPA inspectors poking around in the oil patch and less oversight of state regulation programs.



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9. **INTERIOR: 'Skinny budget' plants a big flag for energy production**

E & E News, March 17 | Pamela King

President Trump's "skinny budget" did more than slash Interior Department funding.

The [proposal](#) to trim Interior's budget by 12 percent added to the file of evidence that Secretary Ryan Zinke faces a mandate potentially at odds with his vision of himself as a Teddy Roosevelt conservationist who can strike a balance between resource development and conservation on public lands (Energywire, Feb. 28).

10. **LAW: Court delays fracking rule proceeding as Interior plans rollback**

E & E News, March 17 | Ellen M. Gilmer

A federal court has scrapped upcoming oral arguments over the Obama administration's landmark effort to regulate hydraulic fracturing.



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UTAH – FULL STORY

1. Interior Sec Approves \$22M coal lease for central Utah

KSL News, March 16 | Amy Joi O'Donoghue

SALT LAKE CITY — Newly confirmed Interior Secretary Ryan Zinke approved a \$22 million coal lease for central Utah on Wednesday and made it clear his agency is in the "energy business."

The move by Zinke — his first official action impacting Utah's natural resources on federal lands — unlocks 56 million tons of recoverable coal in Sevier and Sanpete counties long sought by Bowie Resources to prolong the life of SUFCO, Utah's largest coal mine locally operated by Bowie's subsidiary, Canyon Fuel Co.

In other action that Zinke says signals a new focus on energy development on public lands where "appropriate," he appointed Mike Nedd as acting director of the national BLM.

Nedd was described as a career employee and was assistant director for energy, minerals and realty management, holding that position since 2007.

Zinke was blunt about the pivotal change.

"Let me make one thing clear, the Interior Department is in the energy business, and Mike is an energy guy who understands the balance we must strike when developing resources and creating jobs on our public lands. It is my hope that working together he will help identify areas where we can expand responsible mineral development while still conserving habitat and wildlife."

Jeremy Nichols with WildEarth Guardians — one of the environmental groups that fought the Greens Hollow lease — called Zinke's decision a "travesty."

"I think what they are saying with this announcement is that they are not here to serve the American people. These are public resources, these are public lands. They are not the coal industry's...This shows that whatever the coal industry wants, it will get, no matter the cost," Nichols said.

Nathaniel Shoaff, an attorney with the Sierra Club, blasted the decision as well.



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"Today Secretary of the Interior Zinke sold out Utah to please a single, out-of-state coal company. Despite low demand in the U.S. and international markets for the coal Utah is already mining, Zinke has now placed over 6,000 acres of public land in jeopardy," he said.

Zinke said the new lease will support nearly 1,700 mining and related jobs.

"The United States has more coal than any other nation on Earth, and we are lucky to be at a time in our history that we have the technology available to responsibly mine coal and return our land to equal or better quality after," Zinke said.

"For many communities and tribes in Utah, Montana, New Mexico and other states across the West, coal on public lands has been both a boon and a missed opportunity. With the potential for thousands of jobs and millions in economic opportunity, the Interior Department is committed to balancing the development and conservation of these resources. The Greens Hollow lease sale is a sign of optimism for the Trump administration and the pro-energy and pro-growth economic policies to come," he said.

The Greens Hollow Lease has been sought by the SUFCO mine in Salina Canyon since 2005. The tract is on land owned by the Forest Service, which issued a record of decision in 2015. The Bureau of Land Management manages the leases for the coal and issued its own approval at the same time.

Although the Interior Department issued a three-year moratorium on any new coal leases in January 2016, the decision did not apply to leases that had already gone through the environmental review process with a resulting decision.

Environmental groups that include the Sierra Club and the Grand Canyon Trust appealed the lease of the 6,175-acre tract last year, citing potential impacts to habitat for the imperiled greater sage grouse. The lease was finalized in a winning bid in January.

The lease is expected to extend the life of the mine for nearly nine years. The SUFCO mine is one of the longest, continuously running longwall mines in the country.

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2. Bears Ears designation upends proposed ATV trail in San Juan County

KSL News, March 16 | Amy Joi O'Donoghue

SALT LAKE CITY — The new Bears Ears National Monument is already impacting land use in the region after a judge said an 12-year-old proposal to build an off-road trail is contrary to the presidential proclamation.

A judge with the Interior Board of Land Appeals ruled this week that no work can begin on the 6.4 mile ATV loop the Bureau of Land Management approved for the Indian Creek area until an appeal brought by environmental groups is settled.

The loop, sought by San Juan County since 2005, was approved by the BLM in December, just a little under two weeks before then-President Barack Obama made the 1.35 million-acre monument designation in southeast Utah.

Judge Silvia M. Riechel noted the proclamation states that any additional roads or trails designated for motorized use are restricted to those necessary for public safety or protection of objects covered by the proclamation.

Even though the BLM approved the trail prior to the monument designation, Riechel said the agency's decision was not yet in effect because of an automatic 30-day appeal period.

"This is an exciting victory for wilderness, and is the first time an administrative body or court has addressed the legal effect of the Bears Ears National Monument proclamation, which calls for careful consideration and analysis when managing the spectacular and irreplaceable resources within its boundaries," wrote Kya Marienfeld in a blog posted by the Southern Utah Wilderness Alliance.

The alliance, the Grand Canyon Trust, Great Old Broads for Wilderness and the Utah Chapter of the Sierra Club fought approval of the trail due to its impacts on wilderness quality lands and effects from dust and soil degradation in a region they assert already has 3,000 miles of off-road trails.

Originally, San Juan County applied for a right-of-way with the BLM in 2005 to put in its own trail that would connect to ATV use on existing designated routes in the Lockhart Basin and Davis canyon areas.



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After a trio of environmental assessments and accompanying public comment periods, the BLM in 2015 rejected the county proposal to put in the trail and instead issued a decision that it would construct the route and associated parking areas.

Later that year, based on appeal, the Interior Board of Land Appeals asked the BLM to conduct additional visual analysis of the proposed trail's impacts. The federal agency provided additional assessment and documentation of effects on cultural resources, riparian mitigation and an expanded noise analysis.

That resulted in the subsequent decision issued in December of last year, which brought another appeal.

Both the state of Utah and San Juan County are fighting the appeal, and the BLM joined Utah in objecting to the stay, with the agency arguing harm to the ATV community and to its credibility with the public because of a process that has played out for 12 years.

Tony Rampton, head of the public lands section for the Utah Attorney General's Office, said the stay demonstrates the uncertainty that swirls around land use on the monument.

"Nobody knows at this point what kind of restrictions are actually going to be employed on the monument. It's all up in the air," Rampton said.

He added that the delay, too, marks another setback in what has been a long, drawn out battle.

"The plaintiffs in the case, the environmental groups, just don't want ATVs anywhere. They certainly don't want ATVs in any area that has wilderness characteristics. That is what their primary objective is, to keep ATVs out of the public lands to the greatest degree possible. They are very dogged and determined, and they are having some success," Rampton said.

The environmental groups successfully argued that granting a delay in the construction of the trail prevents unnecessary environmental degradation to lands that would remain damaged long after the appeal is resolved.

The decision concluded that public interest was best served by preventing environmental degradation and preserving the status quo.



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The BLM had argued that the 66-inch trail did serve a public safety purpose by routing ATVs off an existing trail frequently traveled by full-sized vehicles.

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3. **Climate Change: The biocrust conundrum**

High Country News, March 17 | Maya L. Kapoor

In the high desert of Castle Valley outside of Moab, Utah, famous redrock spires and mesas tower against bright blue sky. Not everyone notices another set of strange formations stretching up from the desert floor: biological soil crusts, or “biocrusts,” tangled masses of mosses, lichens and cyanobacteria.

Because the most dramatic biocrusts top out at a few inches tall, people are more likely to step on biocrusts than see them. Yet tiny lives can sculpt ecosystems: Biocrusts are the stalwart architects of dryland soils, digging in where many plants can’t survive. Biocrusts glue the soil together, slowly building its fertility by pulling nitrogen from the air and converting it to a form usable by plants, as well as storing atmospheric carbon. Biocrusts also soak up water like sponges when it rains, slowing down runoff and helping store water for desert plants.

Now, new research published in the peer-reviewed journal *Nature* has introduced a bizarre twist into the hidden world of biocrusts: A changing climate may be killing the mosses and lichens in biocrusts. Their demise, in turn, may actually slow down climate change by making drylands reflect more sunlight back into space.

Drylands, which cover more than 35 percent of the Earth’s land, are places that get so little rain or snow, it doesn’t replace the amount that evaporates away. “Over time, there’s chronically less moisture than comes in,” Scott Ferrenberg, a U.S. Geological Survey biologist and a collaborator on the study, said. Drylands cover most of North America and the West. To the south, they include deserts like the Sonoran; to the north, they include the colder Colorado Plateau, where this biocrust research took place.

Biocrusts live across those arid ecosystems, taking hold where plants struggle. “Biological crusts can often cover just as much ground or more as plants do,” said Matthew Bowker, a soil ecologist and biological crust expert at Northern Arizona University. “If it hasn’t been walked on, driven on, or over-grazed, chances are good you’ve been around it.”



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For the dry places biocrusts live, they behave a bit like a dark shirt in the hot sun, absorbing sunlight and heating up the desert that they cover. This adds to global warming overall. Scientists call a surface's reflectivity its "albedo." High albedo is important for keeping the planet cool because the sun's rays are reflected back. A desert decked out in biocrust has lower albedo than bare desert soil, because it's darker and more textured than crust-free soil. And more complex biocrusts like those found on the Colorado Plateau have lower albedo than simpler ones.

Austin Rutherford, a graduate student at the University of Arizona, along with colleagues including Ferrenberg, published the results of a 10-year experimental study that found the mosses and lichens that give biocrusts their darker colors and textured surfaces may not make it through the next century. As they die out, the albedo of the drylands where those biocrusts live may increase by more than 30 percent, which could be enough to slow down climate change.

The team set up experimental plots in the desert, creating a futuristic climate scenario with temperature and rainfall modeled after what's predicted to happen in the region, then watched what unfolded in the biocrust world at their feet. This meant, ultimately, warming some plots by as much as about 40 degrees Fahrenheit – the projected increase for the next 100 years – and giving some biocrusts short bursts of 1.2 millimeters of simulated rain twice each week.

That's to reflect the fact that rainfall is becoming shorter and more frequent in the region, Rutherford explained. "You're still going to get your monsoon, but in shorter, more intense rainfall."

As it turns out, biocrust creatures can be picky about how their water gets delivered – especially mosses. Within the first year of the study, mosses died out in plots that got extra water, or extra water with warming. Over the long term, as treatments continued, mosses died out in the plots that were only warmed, too.

To explain why the mosses died, Ferrenberg points to USGS researcher Sasha Reed's work on moss biology.

Mosses often dry out and then come back to life. To do that, dried out mosses store energy that they made while wet so that the next time it rains, they have the resources to get back to photosynthesizing and living.

But mosses are ancient types of plants. "They don't have stomata or waxy cuticles like grass. When you wet a moss it immediately becomes active," Ferrenberg said. If it rains long enough to wake them up but not to let them build up energy reserves, it's as though they keep walking to



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the grocery store and finding that it just closed. Eventually, if the store doesn't stay open long enough – if the rain doesn't last long enough – the mosses will starve to death.

The researchers found that as the mosses died, cyanobacteria grew in their place. Albedo in the plots increased by more than 30 percent, reflecting more of the sun's energy back into space.

There's another potential feedback loop in Colorado Plateau biocrusts, which develop particularly rough textures in part because of freezing and thawing of the soil. As the region's climate warms, less freeze-thaw will further accelerate the move to smoother, lighter and more reflective biocrusts, which absorb less of the sun's energy. This may also slow down climate change.

But the full consequences of changing biocrusts on the warming climate are likely more complicated.

"While at the surface it might look like, 'Hey, let's go out and drive all over the biocrust that helps cause that climate change,' it turns out that it could put us right back where we were, maybe worse," Ferrenberg cautioned. For example, without a network of biocrust holding the Colorado Plateau's soil together, wind erosion could throw enough dust onto nearby mountains to cover snowpacks, which are themselves important reflectors of sunlight. That could cancel out the cooling from the smoother, more reflective biocrusts. Plus, dead biocrusts will release all the atmospheric carbon that they once stored as they grew.

In the end, a conversation about climate change mitigation that includes losing biocrusts ends up where it started. If Westerners don't cut back on climate-warming emissions, we may end up grasping for... well, not straws. Or moss. Maybe cyanobacteria.

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4. NATIONAL MONUMENTS: New tribal commission asks Zinke to discuss Bears Ears

E & E News, March 17 | Jennifer Yachnin

The newly appointed Bears Ears Commission today urged Interior Secretary Ryan Zinke to meet with Native American representatives to discuss the future of the 1.35-million-acre national monument, asserting that any decisions by the Trump administration to eliminate or reduce the southeastern Utah site would be "absolute tragedies."



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In a [letter](#) to Zinke and acting Agriculture Secretary Michael Scuse, the commission urged the two officials to meet with its members during a yet-unscheduled trip to Utah. The commission represents the five tribal nations with ancestral ties to Bears Ears; the letter is its first action.

Republican leaders in the Beehive State have urged President Trump to eliminate the new Bears Ears National Monument — created by President Obama in his final weeks in office over the objections of lawmakers like House Natural Resources Chairman Rob Bishop (R) — arguing that he has authority to do so under the Antiquities Act.

But the Bear Ears Commission and the Bears Ears Inter-Tribal Coalition, which urged the creation of the monument, have pushed back against shrinking or eliminating it, citing the scientific, historical and cultural importance of the region.

"From our standpoint, any such actions would be absolute tragedies in terms of impacts on our people today and the eternal values and traditions of our many generations of ancestors," the letter states. "Needless to say, if such actions are not being considered, than the meetings would be extraordinarily productive in terms of starting to put in place a system of collaborative management that would make this monument one of the brightest stars in America's public land system."

The commission is composed of Alfred Lomahquahu, co-chair of the Bears Ears Inter-Tribal Coalition and representative of the Hopi Tribe; Carleton Bowekaty, Zuni tribal councilman; Shaun Chapoose, chairman of the Ute Indian Tribe Business Committee; Terry Knight, tribal historic preservation officer with the Ute Mountain Ute; Davis Filfred, Navajo Nation delegate; and James Adakai, Navajo Nation Oljato Chapter president.

"Bears Ears National Monument represents the recognition that some areas need to be preserved in their natural state. We are part of the land, and as Tribal Nations we bring a unique perspective to land management and the preservation of our heritage," Lomahquahu said in a statement. "We have an opportunity for the Tribes to work with federal land managers and the community to ensure that this monument benefits all of us."

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5. Tribal Group Says Elimination of Bears Ears Would Be Tragic

US News, March 15 | Brady McCombs, Associated Press

SALT LAKE CITY (AP) — Members of a newly formed tribal advisory commission for the Bears Ears National Monument reminded Interior Secretary Ryan Zinke in a letter Friday that his agency must partner with them, and warned him that rescinding or shrinking the monument would be "absolute tragedies."

Utah's congressional delegation and state leaders including Gov. Gary Herbert have asked President Donald Trump to rescind or shrink the 1.35 million acre monument in southeastern Utah that was designated by former President Barack Obama in December.

"From our standpoint, any such actions would be absolute tragedies in terms of impacts on our people today and the eternal values and traditions of our many generations of ancestors," the commission wrote in the letter.

The Bears Ears Commission, comprised of one elected official from each of five tribes, also requested a meeting with Zinke in the letter.

Department of Interior officials weren't immediately available for comment.

Republican leaders in Maine are also pushing for the elimination of the Katahdin Woods and Waters National Monument designated last summer by President Obama on 87,500 acres of donated forestland

The Antiquities Act of 1906 doesn't give the president power to undo a designation, and no president has ever taken such a step. But Trump isn't like other presidents.

White House officials said recently that Trump's staff is reviewing those decisions by the Obama administration to determine economic impacts, whether the law was followed and whether there was appropriate consultation with local officials.

Republican leaders in Utah contend the monument designation adds another layer of unnecessary federal control in a state where there's already heavy federal ownership.

Zinke said during his confirmation hearing in January hearing that he's committed to working with members of Congress on proposed national monuments such as the Bears Ears.



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The tribal commission falls short of the full co-management system the tribes requested, leaving final say on all land decisions to federal bureaucrats working under President Trump's cabinet appointees. But the creation of the tribal council was still considered a victory for the tribes because it should give them an opportunity to weigh in on the management of their ancestral lands.

The commission announced Friday the five members have been selected. Alfred Lomahquahu will represent the Hopi; Davis Filfred the Navajo Nation; Shaun Chapoose the Uintah and Ouray Ute; Terry Knight the Ute Mountain Ute; and Carleton Bowekaty the Zuni.

They point out to Zinke in the letter that the commission was created in the monument proclamation to ensure decisions "reflect tribal expertise and historical knowledge" and that federal agencies were directed to "meaningfully engage" the commission.

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E&E/NATIONAL NEWS – FULL STORY

1. **Chevron Pipeline Spills 4,800 Gallons of Oil on Public Land, Kills Wildlife**

EcoWatch, March 16 | Lorraine Chow

Cleanup efforts are underway after a failed Chevron Corporation pipeline released about 4,800 gallons of oil into an intermittent stream on public land in northwestern Colorado and killed some wildlife.

The breach happened on Bureau of Land Management (BLM) land and was first detected on March 5 by a Chevron consultant. The pipeline was shut down after discovery of the leak and the oil is now trapped in a berm and siphon dam in a dry ravine, according to the Associated Press.

As it happens, the leak occurred around the same time that the conservation group Center for Western Priorities found that Chevron was behind 31 reported spills in Colorado last year, ranking the energy corporation as the fourth highest oil and gas spiller in the state.

Chevron spokeswoman Erika Conner said that while there are no public health concerns after the March 5 incident, some animals have died. Two mallard ducks covered in oil were found at the spill site and were transferred to Colorado Parks and Wildlife on March 5 but died the day after. Two other small birds and several mice have also been found dead by cleanup crews.



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"The U.S. Fish and Wildlife Service has been notified," Conner told The Daily Sentinel. "We regret the impact the release has had on the affected animals and are working diligently to avoid any additional impacts to wildlife."

Colorado Department of Natural Resources spokesman Todd Hartman told the AP that the failed section of pipeline is being analyzed to determine a cause.

The spill involved a 6-inch-diameter oil gathering pipeline, BLM spokesman David Boyd told The Daily Sentinel.

In its recent report, the Center for Western Priorities calculated available data from the Colorado Oil and Gas Conservation Commission and determined there were 509 reported spills in 2016—that's more than one a day in Colorado.

The number of spills in 2016 are less than the 615 reported spills and incidents in 2015, reflecting the decrease in drilling activity. However, the group expects spills to increase as the state ramps up oil and gas production.

"As drilling and production increase in Colorado—which is expected as the price of oil and gas may increase in the coming years—we also expect to see spills increase," the report said.

"Monitoring these incidents help to inform Coloradans about the impacts of oil and gas development within the state."

In response to the report, Chevron said in a statement that it "aggressively manages the risk of spills through a rigorous ongoing asset integrity program wherever we operate."

"For example, Chevron has undertaken a comprehensive, multi-year, multi-million-dollar project to streamline and upgrade facilities and systems at our largest Colorado asset in Rangely," the company continued. "The program will continue through 2018. To date, approximately 11 miles of pipes have been removed from service."

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2. PUBLIC LANDS: How Congress Is Rolling Back Public Input On Public Lands

Mens Journal, March 16 | Emily J. Gertz

A congressional move to rescind the Bureau of Land Management’s “Planning 2.0” rule is on its way to President Trump’s desk. The Senate voted on March 7 to approve H.J. Res. 44, which passed in February, to overturn the rule.

Developed by the BLM over the past four years, Planning 2.0 updates the agency’s 24-year-old process for planning and approving mining, drilling, grazing, and other business activities on nearly 250 million acres of public lands in 12 western states, including Alaska. The revamped planning process gave the public — including hikers, fishermen, hunters, and other outdoors sports enthusiasts — an earlier opportunity to comment on how a parcel of public land should be used. But not for long.

The \$650 billion outdoor recreation sector needs healthy wilderness, wetlands, and waterways to prosper, but “won’t have the say at the front of the process that we were hoping for” if President Trump signs away Planning 2.0, says Jessica Wahl, spokesperson for the [Outdoor Industry Association](#). “It really matters at the front end. It avoids litigation. It helps land managers understand all the stakeholders and where our assets are.”

How Congress Is Preparing to Roll Back Public Input On Public Lands

Under the BLM’s older rules for land-use planning, public comment usually starts after, rather than before, a proposal for developing a public land parcel has been drafted. In practice, this has often given timber and mineral-extraction industries, farmers, and ranchers — along with their allies in local and state governments — an advantage in setting the priorities for how public land is used. Fans of hunting, fishing, hiking, and other activities, who often prize undeveloped public lands, have had their voices left out of the early planning process in that original system.

Planning 2.0 acknowledges these diverging opinions, says Leah Baker, the head of the BLM’s [Division of Decision Support, Planning, and NEPA](#) (National Environmental Policy Act) by creating “two new points in the process where we’d engage with the public, and consult with state and local governments and [other] stakeholders.” Essentially, it was a way for all of the people who use the land, and all of the industries who make money off of it — including the outdoor industry — to weigh in equally.

Planning for Conservation



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The House and Senate moves to quash Planning 2.0 have dismayed environmentalists. The rule “included a lot of beneficial-sounding language for how to establish habitat connectivity,” said wildlife biologist Erik Molvar, executive director of the [Western Watersheds Project](#). These corridors are crucial to ensuring that wildlife can shift their ranges as climate change alters prey species, water supplies, weather, and other ecosystem conditions, he said.

“It also highlighted some new designations that BLM land managers could use to protect areas that were largely undeveloped,” Molvar adds, by giving them flexibility in basing the boundaries of a land use plan on the natural contours of an ecosystem, however large or small.

“In our history, our plans have been based on our smallest unit of administration,” which at the BLM is the field office, explains Baker. “But over the years some offices have found it makes sense to slightly enlarge a plan” to the district level or across state lines, she says, “or to go even smaller,” such as a 2015 BLM plan for managing around 1,400 acres of wetland near Eugene, Oregon.

Planning 2.0 simply put this “best practice,” into writing, says Baker. If it’s overturned, land-use managers may still have the option of following it on an ad hoc basis, but it won’t streamline the process.

The Case for Ranchers, Miners, and Timber Companies

Opponents of Planning 2.0 included dozens of national and state-based lobby groups, from the [American Petroleum Institute](#) to the [Utah Wool Growers Association](#). Their objections essentially fall under one category: Locals should get to decide how the land is used. “Our objections to the BLM 2.0 planning rule were many,” says Luke Popovich, vice president for external communications at the [National Mining Association](#), by email. “But basically it would have minimized the input from local stakeholders, including ranchers, miners, timber companies, and certainly the states and local governments.”

These worries were echoed by Brian Namey, public affairs director for the [National Association of Counties](#). “Our main concern with Planning 2.0 was that it could have diluted county input into federal land management decisions,” Namey says, also by email. “Local consultation in the federal rule-making process is important because counties know firsthand the impacts of rules on the ground and, in many cases, play a key role in implementing them.”

Senator Lisa Murkowski (R-Alaska), the chair of the Committee on Energy and Natural Resources, who introduced the resolution to overturn the rule in the Senate, stated that Planning 2.0 “would have harmed grazing, timber, energy development, mineral production, and even



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recreation on federal lands,” although she did not describe how. (Senator Murkowski was not available to speak with Men’s Journal for this article, according to Nicole Daigle, the committee’s communications director.)

The Loophole That Might Make These Changes Permanent

The Congressional Review Act, the 1996 law being used by the House and Senate to overturn this and other Obama-era regulations, prohibits agencies from revisiting rules that Congress disapproves under the act. That leaves only one option for changing the BLM planning process in the future: Congressional legislation. In that scenario, the outdoor recreation industry is counting on hikers, climbers, fishermen, hunters, and outdoor enthusiasts to let Congress and the Trump administration know they are paying attention. “People are engaged, and we’re seeing more awareness of how important some of these plans are,” Wahl says, “and that Congress using these crazy tools to roll the process back is not in line with what public opinion.”

Along with Planning 2.0, Congress has taken CRA-enabled aim at other Obama-era rules linked to energy and public lands, such as a moratorium on coal leasing pending an environmental review of the program, a curb on methane flaring at gas wells, and a rule that stopped coal firms from dumping mine waste into streams.

“The Congressional Review Act is an incredibly blunt and dangerous instrument,” said Lukas Ross, a public lands campaigner for [Friends of the Earth](#). “The attack against Planning 2.0 is the thin end of a very ugly edge [of] a really aggressive campaign to roll back not just protections for our public lands, but the very idea of public lands,” Ross said. “All these attacks are fundamentally designed to ensure the private benefit of a very narrow range of interests on our public lands.” It will be up to the public and conservation groups to push back hard on these attempts, he said.

Molvar agreed. “I think you’re going to see that as the federal agencies increasingly try to dismantle environmental protections, and frustrate efforts to restore the land, groups like ours are going to ramp up efforts to hold them accountable through the legal system.”

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3. ADVOCACY: 'Keep it in the ground' shifts tactics for Trump era

E & E News, March 17 | Jennifer Yachnin

In the run-up to the 2016 presidential election, proponents of the "keep it in the ground" movement appeared to be on a roll: The Paris climate agreement had been signed, President



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Obama had enacted a moratorium on new coal leases, and activists regularly made headlines for their efforts to push Democratic presidential nominee Hillary Clinton to commit to their cause.

But that was before Republican Donald Trump won an upset victory and the new administration began a concerted rollback of environmental regulations, including an expected repeal of the coal moratorium.

Now organizers of the keep-it-in-the-ground movement, which includes more than 400 organizations from 60 countries, are figuring out how to start over.

While the association's aim was once to influence an administration and a president who endorsed climate policies, today it's about how best to undermine Trump — an avowed climate change doubter — and his promises to expand coal, oil and gas production on public lands.

"The campaign is not going away. The fact of the matter is, the election did not change the physics of climate change; it is still a real and present danger," said Center for Biological Diversity Public Lands Program Director Randi Spivak.

"We obviously hold no illusion that Trump is going to — in any way — keep fossil fuels in the ground. In fact, it's the opposite. He's been very vocal about wanting to increase fossil fuels across public lands," she added.

Spivak said keep-it-in-the-ground participants will focus on administrative and legal challenges, as well as closely monitoring lease sales and resource management plans.

In addition, groups working under the movement's banner will focus on educating potential supporters in so-called front-line communities adjacent to production sites and pipelines, including Native American tribes and farmers.

She said organizers expect to find new backers among those communities, pointing to a recent Colorado College State of the Rockies Project poll that showed residents in seven Western states would like to see Trump's administration limit expansion of oil and gas development (E&E News PM, Jan. 31).

"The campaign was never about shutting down existing production," Spivak said, adding that the effort remains focused on not "locking in fossil fuel dependency."



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Sara Shor, who manages the keep-it-in-the-ground campaign for environmental group 350.org, likewise said her organization will turn from the White House and Congress to local regulators and stakeholders.

"We'll be doubling down at the state and local level. A lot of these projects have decisionmakers that are not the federal government. We'll be pushing on all those entry points," Shor said, referring to construction projects for new fossil fuel-related infrastructure, including pipelines.

Lena Moffitt, director of the Sierra Club's Dirty Fuels campaign and its keep-it-in-the-ground efforts, said in a separate interview that work would also focus on protecting specific sites, such as Zion National Park in Utah.

Bureau of Land Management officials received more than 40,000 public comments on a proposal to lease 2,800 acres about 1 mile north and east of Zion in southwest Utah. The lease sale would take place Sept. 14 if approved (Greenwire, March 9).

"We will be amplifying opposition to inappropriate leasing in places that are particularly iconic like that," Moffitt said, pointing to the tourism and related revenue that the park generates for the Beehive State.

Similarly, Jeremy Nichols, director of WildEarth Guardians' Climate and Energy Program, said the keep-it-in-the-ground movement will continue to "expose legal vulnerabilities in oil and gas and coal leasing," while also working to highlight what he called more "scandalous" aspects such as low per-acre prices for oil and gas leases.

"To say that [Trump's] against what we believe in, that's an understatement. He wants to maul it. He wants to viciously destroy it," said Nichols.

Recalling efforts to sway the Obama administration, he added: "Our efforts at the time were geared toward trying to reach that man in the White House. Obviously, we're not going to reach the man in the White House right now. It's switching to a more defensive tack."

That includes "considerably" ramping up litigation over new production on public lands.

"We went to the courts under Obama. We don't care who's in office; we will hold them accountable," Nichols said. "The courts right now are really the only check we have on this administration's desire to cater to the fossil fuel industry."



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But the movement — which will keep its moniker and the social media hashtag #keepitintheground — will also turn to new alliances, including conservation, recreation and sportsmen's groups that could lead the charge against expanding production on public lands.

"'Keep it in the ground' will still be our rallying cry, but keeping it in the ground as an outcome is going to take on many different forms," Nichols said.

In addition to typical concerns like clean air or clean water, the focus could shift to efforts to lease or outright transfer lands to states.

"Every acre that is leased to the oil and gas industry or the coal industry is an acre that we as Americans lose," Nichols said.

350.org's Shor likewise said she expects conservationists interested in fishing and hunting to take on a "leadership role" in the campaign's future.

"We'll see a broader coalition than we've ever seen before," she asserted.

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4. **OIL AND GAS: 'More to come' from Trump, GOP regulatory agenda — Gerard**

E & E News, March 17 | Ellen M. Gilmer

Jack Gerard, the nation's top oil and gas lobbyist, foresees lots of action from the Trump administration and Congress on energy issues in the next six weeks.

Speaking today at a St. Patrick's Day-themed Capitol Hill event that is part of the American Petroleum Institute's campaign counting down the first 100 days of the new GOP-controlled Congress and the Trump presidency, API CEO Gerard homed in on the regulatory arena.

"I think there's more to come there, and I think it fits into that broader vision the president has made abundantly clear," Gerard said. "Energy is part of his agenda from an economic, job creation function, so there's more to come."

Gerard expressed support for a Senate resolution to rescind a Bureau of Land Management regulation curbing greenhouse gas emissions from oil and gas flaring, venting and leakage on public and tribal lands that could get a vote in the Senate next week (E&E Daily, March 16).



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"I think there's still a few others to come," Gerard said of Republicans' use of the Congressional Review Act to roll back Obama-era regulations on energy and environmental issues.

While punting on the question of which rules he would like to see revisited, Gerard praised the White House budget blueprint that would eliminate funding for U.S. EPA's Clean Power Plan and gut programs addressing climate change (Climatewire, March 16).

Gerard emphasized the industry's climate pitch that greenhouse gas emissions have dropped thanks to the shift to natural gas production (Greenwire, Nov. 10, 2016).

Data released today by the International Energy Agency showed that energy-sector emissions in the United States fell by 3 percent last year to their lowest level since 1992, a development helped by a shift away from coal in the energy sector toward natural gas and renewables.

FERC and tax reform

API is anxious for Trump to tap three new members of the Federal Energy Regulatory Commission.

E&E News has reported on several people considered in the running for spots on the five-member commission (Greenwire, March 8).

Those include Kevin McIntyre, a co-head of Jones Day's global energy practice; Neil Chatterjee, a longtime energy aide to Senate Majority Leader Mitch McConnell (R-Ky.); Patrick McCormick, chief counsel for the Senate Energy and Natural Resources Committee; Robert Powelson, a Pennsylvania utility regulator; and Ellen Nowak, chairwoman of the Wisconsin Public Service Commission.

"All the speculation we've read today, that's positive — people with experience, people with know-how, people with understanding about FERC," Gerard said.

Gerard was asked about the "border adjustment tax" that Republicans in Congress are mulling as part of a broader plan that would also cut corporate tax rates. It would impose a new tax on oil and gas imports.

House Ways and Means Chairman Kevin Brady (R-Texas) and Speaker Paul Ryan (R-Wis.) understand "we are a key lifeblood of this economy, and so what you want to do is encourage constant reinvestment," Gerard said.



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Gerard emphasized support for the broader framework of the tax plan. On the border adjustment mechanism, API is "still doing further analysis" and trying to get more clarity from lawmakers, he said. So far, it's been a "very constructive dialogue," he said.

"We need tax reform, and we can work out those details. The process has just begun," Gerard told reporters.

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5. **PROPERTY RIGHTS: Supreme Court to hear precedent-setting case**

E & E News, March 17 | Amanda Reilly

The Supreme Court on Monday will hear arguments in a high-stakes legal battle over a tiny waterfront lot that could affect how courts weigh whether government has illegally taken private property.

The owners of the waterfront land in Wisconsin claim that St. Croix County, through a decades-old environmental regulation, has taken their private property without compensation. Property rights advocates and several states have leapt to their defense, arguing that the case is important for maintaining rights for landowners across the country.

On the other side, Wisconsin and St. Croix argue that lower courts were correct in rejecting the claims. They are supported by the federal government and several other states.

John Echeverria, a takings expert at Vermont Law School, said *Murr v. Wisconsin* could end up becoming one of the most important property rights cases ever decided by the Supreme Court.

"How large-scale developers get to define their interests for the purposes of takings litigation is the major lurking issue in the case," he said.

The six Murr siblings own two lots along the idyllic St. Croix River near the Wisconsin-Minnesota border.

Their late parents, William and Dorothy Murr, purchased one of the lots in 1960 and built a modest cabin on the property to spend summer vacations and host gatherings of the extended family.



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Three years after building the cabin, the parents purchased the adjacent lot as an investment parcel to eventually hand down to their children. That approximately 1-acre lot next to the cabin has since remained vacant.

The Supreme Court case stems from the Murr siblings' decision in 2004 to approach St. Croix County in the hope of selling the vacant property to finance needed improvements on the cabin.

"It is outdated and is in need of serious repair," said Donna Murr, the youngest of the siblings and the spokeswoman for the family. "Rather than take out a mortgage to pay for the improvements on the cabin, we decided that we wanted to sell the investment parcel that my parents bought and gave to us years before."

But they were told they couldn't sell the property. Congress added the St. Croix River to the National Wild and Scenic Rivers program in 1972, and an ensuing county ordinance based on state regulations required a total area of at least an acre to develop. The 1975 ordinance, which required subtracting wetlands and floodplains from the total land area, meant the Murrs' vacant lot was too small to develop.

The ordinance contained a grandfather clause allowing single-family residences to be built on lots created prior to 1976, but only if the property wasn't under the same ownership as an adjacent lot. Because the Murrs owned the adjacent lot, the grandfather clause didn't apply.

And the ordinance prevented the Murrs from selling the vacant lot unless they combined it with the lot that contains the cabin.

"We learned that they were not going to allow us to separately sell or develop the vacant parcel, unless we tore down the existing cabin on the lot next door," Murr said. "Needless to say, we were stunned to hear this. That made no sense to us whatsoever."

The family sued, alleging an illegal taking of private property. The case made its way up to Wisconsin's highest court, which ruled against the Murrs, relying on precedent that requires courts to look at landowners' entire property — rather than breaking it into segments — when assessing government takings claims (Greenwire, June 15, 2016).

'Parcel as a whole'

The Supreme Court agreed to take up the dispute in January 2016. Justices on Monday will hear an hour and 10 minutes of oral arguments.



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The key question justices will grapple with is how courts should weigh whether an uncompensated taking of private property has occurred in violation of the Fifth Amendment.

At the heart of the issue is a legal precedent that stems from a 1978 case, *Penn Central Transportation Co. v. New York City*, in which the owners of Grand Central Terminal alleged that they were entitled to compensation for a government taking because a historical preservation law barred certain development projects in the airspace above the terminal.

Justices then said courts shouldn't "divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated." Instead, they said, the Supreme Court should weigh the extent of interference with rights on the "parcel as a whole."

In *Murr*, Wisconsin argues that state laws shape the relevant parcel as a whole and that, when the Murr siblings took over ownership of the lots in 1995, they took the title of a single merged parcel.

Seen that way, the "taking" of the vacant lot isn't a significant loss, the state says.

St. Croix takes a slightly different approach along those same lines, arguing that merger provisions such as the 1975 ordinance are common in property law and that the Murrs should have known the implications of owning adjacent lots.

"If they were owned by two different people, then each would get a grandfather," said Richard Lazarus, a law professor at Harvard University who is representing St. Croix. "You don't get the advantage of the grandfather clause if you have two lots in joint ownership because then you don't have the hardship and then the lots are merged."

Under the Obama administration, the federal government also argued that Wisconsin courts correctly sided with the state and county, but it argued that courts should apply a case-by-case approach to determining whether a taking has occurred. Because the two Murr lots are contiguous, they should be seen as a single parcel in applying takings analysis, the government said. The Trump administration's Justice Department is expected to argue that view on Monday.

The Pacific Legal Foundation, though, disputes that the two lots were ever merged.

The 1975 regulation at issue was simply "an end-use ordinance that restricts the use of the property, and it does not merge the two properties together," said John Groen, a PLF attorney who is representing the Murrs. The family's lots "remain separate properties today, both legally



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and factually. It is simply the restrictions on the use of the properties that cause them to appear to be merged or effectively merged."

As such, PLF argues, the relevant property against which to weigh whether a taking has occurred is just the vacant lot.

"The state is arguing that here the single parcel is both properties, and that view, we contend, is simply wrong," Groen said.

The Supreme Court's delay in scheduling oral arguments in the case led to some speculation that the court was split 4-4 over the issue after Justice Antonin Scalia's death (Greenwire, Oct. 4, 2016).

But the court ended up scheduling arguments for Monday, before President Trump's nominee for the vacant seat will be in place. The arguments, in fact, will wrap up just as the confirmation hearing for Judge Neil Gorsuch to fill the seat is beginning.

Lazarus said he expects Justice Anthony Kennedy to be the swing vote in the case, as he has tended to be in property rights issues. If the court is indeed split, it could schedule a rehearing in the case once Gorsuch is confirmed.

Echeverria, who filed an amicus brief for economists in support of Wisconsin and St. Croix County, said it will be interesting to see how justices approach the slightly different arguments being advanced by the federal government, the state and the county — as well as how they view the Murrs' complaint.

"One way of viewing them is, gee, too bad you didn't get better legal advice," he said. "If they had competent legal advice, they probably wouldn't have fallen on these traps. ... It'll be a telling moment in the argument if the court says it looks like there's an old, stale legal malpractice case."

On the other hand, Echeverria said, the court may say, "Why can't these poor people build their house?"

States line up

The case has pitted coalitions of states against each other.

Led by Nevada, nine states filed an amicus brief arguing that it's critical for the Supreme Court to preserve property rights and that a ruling against the Murrs could allow the federal government to increase its ability to take state and private land without just compensation.



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The states also say the case is important for maintaining the integrity of the system of titling and identifying separate lots.

Alaska, Arizona, Arkansas, Kansas, Oklahoma, South Carolina, West Virginia and Wyoming joined Nevada in the brief.

On the other side are California and eight other states, which argue that a decision in favor of the Murrs would impede the ability of states and localities to put in place necessary regulations.

Joining California were Hawaii, Illinois, Maine, Massachusetts, Minnesota, Oregon, Vermont and Washington.

Groen, the Murrs' attorney, said, however, that the case is not about the wisdom of land-use ordinances.

"Whether restricting the sale or development of separate parcels of property is a good idea or not — that's for legislators to decide," he said. "The question here goes to the takings claims and whether government should bear the burden of its regulations, or can the government shift that burden onto the Murrs."

Groen said the case would help protect other landowners who find themselves in situations similar to that of the Murrs. Echeverria, though, said the case could end up being a boon for big developers.

Suppose, Echeverria said, that a developer is challenging a local floodplain regulation affecting 1 acre on a 100-acre area that has been subdivided into 100 lots. Under current law, courts would define the relevant parcel against which to weigh whether a taking has occurred as the full 100-acre area and conclude that the economic impact would be minimal.

If the court agrees to define "parcel as a whole" as the Murrs and Pacific Legal Foundation are seeking, Echeverria said, courts would instead define the relevant parcel as the 1-acre lot and conclude that a regulatory taking has occurred.

"The court has never approached the takings issue that way," Echeverria said. "If the court would embrace that idea, it would greatly expand the scope of the takings clause and instantly make it more difficult for government to regulate."

One immediate effect of the case could be in deciding a separate pending property rights case in front of the Supreme Court.



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In that case, *Lost Tree Village Corp. v. United States*, the government asked justices to review a lower-court decision that found the government liable for \$4.2 million after it denied a real estate company permits to fill in wetlands.

The developer, Lost Tree Village, had argued that a coastal parcel in Florida would be worth \$25,000 without the necessary permit and \$4.8 million with it after being developed into a residential property.

But federal attorneys said the lower court erred by determining that the land in question should be isolated from the developers' other property for takings considerations.

The Obama administration had urged the Supreme Court to hear *Lost Tree Village* alongside *Murr*, but justices have left the case pending. Legal experts expect the court will dispense with it in accordance with the ruling in *Murr*.

'Mind-blowing'

Up to 21 members of the Murr family — the final number will depend on whether a family hockey game Sunday is completed on time — are planning to attend Monday's oral arguments. They intend to arrive as early as 5 a.m. to wait in line to score seats at the courthouse. They'll bring some pads to sit on and some decks of cards to pass the time until the midmorning arguments.

Donna Murr was the first to arrive in Washington. She flew in Wednesday to meet with members of the media beforehand.

At a coffee shop about 10 minutes' walk from the Supreme Court, Murr yesterday said she was a little overwhelmed at the national attention the case has received.

"In my mind, it could have all been settled on the local level with common sense and conversation," she said. "It's mind-blowing to me."

The family has still not started any of the improvements that need to be done on the cabin, as all of their efforts and resources have been concentrated on the court fight. Murr said the case has cost the family about \$100,000 so far, split evenly among the six siblings — though PLF is representing the family for free in the Supreme Court fight. Three siblings have retired since the start of the legal battle.



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If they're successful, the family will "sit down and gather our thoughts and decide how to proceed with the project," Murr said. The siblings intend to pass down the cabin to the next generation.

Meanwhile, the Murrs have continued to gather at the cabin in the summer and for holidays.

Murr said the family is looking forward to its next Fourth of July gathering. Every year, they organize a state-themed party at the cabin, in which the family members dress as people who come from a certain state and prepare a menu that matches.

They've already voted on this year's theme.

"Nevada was our No. 1 amicus," Murr said. "Gaming and food — a little Vegas flair. We're celebrating Nevada this year."

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6. **INTERIOR: Agency denies Trump Jr.'s pal will be sportsmen liaison**

E & E News, March 17 | Jennifer Yachnin and Scott Streater

Although one of Donald Trump Jr.'s hunting buddies announced this week that he will accept a new post at the Interior Department — serving as a liaison between the sportsmen's community and the White House — the agency denied the creation of the position and said it had not hired anyone in that capacity.

Jason Hairston, one of the leaders of Sportsmen for Trump during the 2016 election cycle, told Politico that he will serve as an unpaid liaison among Interior, the White House, sportsmen's groups and Trump Jr.

"I'm absolutely going to take the position," Hairston told the website. He said that Trump Jr. had hoped to fill the role himself but cited conflicts of interest with running the Trump business empire along with his brother Eric Trump.

But Interior today cast doubt on the claims of the creation of a new position.

"We don't have any personnel announcements to make at this time," said Heather Swift, an agency spokeswoman.



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But another administration source indicated that Hairston is being considered for a number of vacant positions with the National Park Foundation, the National Fish and Wildlife Foundation, and others.

"There are vacancies on a number of boards affiliated with the Interior Department, and given his background and experience as a sportsman, he'd be a real asset and is likely being considered for one of those appointments," the source said.

Hairston, the founder of hunting gear retailer Kuiu, did not respond to requests for comment. He told Politico he would not relocate from California for the post and would continue to run his company.

Trump Jr. told the Breitbart News Network in an interview last year that he planned to add more sportsmen to Interior, now led by former Montana Rep. Ryan Zinke (R).

"As it relates to the sportsmen and the hunters, we're going to actually have hunters involved in the Department of the Interior. Not animal rights activists who are setting hunting seasons but don't believe in the North American Model of Wildlife Conservation," Trump Jr. said last year.

Trump Jr., an avid hunter himself, has previously referred to Hairston, a San Francisco 49ers linebacker in the mid-1990s, as "my buddy" on social media, as well as praised Hairston's business.

Leaders at several sportsmen's groups acknowledged that Hairston had been rumored as a potential adviser to Interior in recent weeks, and several said no other names had been floated.

Whit Fosburgh, president and CEO of the Theodore Roosevelt Conservation Partnership, told E&E News that Hairston met with his organization during a visit to Washington last week.

"We're glad to see somebody in the hallway who specifically would represent the sportsman's view," Fosburgh said. He noted that sportsmen's organizations sought such a post in the Obama administration. "This is not new. We were pushing this during the Obama years."

He added: "What it's a recognition of is [the Trump campaign] made a lot of promises that they were going to take care of the sportsmen. ... It can't happen soon enough to get someone up there who gets those issues."

Fosburgh noted that Hairston is well-known in the sportsmen's community. His business has been profiled by numerous publications, and Hairston was featured in a New York Times profile



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last month that detailed his winning \$235,000 bid for a hunting tag for a California desert bighorn sheep.

"He's not a policy expert, by any means, and it's going to be a very steep learning curve for him. It's one thing to be a really good hunter and a good businessman, it's another thing to get how Washington policy works and how to influence that," Fosburgh said.

Backcountry Hunters & Anglers Conservation Director John Gale likewise praised Hairston and the new advisory post.

"The Trump administration has gone on record in its support of public lands and issues important to hunters and anglers," Gale told E&E News. "We would welcome the appointment of an industry leader such as Jason Hairston to a position designed to amplify sportsmen's values and the importance of our public lands and waters. Backcountry Hunters & Anglers looks forward to working with Mr. Hairston should he occupy this role."

'Passionate' about hunting

Hairston writes extensively about his love for all things big-game hunting on a blog on Kuuiu's website.

His childhood, he wrote, was spent outdoors, hunting with his father and brother.

Growing up, he wrote, his father read him bedtime stories about legendary hunters such as Howard Hill, the founder of Howard Hill Archery, and Saxton Pope, a surgeon and renowned archer who in 1922 wrote the influential book "Hunting With the Bow and Arrow."

"It was like living in the movie 'A River Runs Through It,'" he wrote, "only with archery equipment and deer, and instead of Montana we lived in Southern California."

He boasts that he "killed and field dressed my first animal when I was nine."

"Throughout High School, I worked in the local archery store in summers," Hairston wrote. "I loved doing anything that had to do with hunting. It was weird, I'd go to parties on the weekend and have to leave at one or two in the morning because my dad would be ready to leave for a hunt in a couple of hours. I never missed a hunt, not once."

One of his other early passions was football. Hairston played linebacker for the Aggies of the University of California, Davis. But during his junior year, "I got hit in the head, hard enough to break my C5 and C6 vertebrae, each in seven different places," he wrote.



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Still, he was good enough to be signed as an undrafted free agent with the San Francisco 49ers in 1995 and made the team. In 1996, he joined the Denver Broncos. But he continued "to have all sorts of problems with my neck," he wrote, and he retired that year from the NFL at age 24.

He eventually started a hunting gear company called Sitka, which he later sold.

In 2010, he started Kuiu and the business quickly took off, partly because Kuiu sells directly to customers and partly due to blog postings about the company and his "passionate" love of hunting, Hairston wrote on his blog.

Today, the company has annual sales of about \$50 million, "recently opened a small showroom in Spain," and is considering expanding to New Zealand and Canada, according to a CNN [Money report](#) last month that highlighted Hairston's friendship with Trump Jr.

"I created the entire [mountain hunting] category for the hunting market, which is a humongous market, and since then I realized this is really my gift to the world as far as building brands," he told Sports Illustrated in a profile last year.

Hairston frequently posts images of hunting excursions and business meetings on Instagram, where he has more than 28,000 followers. One post dated March 8 shows a photo of Hairston with Trump Jr.

On the post next to the photo, he wrote: "I dropped by Trump Tower to catch up with @donaldjtrumpjr this afternoon. It was great to see him as always. Such a good friend and person."

Trump Jr. responded: "Good times buddy. Great to see you."

But Hairston's real connection is with big-game hunters.

"Among a segment of hardcore big-game hunters, no brand is as revered as Kuiu," according to a recent Men's Journal profile of Hairston.

"The company's high-performance fabrics — bonded fleece and waterproof breathable synthetics — are pulled directly from the mountaineering world, and its distinct Tetris-like camo pattern looks more like standard-issue SEAL gear than the fake shrubbery so common at Walmart," according to the profile.



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"Metallica's James Hetfield owns a guitar emblazoned with Kuiu camo, and Kid Rock has a piano wrapped in it," the profile says.

Hairston wrote on his blog that preserving "the roots and tradition of hunting" is one of his company's key missions.

"I want KUIU to contribute to the tradition through storytelling," he wrote. "I want KUIU to be a source of inspiration by living and breathing Mountain Hunting."

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7. **NATIONAL PARKS: Budget cuts overshadow hearing on maintenance backlog**

E & E News, March 17 | Emily Yehle

Proposed cuts to the National Park Service's budget stole the spotlight at a hearing yesterday billed as a look at "innovate infrastructure ideas" for federal parks and forests.

The hearing — held by the House Natural Resources Subcommittee on Federal Lands — was overshadowed by the release of President Trump's "skinny" budget and its suggested 11.7 percent cut to the Interior Department. It's unclear what that means for NPS; the proposal did not outline how the cuts would be spread across Interior's agencies (Greenwire, March 16).

Democrats repeatedly brought up the proposed cuts.

Rep. Colleen Hanabusa of Hawaii, the subcommittee's top Democrat, said it would exacerbate NPS's \$12 billion maintenance backlog and "kick the can further down the road." Rep. Norma Torres (D-Calif.) put the potential cuts in terms of park units; a 12 percent cut at NPS, she said, would be equal to closing down 12 of "our biggest parks."

Deny Galvin, a former NPS deputy director who now advises the Coalition to Protect America's National Parks, said a cut of that size would be "devastating," totaling more than twice the salaries of all seasonal employees.

"Where that is taken is going to be very important to the ability of the National Park Service to maintain public services," he said.

But Republicans framed the NPS backlog as one borne of incompetence rather than funding scarcity. They promoted more private-public partnerships, fewer land acquisitions and more budget autonomy for individual parks.



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Natural Resources Chairman Rob Bishop (R-Utah) pointed out that Trump's budget proposes increased investment in deferred maintenance projects.

"No one is talking about closing parks," he said. But he argued that NPS needs to think beyond a repeat of Mission 66, the 10-year investment made for the agency's 50th anniversary. "We need to have some creative new ideas. It sounds like the last time we had a creative new idea was 1966."

Reed Watson, executive director of the Property and Environment Research Center, told lawmakers that NPS needed to be less reliant on congressional appropriations. He advocated for individual parks to keep all their entrance fees and spend them "without regional or national approval."

Letting parks make those decisions may not be the "silver bullet," he said, "but it certainly can't hurt." He also dismissed the idea of fully funding NPS's backlog, arguing that it would encourage the agency to start labeling routine maintenance as deferred.

"We cannot allocate those funds based on the Park Service's own assessment of need," he said. "If we do, we're going to create a perverse incentive."

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8. **EPA: Enforcement advocates call budget a 'death blow'**

E & E News, March 17 | Mike Soraghan

Deep cuts to environmental enforcement proposed by the Trump administration, experts say, would translate into fewer U.S. EPA inspectors poking around in the oil patch and less oversight of state regulation programs.

The spending proposal rolled out yesterday contains a 24 percent cut to EPA's enforcement office, called the Office of Enforcement and Compliance Assurance (OECA). That would further erode a branch that has already been losing staff to budget cuts during the Obama years.

Even though Congress is unlikely to agree to such deep cuts, enforcement veterans and former agency officials say the proposal is a clear signal of the new administration's priorities.

"The policy direction is less enforcement," said Rich Alonso, a former air pollution enforcer at the agency now at Bracewell LLP.



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Advocates of enforcement called the cuts devastating. In an email exchange, Obama-era OECA Chief Cynthia Giles called them a "death blow."

The administration's blueprint justifies the cuts by stating the plan "avoids duplication" of state enforcement efforts.

The main EPA programs delegated to states include programs covering clean water, drinking water, solid and hazardous waste programs, and stationary source air pollution, Alonso said. Presumably, those would be targeted for the biggest reductions.

Federal-only programs include mobile sources and fuel regulations under the Clean Air Act, pesticide programs, toxic substances control and the wetlands program.

But state governments may not be able to pick up the slack. In EPA Administrator Scott Pruitt's home state of Oklahoma, agencies have been told to prepare for another year of spending cuts at levels as high as 14.5 percent.

In Pennsylvania, the head of the state Department of Environmental Protection wrote to Pruitt yesterday, saying proposed reductions in federal funding would hit his agency hard.

"These budget cuts do not reduce any of the responsibilities that DEP has to the people of Pennsylvania, but does decrease the resources available to fulfill those responsibilities," wrote acting Secretary Patrick McDonnell, part of Democratic Gov. Tom Wolf's administration.

Trump budget writers protected state revolving funds, which provide money for infrastructure to state and local governments. But they proposed a sharp cut to grant programs, including many for states, saying many "go beyond EPA's statutory requirements."

But many of those grants "actually go to support bread-and-butter air and water pollution programs," said Avi Garbow, EPA's general counsel in the Obama administration.

"This is a pipeline that is going to dry out," said Garbow, now at Gibson, Dunn & Crutcher.

'Desktop enforcement'

More details of how Trump wants to cut EPA and other agencies are expected in May (E&E Daily, March 16).



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Alonso said he'd expect sharp cuts to any programs where EPA reviews the work of state environmental programs to ensure compliance. State oil and gas agencies are the primary regulators of oil and gas operations.

While he expects energy companies to see the enforcement changes as a good sign, Alonso said they should be cautious in their optimism.

He expects that EPA officials will turn to more "desktop enforcement," where the agency demands compliance data from companies to look for violations. While that requires fewer resources for the agency than on-site inspections, it can be time-consuming for companies.

And environmental groups, likely drawing record contributions, will also try to fill any gap EPA leaves in enforcement with lawsuits.

"These organizations are pretty well-known. They're taken seriously," Alonso said. "They're good adversaries."

But Joel Mintz, author of "Enforcement at the EPA: High Stakes and Hard Choices," said nonprofit groups can't come close to filling such a gap.

"There's only so much they can do," said Mintz, a law professor at Nova Southeastern University. "It will not make up for the loss of attention to environmental problems."

Critics say the cuts could challenge Pruitt's oft-touted devotion to the "rule of law" by making it difficult or impossible to comply with federal statutes.

For example, federal law requires that the agency have 200 criminal investigators. But it has far fewer. The agency already struggles to meet many deadlines set in statute. Environmental groups and others can sue to enforce them.

"If this budget is imposed," said Garbow, the Obama-era general counsel, "it could so decimate the agency that it is incapable of following the duties delegated to it by Congress."

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9. **INTERIOR: 'Skinny budget' plants a big flag for energy production**

E & E News, March 17 | Pamela King

President Trump's "skinny budget" did more than slash Interior Department funding.



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The [proposal](#) to trim Interior's budget by 12 percent added to the file of evidence that Secretary Ryan Zinke faces a mandate potentially at odds with his vision of himself as a Teddy Roosevelt conservationist who can strike a balance between resource development and conservation on public lands (Energywire, Feb. 28).

While the White House budget blueprint includes scant specifics on Interior spending, it offered one bullet point hinting that the scale could tip in favor of fossil fuel extraction on the lands the agency manages.

"The President's 2018 Budget strengthens the Nation's energy security by increasing funding for DOI programs that support environmentally responsible development of energy on public lands and offshore waters," the document says. "Combined with administrative reforms already in progress, this would allow DOI to streamline permitting processes and provide industry with access to the energy resources America needs, while ensuring taxpayers receive a fair return from the development of these public resources."

Yesterday's release offered just top-line numbers that reflect the president's priorities, which include opening up federal lands to energy development. Additional figures are expected this spring (E&E Daily, March 16).

"Secretary Zinke is working to ensure the president's priorities are well represented in the details of the president's budget that will be released in May," an Interior official said yesterday.

Because the budget outline is light on spending details, it should be read symbolically, ClearView Energy Partners LLC Managing Director Kevin Book wrote in a research note yesterday.

Book's read of the document hints at tension between Zinke's conservation goals and Office of Management and Budget Director Mick Mulvaney's financial priorities.

"It's not clear that Ryan Zinke's outdoorsman ways have filtered all the way up to Mulvaney's office," Book said in an interview with E&E News.

The mention of "environmentally responsible development" appears to indicate that the department's "limiting" agencies — such as the Fish and Wildlife Service — won't stop their oversight of mineral development, he said. But the reference to "streamline[d] permitting" suggests that "enabling" agencies — such as the Bureau of Land Management — will grant wider latitude on extraction proposals, Book said.



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"Administrative reforms already in progress" appears to refer to the expected rollback of the Council on Environmental Quality's guidance on consideration of climate impacts in National Environmental Policy Act reviews and to the withdrawal or recalibration of the social cost of methane as a public-interest justification for regulations, he said.

The latter issue has played a starring role in the cost-benefit debate over BLM's Methane and Waste Prevention Rule, which could face congressional repeal.

"There's a lot of moving parts," Book said of the blueprint bullet point.

Promises of environmentally responsible development sound appealing, but the devil is in the details — and the Trump administration's budget offers next to none, said Michael Blumm, a professor at Lewis & Clark Law School.

"It all depends on what you mean by responsible development of energy on public lands," he said. "We can all agree that's a good idea, but how we define it is different."

Including a pledge to streamline permitting indicates intention to decrease public participation in the process and to conduct less detailed environmental studies, Blumm said.

"If their real effort is to streamline permitting, that will undermine what most people's interpretation of environmentally responsible development is," he said. "I'd be worried about it, but it's hard to see exactly what they're up to."

An agenda setter

Groups that had previously expressed hope that Zinke would take a moderate stance on energy production on public lands said they haven't lost that outlook — assuming lawmakers quash Trump's spending proposal (Greenwire, March 16).

"We hope and expect that conservation programs will be invested in at the end of the day, but it's clear that this budget highlights that the administration's agenda is fossil fuel development on public lands above all other uses," said Cameron Witten, government relations and budget specialist for the Wilderness Society. "We are hopeful from the strong bipartisan reaction to the budget proposal today that it will be dead on arrival in Congress."

The Center for Biological Diversity, which pledged to keep a close eye on Zinke's Interior tenure, said a 12 percent budget cut at the agency would inevitably drain funding for habitat and wildlife protections that could potentially balance oil and gas industry interests. Coupled with the disappearance of BLM's hydraulic fracturing rule and the possible repeal of the bureau's methane



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rule, the agency's ability to regulate energy development on its lands is quickly evaporating, said Randi Spivak, the center's public lands program director.

"This budget is just another sign of Trump's and Zinke's agenda," she said. "They look at public lands as a source of fossil fuels extraction."

The Independent Petroleum Association of America applauded the budget proposal for its apparent sway toward oil and gas operations.

"We're pleased the Trump administration is placing a priority on permitting of oil and natural gas wells on federal lands," said Dan Naatz, IPAA's senior vice president of government relations and political affairs. "Timely permitting is critical to long-term business plans and to sustaining oil and natural gas exploration and production on federal lands."

If budget negotiations continue in this vein, companies that had previously foregone development opportunities on public lands might begin to reconsider, said Western Energy Alliance President Kathleen Sgamma.

"The message of greater regulatory certainty under this administration is causing many companies that had abandoned public lands to consider a return," she said.

In Sgamma's view, a streamlined permitting process does not preclude environmentally responsible development.

"Regulatory certainty and efficient processing don't mean companies aren't following environmental law; it just means the process is more rational and predictable," she said.

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10. **LAW: Court delays fracking rule proceeding as Interior plans rollback**

E & E News, March 17 | Ellen M. Gilmer

A federal court has scrapped upcoming oral arguments over the Obama administration's landmark effort to regulate hydraulic fracturing.

In a blow to supporters of the rule, the 10th U.S. Circuit Court of Appeals yesterday agreed to delay proceedings that were scheduled for Wednesday in Denver. The move comes after Trump administration lawyers notified the court this week that the Interior Department is launching an effort to rescind the regulation.



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A panel of judges granted the administration's request to put off oral arguments but denied its motion to put the case on hold indefinitely. Instead, the court will order the parties to file supplemental briefs and will reschedule oral arguments after those are filed.

The court has not yet specified what it wants the litigants to address in the new round of briefing. Environmental groups supporting the rule recommended that supplemental briefs address whether the case should be held in abeyance; what the status of the fracking rule should be while Interior works to rescind it; and whether a lower court's decision invalidating the rule should stand during that process.

Environmental lawyers hope the court allows them to continue defending the fracking rule even if Interior no longer supports it.

"We look forward to the chance to continue to press our case at the 10th Circuit," Earthjustice attorney Mike Freeman said yesterday.

The stakes are high. The 10th Circuit appeal centers on a lower court's ruling that Interior lacks authority to regulate fracking at all. The ruling was panned last year by the Obama administration, environmental groups, many law professors and former agency officials from both Republican and Democratic administrations, who said the decision undermines Interior's Bureau of Land Management's ability to oversee public lands (Energywire, March 16).

"[S]hielding the district court's ruling from appellate review could have far-reaching impacts to the Citizen Groups and public interest that extend well beyond just this Rule," environmental groups told the court earlier this week. "For example, much of the court's reasoning — such as its view that BLM lacks authority under the Mineral Leasing Act to issue rules protecting groundwater on public lands — would invalidate BLM's existing regulations."

The embattled rule was the Obama administration's most visible effort to address fracking impacts, setting new requirements for well construction, wastewater management and chemical disclosure for fracked wells on public and tribal lands.

The latest legal drama follows years of uncertainty for the fracking rule. First contemplated in 2010, the rule underwent several revisions before being finalized in March 2015. Industry groups, four Western states and two American Indian tribes swiftly challenged it as a costly regulatory overreach.

A district court in Wyoming temporarily sidelined the rule before ultimately striking it down in June 2016. Interior and environmental groups went to the 10th Circuit, where an appeal has been



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churning forward ever since. Though oral arguments were originally scheduled for Jan. 17, the court pushed proceedings to March to give lawyers more time to make their case.

Finally, without any prodding from the new administration or any indication of a change in position, the court last week ordered Interior to declare whether it still planned to defend the rule (Energywire, March 10).

Interior says it will initiate a rulemaking process within 90 days to rescind the regulation.

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