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[BLM-CA in the News, August 2 LONG.pdf](#)

## **CALIFORNIA**

### Company's plan to sell Mojave Desert groundwater opposed by L.A. water officials

*The Desert Sun*, August 1

...Cadiz Inc. aims to pump as much as 16.3 billion gallons of groundwater per year on land surrounded by Mojave Trails National Monument about 75 miles northeast of Palm Springs. Conservation groups say if the company is allowed to draw down the aquifer, it would threaten natural springs and wildlife in the heart of the Mojave Desert.

### Garden Fire closes Hwy 178 on Bakersfield side

*The Daily Independent*, August 1

Firefighters are currently combating a wildfire that has closed Highway 178 from the mouth of the Kern River Canyon in Bakersfield to the Democrat Fire Station. According to the U.S. Forest Service, the Garden Fire is now at 700 acres and burning through grass and brush. More than 300 fire personnel have been assigned to it. The Garden Fire started July 30 about a half mile from the Democrat Fire Station near China Springs.

### Thousands of letters sent to White House in support of Carrizo Plains monument

*Paso Robles Daily News*, August 1

In April, President Trump issued an executive order instructing the Secretary of the Interior to review 27 national monuments around the country, including the Carrizo Plain National Monument in San Luis Obispo County. This review would determine whether to shrink or rescind each national monument. The organization Los Padres Forrest Watch created a campaign Save the Carrizo Plain to help garner public support for the national monument. In early July, the group was about to ship two boxes containing over 2,600 letters from our area to the Department of the Interior.

### Bracing for 'The Big One'

*CFUS News Center*, July 31

...Akçiz started his earthquake research in 2005 within Kern County's Carrizo Plain National Monument. He was part of a research team that discovered evidence of at

least six major surface-rupturing quakes over the last 700 years on the southern section of the fault system. The earliest temblor occurred in the 1350s, with the last one on Jan. 9, 1857, when a 7.9-magnitude temblor ruptured a 250-mile section of the fault between Monterey County's Parkfield — dubbed the "Earthquake Capital of the World" — and Wrightwood.

#### BLM Ranger to Testify in Steinle Murder Trial

*KQED*, July 28

A ranger with the federal Bureau of Land Management will testify in an upcoming trial charging a Mexican national with murder for the slaying of Kathryn Steinle in San Francisco two years ago. This marks a change in the U.S. government's initial position that federal employees cannot be subpoenaed to testify in state court cases.

#### Kate Steinle Murder Case Hearing Tuesday

*NBC Bay Area*, August 1

The Kate Steinle murder case continues with yet another hearing Tuesday. Both sides are expected back in a San Francisco court at 9 a.m. Tuesday for a preliminary hearing. Juan Francisco Lopez-Sanchez is accused of shooting and killing Steinle on Pier 14 in 2015. Last week, the judge ruled that the federal agent whose gun was stolen and used in Steinle's killing will testify in the upcoming trial. Jury selectin is expected to begin soon.

### **NATIONAL**

#### 'Aggressive' solicitor pick brings broad legal experience

*GREENWIRE*, August 1

The Trump administration's new nominee for Interior Department solicitor is an aggressive and widely experienced attorney who has represented a politically assertive corporate boss, fellow attorneys say. Tapped late yesterday by the White House for Interior's top legal slot, Idaho Falls resident Ryan Douglas Nelson is currently general counsel for Idaho-based Melaleuca Inc. The self-described "wellness company" is owned by billionaire Frank VanderSloot, who has contributed immense sums to various Republican causes and candidates. Nelson previously served in the White House, Justice Department and on Capitol Hill. "He's a very good lawyer: smart and a pleasure to work with," attorney Tom Lorenzen, a former colleague in the Justice Department's Environment and Natural Resources Division, said today. "He'll make a great [solicitor general] for Interior." *See PDF for full story.*

#### By Helicopter and on Horseback, Zinke Reviews Monuments

*The Associated Press*, July 28

Ranchers who want to scale back two national monuments in New Mexico competed for attention with the outdoor recreation industry as U.S. Interior Secretary Ryan Zinke conducted a series of private stakeholder meetings linked to a nationwide review of 27 monuments approved by past presidents. Zinke skipped a heavily attended public forum about the future of the Organ Mountains-Desert Peaks National Monument in southern New Mexico organized largely by monument supporters, amid a series of private meetings with ranchers, electric utility executives, irrigation district officials and some defenders of the monuments.

[Zinke: Feds must ensure monument designation is 'smallest area compatible with protection'](#)

*USA Today*, July 31

Three years after a tense standoff between a Cliven Bundy-led militia and federal law enforcement agencies in the Southern Nevada desert, Interior Secretary Ryan Zinke visited the newly christened Gold Butte National Monument Sunday. There weren't any protests. No drama. No arrests.

[Amid monument review, a pro-energy Interior emerges](#)

*High Country News*, August 2

Interior Secretary Ryan Zinke is three months into a review of 27 national monuments to determine whether they should be shrunk, abolished or left intact. Zinke's review comes as he continues to fill his department with pro-industry officials and amid a broader push at the Interior Department for increased energy development on public lands — something monument designations can work against.

[Zinke, Trump admin blasted as 'big bullies' in Nev. Tour](#)

*EE Daily*, August 1

Democratic Rep. Dina Titus yesterday railed against Interior Secretary Ryan Zinke's abbreviated review of national monuments in Nevada and accused the Trump administration of acting "like big bullies" in its management of public lands. Titus appeared at a press conference organized by the progressive group Battle Born Progress, along with a pair of Clark County commissioners and leaders of the conservation organization Friends of Gold Butte. Donning her self-proclaimed "fashion statement" — yellow sunglasses emblazoned with "#GoldButte" — Titus slammed Zinke for his one-day visit to view both the Gold Butte and Basin and Range national monuments. *Read PDF for full story.*

[Dolores BLM staffers recognized for lifesaving actions](#)

*The Journal*, August 1

Three staff members of the Bureau of Land Management's Tres Rios office in Dolores

received a Valor Award for their efforts to save a co-workers' life last year. In August 2016, BLM geologist Jamie Blair collapsed at his desk and went into cardiac arrest. David Sanders, Derrick Baldwin, and Robert Garrigues quickly administered lifesaving actions to revive Blair, who has since made a full recovery and is back at work.

#### Nevada Democrats Fault Interior Chief Over Cancelled Meetings

*The Associated Press*, July 31

Elected Democrats and an Indian tribal leader in Nevada criticized Interior Secretary Ryan Zinke on Monday for canceling meetings with advocates after his tour of two national monuments on a list of sites the Trump administration is considering cutting in size. Chris Giunchigliani, a Clark County commissioner, said during a demonstration at the Las Vegas offices of several political advocacy groups that she felt Nevada had been "disrespected."

#### Zinke's 'innovative ideas' order may not help birds — report

*GREENWIRE*, July 31

Altering federal greater sage grouse conservation plans to prioritize state-by-state population goals without including "habitat management and restoration" could harm the bird and drive many other sagebrush-dependent species toward federal protection, a new report says. The white paper, produced by the Western Association of Fish and Wildlife Agencies (WAFWA), suggests that the current federal greater sage grouse protection plans now under review by the Trump administration should not be significantly altered.

#### Court to decide fate of federal fracking authority — or not

*ENERGYWIRE*, July 28

A panel of judges spent yesterday morning grappling with a major legal issue affecting federal oversight of oil and gas development: Does the government have authority to regulate hydraulic fracturing? But whether the court will ever issue an opinion on the matter remains an open question. In an unusual twist of legal procedure, the 10th U.S. Circuit Court of Appeals heard oral arguments in litigation that it may decide to put on ice. *See PDF for dull story.*

#### Zinke meets with sportsmen as some ask 'what happened' to him

*GREENWIRE*, August 2

Interior Secretary Ryan Zinke met today with sporting groups in a closed-door meeting in Washington, even as a national sportsmen's organization launched an ad campaign in Zinke's home state of Montana questioning his ongoing review of national monuments and his overall commitment to public lands. Zinke, who recently completed a tour of national monument sites in New Mexico and Nevada as part of his look into whether to

alter them, hosted the private "Sportsmen's Summit" with dozens of organizations, including the Congressional Sportsmen's Foundation, Ducks Unlimited, the National Rifle Association, Safari Club International and the Theodore Roosevelt Conservation Partnership. *See PDF for full story.*

Zinke ridicules notion he threatened Murkowski

*EE Daily*, July 31

Interior Secretary Ryan Zinke yesterday dismissed as "laughable" questions about his recent well-publicized phone calls to Alaska's senators and rejected characterizations of his calls as a "threat" to Sen. Lisa Murkowski (R) over her vote against proceeding with health care debate. Zinke addressed the phone calls during a press conference here marking the end of his daylong tour of both the Gold Butte and Basin and Range national monuments. *See PDF for full story.*

Antiquities Act of 1906: No Presidential License to Revoke National Monuments

*HuffPost*, opinion piece, July 30

The text, spirit, and 111 year history of the Antiquities Act of 1906 militate against presidential power to revoke a national monument proclamation made by a predecessor president. That conclusion does not disturb the Constitution's separation of powers. If a President signs a bill passed by Congress, it becomes law. A successor president may not repeal the law by a proclamation renouncing his predecessor's signature. The Antiquities Act works in the same way. A presidential proclamation declaring a national monument may not be unilaterally revoked by a successor president. That would require new revocation legislation passed by Congress and signed by the new President. The Antiquities Act was provoked by the vandalizing of ancient and prehistoric American Indian archeological sites on federal lands in the southwest. Section 1 made such vandalizing a federal crime.

Axing sites is a question for the courts — Zinke

*GREENWIRE*, July 31

Interior Secretary Ryan Zinke yesterday acknowledged that any attempts by the Trump administration to strike down existing national monuments could face legal challenges, but he did not rule out that he could still recommend full-scale rescissions as he reviews the boundaries of dozens of monuments nationwide. President Trump ordered the Interior secretary in late April to review the creation of dozens of monuments established since 1996, with a focus on those sites that encompass more than 100,000 acres. *See PDF for full story.*

Saving wild horses requires culling the herd

*The Denver Post*, opinion piece, July 28

I love horses. I love kissing their soft noses. I love forging a bond of trust through grooming and riding. I love horses, not just the idea of horses. I want what's best for them. That's why I support congressional efforts to allow the slaughter of horses. In fact, I don't think current legislation goes far enough. This month the House Appropriations Committee passed a bill that eliminates a prohibition on the slaughter of wild horses and burros managed by the U.S. Bureau of Land Management in 10 states including Colorado. The legislation comports with the National Wild Horse and Burro Advisory Board recommendation to sell or euthanize unadoptable animals and responds to a warning by the previous administration's BLM director of an impending ecological and budgetary crisis under the status quo.

Dept. of Interior Publishes 12 American-Made Accomplishments Since Agency Was Founded

*Breitbart.com*, July 30

"The Department of the Interior was created to take charge of the nation's internal affairs. Interior's diverse mission — which includes managing America's vast natural and cultural resources, honoring our tribal relations, and supplying the nation with energy — has earned it the nickname 'The Department of Everything Else.'"

*Sarah K. Webster*

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## NATIONAL

### 'Aggressive' solicitor pick brings broad legal experience

*GREENWIRE*, August 1

The Trump administration's new nominee for Interior Department solicitor is an aggressive and widely experienced attorney who has represented a politically assertive corporate boss, fellow attorneys say.

Tapped late yesterday by the White House for Interior's top legal slot, Idaho Falls resident Ryan Douglas Nelson is currently general counsel for Idaho-based Melaleuca Inc. The self-described "wellness company" is owned by billionaire Frank VanderSloot, who has contributed immense sums to various Republican causes and candidates.

Nelson previously served in the White House, Justice Department and on Capitol Hill.

"He's a very good lawyer: smart and a pleasure to work with," attorney Tom Lorenzen, a former colleague in the Justice Department's Environment and Natural Resources Division, said today. "He'll make a great [solicitor general] for Interior."

In his former Justice Department job, Nelson "argued more than a dozen important cases and oversaw more than 500 overall," according to another former colleague, Ron Tenpas.

If confirmed as solicitor, the Brigham Young University Law School graduate will oversee 400 employees, including 300 attorneys. His legal team, whose other members are still being fleshed out, will include several deputy solicitors, associate solicitors and eight regional solicitors (E&E News PM, July 27).

The crucial position was once held during the George W. Bush administration by David Bernhardt, who was sworn in today as the Interior Department's deputy secretary.

"Ryan Nelson is coming to the Department of the Interior with a strong background in natural resources policy and law, stretching many years in both the public and private sector," Interior Secretary Ryan Zinke said in a statement. "Having a seasoned legal expert like Ryan, who is also a son of the West, will benefit the entire department."

Nelson's boss for approximately the last eight years, VanderSloot, likewise praised his company's general counsel as a "true patriot."

"During his service, the company has nearly tripled in size, and Ryan has built a strong legal team and worked tirelessly to successfully guide the company's growth," VanderSloot said in a statement.

Founded in 1985, Melaleuca now calls itself "the largest online wellness shopping club in North America," with reported annual sales of \$1.75 billion. Its founder has also made himself a force to be reckoned with in Republican circles.

Last year, records show, VanderSloot and his wife contributed to numerous Republicans, including a \$446,700 contribution to the Trump campaign in August and an additional \$446,5000 to the campaign in September.

Nelson's campaign contributions have been much more modest. Last year, records show, he contributed \$500 to Trump's onetime rival, Florida Republican Sen. Marco Rubio.

Among his other legal tasks, Nelson helped represent VanderSloot in a defamation suit the businessman brought against Mother Jones magazine.

"He was on the aggressive end of the spectrum," attorney James Chadwick, who represented Mother Jones, said in an interview today, recalling Nelson's approach during hearings and depositions.

After the state-level case was dismissed in 2015, VanderSloot announced he was pledging \$1 million toward a "Guardian of True Liberty Fund" that he said would "help pay for the legal expenses of people who have been defamed by Mother Jones magazine or other liberal press because of their conservative values."

On behalf of Melaleuca, Nelson has been active in an assortment of run-of-the-mill business cases, including a lawsuit filed in 2014 against a former executive who, according to the suit, acted "unlawfully to raid Melaleuca's independent marketing force." Under Nelson's guidance, court records show, Melaleuca has filed similar suits against other competitors for attempting to lure away the company's marketing executives.

Nelson previously served as deputy assistant attorney general in the Environment and Natural Resources Division of the Department of Justice and as deputy general counsel for the White House Office of Management and Budget. He also served as special counsel for the Senate Judiciary Committee. Nelson was formerly an associate at Sidley Austin LLP.

Zinke, Trump admin blasted as 'big bullies' in Nev. Tour  
*EE Daily*, August 1

Democratic Rep. Dina Titus yesterday railed against Interior Secretary Ryan Zinke's abbreviated review of national monuments in Nevada and accused the Trump administration of acting "like big bullies" in its management of public lands.

Titus appeared at a press conference organized by the progressive group Battle Born Progress, along with a pair of Clark County commissioners and leaders of the conservation organization Friends of Gold Butte.

Donning her self-proclaimed "fashion statement" — yellow sunglasses emblazoned with "#GoldButte" — Titus slammed Zinke for his one-day visit to view both the Gold Butte and Basin and Range national monuments.



"I wanted to set the record straight about Secretary Zinke: We have written, we have called, we have talked to the Department of Interior trying to get him out here so when he makes his sweep of the monuments he can have an understanding of just how valuable and just how important Nevada's monuments are," Titus said.

Both Nevada sites are part of Zinke's ongoing review of dozens of national monuments, with an eye toward potential reductions or even eliminations. President Trump ordered the review in late April, and a final report is due on Aug. 24.

Although Zinke had planned to meet over two days with both supporters and opponents of each monument, along with local officials and tribal representatives, he cut back his visit to a day due to a White House staff shake-up and a related Cabinet meeting called for yesterday.

Individuals who did attend portions of Zinke's tour of the Nevada monuments said the secretary appeared geared toward considering only small portions of the 297,000-acre Gold Butte or the 704,000-acre Basin and Range monuments.

But Titus and Clark County officials questioned the mix of guests whom Zinke ultimately spent time with during aerial tours of both monuments, as well as short visits to antiquities at each site.

"They turned it into a political event instead of making it what it was supposed to be, getting good information about the value of our monuments. We don't appreciate it," Titus said.

Clark County Commissioner Chris Giunchigliani (D) likewise called Zinke's companions "most disappointing," referring to former Clark County GOP Chairman David McKeon, who is seeking Nevada's 3rd District seat, and state Attorney General Adam Laxalt (R), who is seen as a likely gubernatorial contender in 2018.

"They're not working in a collegial manner. Maybe that's just how they do business in Washington, but we do it different in Nevada," said Giunchigliani, who is herself a potential gubernatorial candidate.

Democratic officials also described efforts to meet with Zinke as chaotic, with numerous meetings set and rescheduled at the last minute.

"It's really disappointing that all of us couldn't collaborate in the meetings that we were promised to come together and talk about what's important for Nevada," said Clark County Commissioner Marilyn Kirkpatrick (D). "They left out local government in that entire process."

### **Funding from offshore drilling?**

Some criticized Zinke's focus on the possibility of funding from offshore drilling as well as other concerns.

"He brought up some issues that were bizarre and not particularly relevant to the issue we were talking about," said Friends of Gold Butte board member Jim Boone, who met Zinke during his tour of the Mount Irish Archaeological District at the Basin and Range monument.

In particular, Boone said Zinke spoke about his "notion that environmentalists are the ones to be blamed for the lack of funding [for monuments], because funding largely comes from offshore drilling."

During multiple appearances on Capitol Hill earlier this summer, Zinke repeatedly pitched his plan to raise funds for cash-strapped agency priorities by boosting drilling in federal waters. In his testimony, Zinke has often highlighted the 2008 revenues of \$18 billion from offshore production, an outlier year that produced significantly more profit than those before or after (Climatewire, June 26).

Boone, an ecologist, said he was also concerned with Zinke's focus on preserving artifacts rather than "landscape-level issues" such as the geology of the Great Basin or even preserving "the tradition of ranching."

"He's clearly opposed to large national monuments, and under his philosophy places like the Grand Canyon would never have been established," Boone said. "Death Valley, Zion, Grand Teton, Joshua Tree, all these places would never have been established."

Boone also noted that he did not have significant time to speak with Zinke since most of the visit consisted of a Bureau of Land Management guided tour of local petroglyphs.

University of Nevada, Las Vegas, intersection resource coordinator Patrick Naranjo, who also met with Zinke during his visit, echoed Boone's remarks that Zinke opened discussions by focusing on the potential for oil and gas development to create federal revenues.

"We're trying to protect unique items that mean very important things to Nevada. I felt like he overlooked the importance of that," Naranjo said.

Zinke meets with sportsmen as some ask 'what happened' to him  
*GREENWIRE*, August 2

Interior Secretary Ryan Zinke met today with sporting groups in a closed-door meeting in Washington, even as a national sportsmen's organization launched an ad campaign in Zinke's home state of Montana questioning his ongoing review of national monuments and his overall commitment to public lands.

Zinke, who recently completed a tour of national monument sites in New Mexico and Nevada as part of his look into whether to alter them, hosted the private "Sportsmen's Summit" with dozens of organizations, including the Congressional Sportsmen's Foundation, Ducks Unlimited, the National Rifle Association, Safari Club International and the Theodore Roosevelt Conservation Partnership.

A former Republican congressman from Montana, Zinke said today on his Twitter account that the purpose of the summit is to "brainstorm ideas for increased access and collaborative conservation efforts."

Zinke introduced newly sworn-in Deputy Interior Secretary David Bernhardt at the summit, according to Zinke's Twitter feed. "They've known David for a long time & were happy to welcome him back," he wrote.

"Access to our public lands for hunting and fishing is at the heart of Secretary Zinke's agenda, which is why on day one he signed an order to look into areas to open up access," Interior spokeswoman Heather Swift told E&E news in an email. "Today's summit brought together more than 30 sportsmen's organizations and wildlife conservation organizations at the Department to talk about how we can all work together to achieve this mission."

Meanwhile, the ad campaign by Backcountry Hunters & Anglers specifically targets Zinke's review of 27 national monuments, underscoring growing concerns among some outdoors groups that Zinke has openly courted and that have largely supported the Trump administration.

The campaign takes shots at Zinke and his oft-stated desire to be like Theodore Roosevelt, who was the first president to use the Antiquities Act to designate national monuments, helping to earn him the title the "conservationist president."

The campaign features a 30-second television spot that asks: "What happened to Ryan Zinke?"

The spot features John Sullivan, BHA's Montana chapter chairman, who opens by saying public lands "are for everyone, whether you hunt, fish, camp or boat. It's our way of life."

Sullivan then asks, "So what happened to Ryan Zinke?" as the spot features shots of Zinke, including one of the secretary on horseback juxtaposed next to a photo of Roosevelt on horseback.

"He said he'd fight to protect public lands" and work "to be like Theodore Roosevelt," Sullivan says. "But since his Washington promotion, he's put our public lands at risk. Make no mistake: Zinke's national monuments review threatens our heritage and thousands of jobs."

He concludes, "Mr. Secretary, don't turn your back on Roosevelt now."

Swift did not respond to a request to comment on the BHA ad campaign.

A BHA spokeswoman said Land Tawney, BHA's president and CEO, talked to Zinke today about the group's new campaign but offered no details on the conversation. BHA representatives declined an invitation to attend today's Sportsmen's Summit, citing scheduling conflicts.

The public submitted more than 1.3 million comments to the Interior Department on the ongoing review that could include recommendations from Zinke to shrink or eliminate dozens of monuments (E&E News PM, July 10).

Zinke is expected to submit a final report to President Trump with his recommendations by Aug. 24.

The review has plenty of critics. The Center for Western Priorities launched its own ad campaign yesterday urging Zinke not to recommend any changes to the dozens of national monuments under review (Greenwire, Aug. 1).

The Backcountry Hunters & Anglers ad campaign reflects a growing uneasiness among sporting groups that Zinke may not be the Interior secretary he says he wants to be, Tawney said.

"Secretary Zinke likes to compare himself to Theodore Roosevelt, a visionary sportsman whose conservation achievements are unsurpassed," Tawney said in a statement.

But he added: "Actions speak louder than words, and American hunters and anglers demand leadership from the secretary that upholds — and advances — Roosevelt's legacy. Our national monuments have stood the test of time, and the present review could trigger a game of political football, leaving some of our most cherished landscapes in limbo."

Tawney said the group is still hopeful, as it views Zinke "as potentially a strong ally of sportsmen and women."

But time is running out, Tawney said.

"Action has yet to be taken," he said, "but we trust he will honor Theodore Roosevelt."

Zinke ridicules notion he threatened Murkowski

*EE Daily*, July 31

Interior Secretary Ryan Zinke yesterday dismissed as "laughable" questions about his recent well-publicized phone calls to Alaska's senators and rejected characterizations of his calls as a "threat" to Sen. Lisa Murkowski (R) over her vote against proceeding with health care debate.

Zinke addressed the phone calls during a press conference here marking the end of his daylong tour of both the Gold Butte and Basin and Range national monuments.

Alaska Sen. Dan Sullivan (R) first revealed Zinke's phone call over the health care issue in an interview with the Alaska Dispatch News last week, asserting that Zinke had said Murkowski's opposition to the health care debate could have ramifications for the state's energy industry.

"I'm not going to go into the details, but I fear that the strong economic growth, pro-energy, pro-mining, pro-jobs and personnel from Alaska who are part of those policies are going to stop," Sullivan said Thursday (Greenwire, July 27).

Murkowski declined to discuss the details of her own call with Zinke but told E&E News last week: "I don't want to go into the contents of a personal call, but it was a difficult call, let's just say."

Asked yesterday to recount his conversation with the senators, Zinke said: "I talk to Sen. Murkowski and Sen. Sullivan all the time."

As a reporter attempted to clarify, Zinke continued: "A lot's been said about a lot of things. But I talk to them all the time. We get along well."

Asked whether he had issued threats to the senators, Zinke said: "The moon has been characterized as a threat, too, so I think it's laughable."

House Natural Resources Chairman Rob Bishop (R-Utah) said last week he was not familiar with the calls but suggested that such pressure from the executive branch is "not unprecedented."

Nonetheless, Reps. Frank Pallone of New Jersey and Raúl Grijalva of Arizona, the top Democrats on the Energy and Commerce and Natural Resources committees, last week asked both the Government Accountability Office and the Interior Department's inspector general to review whether the telephone calls violate any legal or ethical standards, including the the Anti-Lobbying Act and Antideficiency Act (E&E Daily, July 28).

Court to decide fate of federal fracking authority — or not  
*ENERGYWIRE*, July 28

A panel of judges spent yesterday morning grappling with a major legal issue affecting federal oversight of oil and gas development: Does the government have authority to regulate hydraulic fracturing?

But whether the court will ever issue an opinion on the matter remains an open question.

In an unusual twist of legal procedure, the 10th U.S. Circuit Court of Appeals heard oral arguments in litigation that it may decide to put on ice.

At issue is the Obama administration's rule for fracking on public and tribal lands. A lower court found that the federal government lacks authority to regulate fracking, and the question has been

on appeal at the 10th Circuit since last year. Now, the Trump administration is rolling back the rule and wants to freeze the case in the meantime.

The judges yesterday heard arguments on both the fundamental authority question and the procedural issue of whether the case should be paused.

All three judges on the panel expressed skepticism about freezing the case indefinitely while BLM goes through a new rulemaking process to roll back the regulation (E&E News PM, July 27).

"What's the incentive to move quickly?" asked Judge Harris Hartz, a George W. Bush appointee. He noted that if the case is paused, it could be years before the question of BLM's fracking authority is answered.

Government lawyers stressed that unwinding the fracking rule is a Trump administration priority, so BLM will work "expeditiously" to complete its rollback. BLM maintains that the lower court's ruling was incorrect but says any merits decision at this time would be judicially inefficient and would interfere with the new rulemaking process.

Greenberg Traurig LLP attorney Paul Seby, representing North Dakota, agreed, arguing that a merits decision would function as an advisory opinion.

Judge Mary Beck Briscoe, a Clinton appointee, repeatedly pushed back on that claim and appeared to be strongly in favor of resolving the question now.

"Isn't that issue ripe, and don't we have the duty to decide?" she asked, answering herself later: "We have an underlying decision that is on the books that is ripe for review."

At this point, the 10th Circuit may opt to put the case on hold, issue a merits decision or — less likely — dismiss the case and vacate the lower court's ruling that the government has no fracking authority.

Judge Jerome Holmes, a George W. Bush appointee, noted that the last option could allow the 10th Circuit to address concerns about the impacts of the lower court's ruling without inserting itself into BLM's ongoing regulatory process.

### **Whose authority is it, anyway?**

The judges appeared eager to delve into the merits of the case yesterday, extending argument time for several parties to allow for more discussion of the government's jurisdiction.

The winning argument in last year's district court decision was put forth by states challenging the rule. Wyoming, Colorado, North Dakota and Utah say the Safe Drinking Water Act (SDWA) gave U.S. EPA exclusive authority over fracking, and the Energy Policy Act of 2005 then removed that power and left it to state regulators.

Hartz questioned the breadth of the so-called fracking exemption. Noting that he was still grappling with the issue, he put forth a narrower potential reading of the statutes, musing that the SDWA may prevent agencies other than EPA from regulating fracking for water protection purposes, but may not necessarily preclude other agencies from regulating fracking to address, say, seismicity or wildlife concerns.

Wyoming Deputy Attorney General James Kaste responded that the SDWA unambiguously delegated all fracking authority to EPA. BakerHostetler attorney Mark Barron, representing the Independent Petroleum Association of America and Western Energy Alliance against the rule, noted that BLM has routinely deferred to other EPA authorities under the SDWA.

"They cannot now escape the same conclusion when it comes to non-diesel hydraulic fracturing," he said.

Justice Department attorney Andrew Mergen and Earthjustice attorney Mike Freeman maintained that the fracking rule was promulgated under distinct BLM authority to manage public lands under the Mineral Leasing Act and Federal Land Policy and Management Act.

They argued that EPA's SDWA authority over injection is not exclusive. Congress would have been explicit if it intended to remove the issue from BLM's purview, they said. Mergen noted that EPA itself supported BLM's efforts to regulate fracking when it began promulgating the rule during the Obama administration several years ago.

### **'There's no case law on this'**

Tribal issues that have been largely overshadowed by the broader fracking authority question throughout the case also gained traction in court yesterday.

The Ute Indian Tribe and several others have taken issue with the fracking rule since its inception, complaining that it treats tribal lands the same as public lands. They argue that BLM lacks rulemaking authority on tribal trust lands (Energywire, July 11, 2016).

Hartz slammed government and environmental lawyers for failing to address the tribal law questions in their most recent briefs, suggesting they may have conceded the argument. Freeman

argued that because the district court never issued a final decision on the tribal law issues, the 10th Circuit should avoid weighing in on them and should instead remand those issues to the lower court.

Fredericks Peebles & Morgan LLP attorney Jeffrey Rasmussen, who argued for the Utes, said he thinks the 10th Circuit is poised to decide the matter.

An answer from the appeals court would be a major development in federal Indian law. While tribes have long raised the argument that BLM lacks rulemaking authority tribal trust land, courts have not yet issued clear direction on the issue, Rasmussen said.

"There's no case law on this, so this would be a very good one for us," he said after arguments.

### **What's next**

A decision from the court could come down in a matter of weeks or months, depending on what issues the judges decide to tackle.

Barron, the BakerHostetler lawyer, argued that "there's no urgency to decide" because there's no likelihood BLM will attempt to exercise any authority over fracking in the near future.

"One thing that's abundantly clear from today's hearing is elections have consequences," Western Energy Alliance President Kathleen Sgamma said after arguments.

Supporters of the fracking rule stressed that a court decision reaffirming federal authority over fracking is critical to ensuring public safety and environmental protection.

"Communities living near oil and gas facilities on public lands, both now and in the future, stand to lose if the Trump administration gets its way in the 10th Circuit," Earthworks policy advocate Aaron Mintzes said in a statement. Earthworks is one of several environmental intervenors in the case.

Florida State University law professor Hannah Wiseman, whose 2008 law review article discussing the limits of federal authority over fracking was used by opponents of the rule, said a 10th Circuit decision will help guide BLM's ongoing regulatory process.

"No matter what new rule BLM crafts to replace the Obama administration's rule that it proposes to rescind, the process must start from a clear baseline understanding as to what the BLM has the authority to regulate — that question will permeate any rulemaking process," said Wiseman, who



has argued that her article was taken out of context by fracking rule opponents and the lower court.

"Further," she added, "the district court opinion sets erroneous precedent that could block the BLM's duties in many areas — not just the fracking area — and already is being cited in other cases."

For now, supporters and critics of the fracking rule will be busy dealing with the next stage in the process: submitting comments on BLM's proposal to rescind the regulation.

The agency published its proposal earlier this week, kicking off 60 days of public comment.

"IPAA is eager to turn our attention to the regulatory process as we engage with the new Administration on this issue," Dan Naatz, senior vice president for government relations and political affairs at the industry group, said in a statement.

Axing sites is a question for the courts — Zinke

*GREENWIRE*, July 31

Interior Secretary Ryan Zinke yesterday acknowledged that any attempts by the Trump administration to strike down existing national monuments could face legal challenges, but he did not rule out that he could still recommend full-scale rescissions as he reviews the boundaries of dozens of monuments nationwide.

President Trump ordered the Interior secretary in late April to review the creation of dozens of monuments established since 1996, with a focus on those sites that encompass more than 100,000 acres.

To date, Zinke has recommended that the White House make significant reductions to the 1.35-million-acre Bears Ears National Monument in southeastern Utah, while ruling out any changes to three monuments: the Craters of the Moon in Idaho, Hanford Reach in Washington state and Canyons of the Ancients in Colorado. He has also indicated that he will not seek alternations to the Upper Missouri River Breaks National Monument in Montana.

In remarks at a privately owned ranch here in Nevada — where Zinke stood against a backdrop of the Gold Butte National Monument in 110 degree heat — the secretary said his review of the remaining 22 monuments has found a "handful" of sites with potential issues, including proclamations that could bar traditional uses, hunting or fishing. He did not offer specific examples or name the monuments in question.

But Zinke pointed to past changes to monuments, asserting that previous presidents have altered sites at least 18 times.

"I don't think there's too much question that a monument can be adjusted. Whether a monument can be rescinded or not, that is a question for the courts. I'm going to do the right thing," Zinke said.

While President Obama was the most recent chief executive to expand a monument — he added to the Papahānaumokuākea Marine National Monument in 2016 — no president has reduced a monument since President Kennedy modified the boundaries of the Bandelier National Monument in New Mexico in 1963.

Legal scholars who have studied the Antiquities Act of 1906 — the law that allows presidents to designate existing federal lands as monuments for the protection of objects of cultural, scientific or historic value — have asserted the drop off in reductions is due to the adoption of the Federal Land Policy and Management Act in 1976 (Greenwire, July 28).

Moreover, no president has ever sought to overturn a monument designation made by one of his predecessors, and observers have suggested that Trump would prompt legal challenges should he attempt to do so.

But Zinke said he also hopes to see Congress address what he views as conflicts in some monuments, pointing to overlapping areas of designated wilderness or other classes of land.

"What I think is inappropriate is to stack different classes of land on the same ground, because you have multiple bureaucracies, and that makes management difficult and confusing," Zinke said. "A pasture, just like out there, should have one set of rules ... should have some degree of stability."

Zinke said he has asked lawmakers to address whether monument designations should supersede other statutes, such as wilderness areas, that have previously been approved by Congress.

The secretary also raised concerns, as he has on visits to other monument sites, about a lack of visitor facilities and maintenance issues.

"Generally speaking, when you make a monument, you're going to have more people, and if we're going to protect those objects that the monument is intended to do, then you have to have things like a bathroom there," Zinke said.

**Silver State in a single day**

Zinke's visit to Nevada rounded out a week of travel during which he also made stops in Colorado and spent three days in New Mexico, where he visited the Organ Mountain-Desert Peaks National Monument and toured the land-locked Sabinoso Wilderness on horseback with the state's Democratic senator.

But Zinke spent only a single day in the Silver State, cutting short a planned two-day visit there in order to return to Washington for a scheduled Cabinet meeting at the White House today.

"I jammed everything into one day," Zinke said at a press conference. He noted that he planned to speak with the state's senators and governor separately, as well as hold a telephone conference for Native American tribes with whom he could not meet.

According to an Interior spokeswoman, Zinke took part in an aerial tour of the Gold Butte monument along with state Assemblyman Chris Edwards (R); Moapa Valley Water District's Logandale director, Lindsey Dalley; and Partners in Conservation Administrator Elise McAllister.

Zinke also stopped at the Basin and Range monument, where he viewed the White River Narrows Rock Art Site and met with state Attorney General Adam Laxalt (R) and the Bureau of Land Management's acting Nevada director, Marci Todd.

During his visit to Basin and Range, Zinke also met with officials from the Los Angeles County Museum of Art to tour Michael Heizer's large installation "City." The museum agreed to a conservation easement last year to grant BLM rights to 1,300 acres of private land around the installation within the monument.

The secretary was also scheduled to meet with Friends of Nevada Wilderness Issues Chairman John Hiatt; Conservation Lands Foundation Nevada Program Director Jocelyn Torres; Friends of Basin and Range ecologist Jim Boone; and University of Nevada, Las Vegas, Program Coordinator for Native American Populations Patrick Naranjo.

But Zinke acknowledged today that he will not be returning to Nevada before he is set to issue his final report — including recommendations on the state's newest national monuments — on Aug. 24.

"I haven't decided anything," Zinke said about the two Nevada sites. "We'll review everything."

He noted that he is concerned about access for hunting and fishing, as well as for "infrastructure upgrades," including both roads and access to upgrade transmission lines and implement flood control.

Battle Born Progress Executive Director Annette Magnus decried Zinke's shortened visit to the state — particularly following his three-day ramble through New Mexico — noting that her group was among those set to attend a canceled roundtable meeting today.

"I would want to ask the secretary how he thinks it's acceptable to tour both monuments — go on a hike of Gold Butte — but not actually meet with the advocates who have been spending their lives working to defend these special places?" Magnus told E&E News.

Magnus noted that two separate meetings with Zinke were scheduled and then canceled, adding: "We're still hoping that he'll reach out to us and have a meeting with us."

Magnus criticized Zinke's short visit to the state, asserting he did not spend a sufficient amount of time to examine the land, calling the less-than-24-hour trip "highly unacceptable."

The progressive group is set to hold a press conference today in place of its planned meeting with Zinke, including Nevada Rep. Dina Titus (D) and local elected officials.

Zinke's 'innovative ideas' order may not help birds — report  
*GREENWIRE*, July 31

Altering federal greater sage grouse conservation plans to prioritize state-by-state population goals without including "habitat management and restoration" could harm the bird and drive many other sagebrush-dependent species toward federal protection, a new report says.

The white paper, produced by the Western Association of Fish and Wildlife Agencies (WAFWA), suggests that the current federal greater sage grouse protection plans now under review by the Trump administration should not be significantly altered.

The paper, and three other WAFWA white papers on sage grouse, address aspects of Interior Secretary Ryan Zinke's secretarial order that established a team to review the Obama-era federal grouse conservation plans and suggest changes (Greenwire, June 7). Zinke's order directed the team to consider "creative approaches and ideas" to sage grouse management, including setting population targets for the bird in each of the 11 Western states with grouse habitat.

"There are a lot of innovative ideas out there," Zinke said last month in announcing the secretarial order. "I don't want to take anything off the table when we talk about a plan."

But because the ground-dwelling bird is so dependent upon the sagebrush ecosystem, shifting the policy — which amended 98 Bureau of Land Management and Forest Service land-use plans — away from habitat conservation could reduce sage grouse populations, says the white paper from WAFWA, which represents fish and game agencies in 23 states and Canadian provinces.

"Efforts to enhance, restore, and protect habitats from conversion and degradation will be necessary to achieve population goals that are in aggregate sufficient to deter" a future listing under the Endangered Species Act, the paper says.

That could lead to an onslaught of ESA petitions from conservation groups and others seeking federal protection for the 350 or so other species that depend upon the sagebrush ecosystem.

"Population level management actions to benefit sage-grouse don't provide benefits to other sagebrush dependent species," particularly if those other species are used "to mitigate for loss or degradation of habitat," the paper says.

"For this reason, any significant retraction of habitat-based protections afforded in BLM Land Use Plan Amendments or Forest Plan Revisions may lead to additional petitions on sagebrush species of conservation concern such as pygmy rabbits," the paper concludes.

A separate WAFWA white paper also takes issue with another management change suggested by Zinke involving the establishment of a captive breeding program as a way to maintain sage grouse populations.

That paper says, "Techniques for captive rearing of sage-grouse are still in their infancy although significant strides have been made in the last 10 years."

What's more, establishing a successful "captive flock" could mean poaching as many as 369 grouse eggs from nests in the wild, creating the "potential for impacts to source populations" of wild sage grouse in an effort "to provide the number of eggs needed."

The white papers come as the review team, composed mostly of BLM, Fish and Wildlife Service and U.S. Geological Survey officials, is scheduled as early as this week to submit recommendations to Zinke on possible changes to the federal plans, including adopting population counts and captive breeding into grouse conservation.

The potential changes to the plans finalized in September 2015 prompted four senators, including Environment and Public Works Committee ranking member Tom Carper (D-Del.), to send a letter this month to Zinke asking him to provide "a full list of those appointed to serve" on the

review panel, and to answer questions about the panel's schedule and focus (E&E News PM, July 13).

The senators asked Zinke to supply the information to them by July 21; Zinke has yet to respond to the letter, according to a spokeswoman for Carper.

The captive breeding and population count reports are two of four white papers that are part of WAFWA's Sagebrush Ecosystem Initiative.

Ed Arnett, a wildlife biologist and senior scientist at the Theodore Roosevelt Conservation Partnership, and Nada Culver, senior counsel and director of the Wilderness Society's BLM Action Center, analyzed the white papers.

They wrote that the white papers show that some of the changes to the federal plans suggested by Zinke "are not consistent with accepted science or practice."

"Habitat must remain the focus of conservation planning," they wrote.

They added that the Interior Department "only has authority to manage habitat and should reinforce its coordination with the states, who manage the birds, on habitat management goals and objectives that would be tracked using indices to sage-grouse populations."