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Attached is the daily news report for March 7.

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DAILY NEWS REPORT - UTAH

UTAH – TOP STORIES – MARCH 7, 2017

1. **Comments pour in over Zion area oil and gas leasing**

The Spectrum, March 6 | David DeMille

Federal land managers will need to sift through thousands of public comments before deciding on a controversial proposal to open up land just outside of Zion National Park for oil and gas leasing.

2. **Report Warns Small Businesses Bear The Brunt Of Obama-Era Methane Rule**

The Daily Caller, March 6 | Chris White

Small businesses will bear the high costs associated with Obama-era rules restricting natural gas production on federal lands, a Washington, D.C.-based public policy group warned legislators Monday.

3. **Senate committee advances Utah Public Lands Act**

Deseret News, March 6 | Amy Joi O'Donoghue

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4. **Will Bears Ears National Monument get funded?**

Deseret News, March 6 | Amy Joi O'Donoghue

SALT LAKE CITY — Utah's elected leaders are pushing forward on their promise to fight the Bears Ears National Monument any way they can, with the latest battle cry a threat to withhold funding.

5. **San Juan County sheriff investigating phony Bears Ears fliers**

The Salt Lake Tribune, March 6 | Brian Maffly

Someone is again posting phony information about Bears Ears National Monument around San Juan County, and it's worth \$500 to the local sheriff to find out who is behind the disinformation campaign.



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6. Patagonia teams with Google for virtual reality video series on Bears Ears

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Patagonia and Google are teaming up to save the new Bears Ears National Monument through a new video series.

7. Hundreds of Mormons tell feds: Keep Bears Ears monument

The Salt Lake Tribune, March 7 | Bob Mims

More than 200 LDS Church leaders and members have signed a letter urging U.S. Interior Secretary Ryan Zinke and Congress to leave in place the recently designated Bears Ears National Monument in southeastern Utah.

8. USU Extension protects sage-grouse by clearing conifers

Cache Valley Daily, March 7 | Shelby Ruud, USU Extension

Research published by Utah State University Extension specialists shows that the removal of invading conifer trees from sagebrush habitats could help boost success for nesting and brooding sage-grouse.

9. 10 ways to save on camping in Utah

The Seattle Times, March 7 | Marla Jo Fisher, The Orange County Register

I love sitting around a campfire in the many wonderful landscapes of Utah. But, while camping is a great way to save money and enjoy spending time outdoors, it can be surprisingly pricey. Here are my tips for saving money on an outdoors trip to Utah.

10. Outdoor Recreation Show And Salt Lake City: The Split's Not Final Until Summer

KUER News, March 7 | Judy Fahys

Utah Governor Gary Herbert and outdoor-industry leaders met to work out their differences last month during a conference call. If they pulled it off, a big trade show would stay in Salt Lake City. Instead, a 20-year relationship seems headed towards divorce, but is there any chance to save this rocky marriage?



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E&E/NATIONAL NEWS – TOP STORIES

1. Refuge manager, fish biologist tell jurors how they felt scared, violated during occupation

The Oregonian/OregonLive, March 7 | Maxine Bernstein

The manager of the Malheur National Wildlife Refuge and its former fish biologist returned to the witness stand Tuesday to testify about the fears they felt just before and during the armed takeover of the federal bird sanctuary.

2. Seeking speed in public land lawsuits

Finance and Commerce, March 6 | The Associated Press

Supreme Court nominee Neil Gorsuch has shown a willingness to limit the participation of environmental groups in lawsuits involving public lands, writing in one case that allowing conservationists to intervene could complicate and slow down the judicial process, according to an Associated Press review of his rulings as a federal appeals court judge.

3. U.S. Senate revokes Obama federal land-planning rule

The Duluth News Tribune, March 7 | Reuters Media

WASHINGTON -- The U.S. Senate on Tuesday, March 7, revoked a rule that aimed to give the public more input into federal land management decisions, the latest move by the Republican-led Congress to undo Obama administration environmental regulations it sees as a burden.

4. PUBLIC LANDS: Top Democrat urges Zinke to lift stay of Obama royalty rule

E & E News, March 7 | Scott Streater

The ranking member of the Senate Energy and Natural Resources Committee wants Interior Secretary Ryan Zinke to lift an indefinite suspension of an Obama administration fossil fuel royalty rule, saying that failure to do so violates federal law and contradicts Zinke's own testimony during his confirmation hearings.



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5. CLIMATE: Enviro attorneys gird for defense of Obama initiatives

E & E News, March 7 | Amanda Reilly and Hannah Hess

Environmental attorneys outlined a multi-pronged legal strategy today for defending the Obama administration's climate rules, including the Clean Power Plan.

6. UTAH: Air regulators take rare step to ask for governor's veto

E & E News, March 7 | Emma Penrod, Salt Lake Tribune

In a rare move, the Utah Air Quality Board has joined with local advocates in calling on Gov. Gary Herbert to veto a bill that would bar the state from regulating the burning of wood to cook food.

7. Senate advances measure to kill Obama's Planning 2.0 rule

E & E News, March 7 | Kellie Lunney

The Senate last night advanced a measure that would kill a controversial Interior Department rule revising land management plans for millions of acres of federal lands.

8. PUBLIC LANDS: House bill would allow bicycles in wilderness areas

E & E News, March 7 | Emily Yehle

Two California Republicans want to allow bicycles in wilderness areas, introducing legislation yesterday to remove a ban on "mechanical transport" in the Wilderness Act.

9. INTERIOR: Bishop wants \$50M to offset federal land transfers

E & E News, March 7 | Kellie Lunney

House Natural Resources Chairman Rob Bishop (R-Utah) wants \$50 million in the budget to offset any costs resulting from transferring federal lands to states and localities.

10. CONGRESS: Do Republicans have the votes to kill Obama's methane regs?

E & E News, March 7 | Brittany Patterson

After a week confirming President Trump's Cabinet nominees, the Senate yesterday returned to choking off Obama-era regulations using the wide-reaching Congressional Review Act.



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11. **FEDERAL AGENCIES: Why Reagan's vaunted 'starve the beast' plan failed**

E & E News, March 7 | Robin Bravender

In his 1981 inaugural address, President Reagan famously said: "Government is not the solution to the problem; government is the problem."

12. **FEDERAL AGENCIES: Climate science cuts now coming to fruition**

E & E News, March 7 | Scott Waldman

The expected rollback to federal climate science has begun.

In its preliminary budget proposal, the Trump administration has targeted environmental protections and climate change research. And while the cuts are essentially an opening salvo in what promises to be a fight with Congress once the budget requests formally arrive, they also demonstrate the level of hostility many scientists feared their work would face from the White House.

13. **FEDERAL AGENCIES: Climate science cuts now coming to fruition**

E & E News, March 7 | Arianna Skibell

A lawyer with the Pacific Legal Foundation, which promotes property rights and limited government, is putting forward a new legal theory that could allow Congress and agencies to greatly expand the reach of the Congressional Review Act.

14. **FEDERAL AGENCIES: Climate science cuts now coming to fruition**

E & E News, March 7 | Mike Soraghan

A former U.S. EPA official says that while the agency's study of hydraulic fracturing will likely wind up in the Trump administration's "round file," it still has value for academic researchers.



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UTAH – FULL STORY

1. Comments pour in over Zion area oil and gas leasing

The Spectrum, March 6 | David DeMille

Federal land managers will need to sift through thousands of public comments before deciding on a controversial proposal to open up land just outside of Zion National Park for oil and gas leasing.

Close to 40,000 written comments had been submitted as of last week to the Bureau of Land Management, with several days still left before Thursday's comment deadline, said agency spokesperson Ryan Sutherland.

On Monday, a group of residents from Virgin and the surrounding communities submitted a grassroots petition requesting the BLM deny the leasing sale, with organizers indicating they had signatures from 365 individuals who wanted to submit "nomination requests for no action" on the land.

"We each respectfully reject the premise that these lands are appropriate candidates for oil and gas lease and subsequent development," according to a letter from the group.

The BLM released the environmental assessment on the proposal in January, responding to a nomination from a company called Utah Exploration and Drilling LLC to include three Washington County parcels, totaling 4,730 acres, in an agency lease sale. In February, the agency extended the deadline for comment to March 9 at the request of the National Park Service and others, and pushed back the potential lease sale to September.

The proposal has sparked an uproar among many across Washington County, where the economy relies heavily on the tourism industry buoyed by the park's 4 million annual visitors.

Two of the land parcels straddle the Kolob Terrace Road, a popular tourist route that connects the park's mountainous Kolob areas to state Route 9 and popular tourist towns like Virgin and Springdale.

The third parcel is several miles to the northwest, along Interstate 15 near the Toquerville freeway interchange and near the location of a proposed water reservoir.



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A coalition of conservation groups have been campaigning to drum up a coordinated opposition.

Park officials raised a number of concerns about how leasing activity might affect things like air quality, water supplies, sensitive species and visitor experience.

The Washington County Commission, a group traditionally in favor of such resource development, passed a resolution opposing the proposal.

Jeff Reber, a managing partner with the company, has said there is no intention to use the parcels for oil or gas drilling, suggesting the main interest in the area was water development.

He said the plan was to shore up all of the mineral rights in the area, with the Utah company partnering with another in Texas that has already leased state-controlled land nearby.

“We really have no intention of doing anything that would disturb the park or the surrounding area,” he said.

If the BLM agrees to a lease sale, the bidding would be open to anyone, though, and conservation groups and local advocates have been quick to raise alarms about the potential negative impacts.

“We can stop this negative impact to our economy and lifestyles with an outpouring of letters to the BLM explaining the reasons we think this lease should not be granted,” wrote Tom Butine, board president of Conserve Southwest Utah, in an editorial submitted to The Spectrum.

Washington County hasn’t had an active oil and gas lease since 2005, and no drilling has taken place for decades, although there were active wells above Virgin in the early 20th century.

Any private party can nominate BLM land for leasing, but agency representatives said nomination only initiates a lengthy environmental process. If any or all of the proposed parcels are included in the sale, each would still require an additional site-specific environmental study before operations could begin.

The environmental assessment cites potential challenges to drilling, including air quality, recreational activity and the presence of nearby endangered or protected animal and plant species.



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Electronic copies of the BLM assessment are available online at <http://bit.ly/2kio6pF> under the “documents” page. Hard copies can be obtained in person at the BLM St. George Field Office, 345 E. Riverside Drive in St. George.

BLM officials said comments should “identify substantive issues relevant to the proposed action” or contain new technical or scientific information. Comments that only state opinions or preferences may be considered but do not require a formal agency response, said Roger Bankert, minerals support supervisor for the BLM’s Utah state office.

Electronic copies of the BLM assessment are available online at <http://bit.ly/2kio6pF> under the “documents” page. Hard copies can be obtained in person at the BLM St. George Field Office, 345 E. Riverside Drive in St. George.

Comments can be emailed to utsgmail@blm.gov via paper mail to:

Bureau of Land Management
St. George Field Office
345 E. Riverside Drive
St. George, UT 84790
Attn: Dave Corry

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2. **Report Warns Small Businesses Bear The Brunt Of Obama-Era Methane Rule**

The Daily Caller, March 6 | Chris White

Small businesses will bear the high costs associated with Obama-era rules restricting natural gas production on federal lands, a Washington, D.C.-based public policy group warned legislators Monday.

Philip Rossetti of American Action Forum said rules on venting and flaring methane from oil and natural gas on federal lands will cost private companies hundreds of millions of dollars annually. He added that the highly contentious rule does little to mitigate greenhouse gasses from methane, because only a fraction of natural gas production comes from federal lands.

“The estimated annual burdens are \$110 – 279 million,” Rossetti wrote in a research note on the American Action Forum website. “Small businesses (defined as fewer than 1,250 employees) are



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expected to bear most the burdens, with an estimated 1,828 entities to be impacted and have an average per-entity cost of \$42,300 – 63,600.”

Congress is currently working on approving a Congressional Revenue Act (CRA) repealing the rules. The GOP-led House approved the CRA in February, and Republicans in the Senate are mulling whether to support the act.

Republicans believe the rule, signed by former President Barack Obama shortly before he left office, is another duplicative rule from the Bureau of Land Management (BLM), while Democrats argue it’s needed to reduce greenhouse gasses causing global warming.

“The contortions BLM went through to say they had the legal authority is almost embarrassing,” Utah Republican Rep. Rob Bishop said in a statement on the CRA’s passing.

He added: “This is an illegal rule and it’s a costly one. This rule’s repeal is a vote for people and making sure their lives are better, not worse.”

Analysts are already skeptical about the rule’s ability to tackle climate change.

Global natural gas production emits only 219 million metric tons of greenhouse gasses, or about 3 percent of the current total, according to U.S. inventory of greenhouse gases. Rossetti noted that the relatively small amount of natural gas production on federal land makes the rules hurt more people than they help.

“Only 15.1 percent of U.S. natural gas production comes from federal land,” he wrote, “so the BLM’s rule would only target a very small portion of national emissions, and primarily small businesses at that.”

The BLM openly admitted in a regulatory impact analysis that the rules will negatively affect natural gas production, a development Rossetti called “disturbing since natural gas has been the biggest driver of declining emissions in the U.S.”

Recent research by the Environmental Protection Agency (EPA) appears to support Rossetti’s claim. The agency stated last year that carbon dioxide contributes more to global warming than methane, which is responsible for 10 percent of all U.S. greenhouse gas emissions.



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The EPA's data also show methane emissions have fallen as hydraulic fracturing, or fracking, increased natural gas production. The agency still wants to regulate methane to reduce global warming.

Rosetti concluded that the more pressing matter is whether a CRA, which would effectively prevent introducing future fracking regulations on federal lands, is the most appropriate way to nix the methane rule.

He did add a caveat to his concern. Natural gas systems contribute only 3 percent of current total greenhouse gas emissions, Rosetti wrote, meaning the potential for significant climate benefit either through this regulation or future similar regulations is small.

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3. **Senate committee advances Utah Public Lands Act**

Deseret News, March 6 | Amy Joi O'Donoghue

SALT LAKE CITY — A bill that details the management and disposition of federal lands should they come under state control unanimously cleared a legislative committee Monday.

[HB407](#), sponsored by Rep. Mike Noel, R-Kanab, would only go into effect should Utah get a federal lands transfer of 250,000 acres or more.

"This is a work in progress," Noel told members of the Senate Natural Resources, Agriculture and Environment Committee. "It might not happen in 10 years. It may never happen."

The bill would set up the Department of Land Management should Utah get a federal lands transfer of 250,000 acres or more and implement restrictions on the sale or lease of those lands. Land sales would be restricted to 100 acres or less and only if it is determined the land has negligible value for outdoor recreation, including hunting and fishing.

"It is easier to sell public lands under the Federal Land Management Policy Act compared to the Utah Public Lands Management Act," Noel said.

The bill establishes that it is the policy of the state to not sell off public lands — a charge leveled by critics of the lands fight — and any sale would require approval by a majority of legislative members and the governor.



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Noel said he wanted to tweak the measure, which was passed last year, to put in more safeguards over the land sale provisions and implement a higher bar for when it would take effect.

The bill is yet another piece of legislation in the move by Utah to wrest control of some 30 million acres of federally managed land within its borders.

In 2012, the Legislature and Gov. Gary Herbert signed off on the Transfer of Public Lands Act, demanding the federal government relinquish title to certain lands or face a lawsuit.

The lawsuit has been put on hold given the change in the White House and optimism by Utah leaders that some other resolution may be possible.

The bill, which passed in the House 54-12, now goes to the full Senate.

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4. **Will Bears Ears National Monument get funded?**

Deseret News, March 6 | Amy Joi O'Donoghue

SALT LAKE CITY — Utah's elected leaders are pushing forward on their promise to fight the Bears Ears National Monument any way they can, with the latest battle cry a threat to withhold funding.

Rep. Jason Chaffetz, R-Utah, asked a House Interior Appropriations subcommittee over the U.S. Department of Interior and other agencies to refrain from funding the Bears Ears as a national monument.

"We, along with state and local officials, and the residents of San Juan County, are committed to ensuring that the Bears Ears region is protected and productive. We firmly believe that these decisions are best made locally, not by lame-duck presidents," he told members of the Interior Subcommittee on Appropriations.

Calls for defunding monument management will only help to further deteriorate relationships, according to pro-monument group Utah Dine Bikeyah.

"Defunding Bears Ears only creates a wider division between parties," Willie Grayeyes, board chairman of the organization, said Monday. "The healing process that we are talking about suggests that we should all come together around solutions that help the land and help local



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people have a larger role in managing these lands. We need more local jobs in San Juan County, not fewer.”

Chaffetz's request on Feb. 28 was followed by the March 3 selection of another Utah opponent of Bears Ears National Monument — Rep. Chris Stewart, R-Utah — to serve as vice chairman of that committee.

Stewart on Monday said withholding funding is a tool that has been used before in significant policy disputes.

"In the past we have denied funding for certain priorities Congress didn't agree to," Stewart said, adding that withholding dollars for monument management is not off the table.

"It's not ideal. It's better to have a resolution on the designation," he said.

Stewart said newly confirmed Interior Secretary Ryan Zinke has pledged to visit Utah within the next few weeks to learn more about the Bears Ears region.

"We will make our case that there is a better way to do it than have it imposed by the president under the Antiquities Act," the congressman said.

Monument supporters have pressed Zinke for a visit to Bears Ears and to attend a community hearing to detail the benefits of the land designation of 1.35 million acres in a region that is said to have in excess of 100,000 cultural artifacts badly in need of protection.

They have also vowed to fight the attempts to unravel the designation made in December by President Barack Obama.

Stewart said as vice chairman of the appropriations subcommittee he has a number of funding priorities with clear impacts to Utah and other states in the West, including ensuring rural counties receive Payment in Lieu of Taxes money.

That program was set up in 1976 by Congress to compensate counties for losses in property taxes due to having nontaxable federal land within their borders. Utah received about \$35 million in fiscal year 2015, but three counties — including San Juan and Grand counties — had their funding reduced.

Stewart said it is also important to garner money for the Secure Rural Schools program, which expired in 2015. That program provides funding and assistance to rural counties and school districts impacted by the decline of revenue from timber harvests on federal lands.



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The raging cost of fighting fires is putting the U.S. Forest Service budget in peril, with the agency spending more than 50 percent of its budget on wildfires for the first time a couple of years ago.

Stewart said there has to be a way to fix those spiraling costs, and granting local government and state government more oversight of fires in their backyard could help.

"We need to look at the broad idea of what is the appropriate mix of federal and state and local control," he said. "No one is suggesting we sell these federal public lands, but there should be some way to give more control back to the state and local governments."

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5. **San Juan County sheriff investigating phony Bears Ears fliers**

The Salt Lake Tribune, March 6 | Brian Maffly

Someone is again posting phony information about Bears Ears National Monument around San Juan County, and it's worth \$500 to the local sheriff to find out who is behind the disinformation campaign.

Sheriff Rick Eldridge on Monday announced a \$500 reward for information about those creating and posting the signs, which appear to be aimed at further inflaming tensions around the recent designation of the 1.3-million-acre monument proposed by Native American tribes.

The notices, posted in several locations outside Monticello and Blanding, announce that the new monument charges a \$100 entrance fee, payable when visitors enter at the Monument Valley Navajo Tribal Park — even though Bears Ears is several miles away from this tribal park near the Arizona-Utah state lines. The signs falsely indicate wood cutting, ATV riding and hunting are not allowed in the new monument.

"If you catch someone hanging these signs, take a picture of the individual and call the Sheriff's Office immediately. 435-587-2237," the sheriff posted on Facebook. The fliers have so far been found posted on Cedar Mesa and near Recapture Canyon, as well as in a national forest campground west of Monticello, according to Eldridge.

"We have local citizens bringing them in who are outraged," he said.

These latest signs echo those posted last summer by monument detractors bent on spreading inflammatory misinformation. One of those earlier signs announced the Interior Department would ban access to Bears Ears for ceremonial activities and wood gathering and would take over 4 million acres of the Navajo Reservation, while another announced a monument



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designation celebration that was to coincide with then-Interior Secretary Sally Jewell's visit to southern Utah to hear local sentiment about the monument proposal.

"No Utah Navajos are invited because we in Window Rock [the seat of Navajo government in Arizona] are taking your sacred land and stopping your wood cutting and other activities on this land and you have been complaining about that," that flier read.

"I think it's the same group of people or individual. I have a hunch who it is. I would love to expose who is behind it, to get to the bottom of this, because they are false and bogus," Eldridge said.

A prominent anti-monument blog, [The Petroglyph](#), accused environmentalists of generating "fake news" and suggested pro-monument groups posted the fliers themselves, but without offering evidence.

The misinformation in the recent fliers reflects some of the anti-monument rhetoric leveled in the state Legislature, in support of a resolution calling on President Donald Trump to rescind the monument. Rep. Mike Noel, for example, has repeatedly complained that motorized use, wood gathering and hunting would be curtailed on the monument, even though the monument proclamation suggests these activities would continue.

The Bureau of Land Management and U.S. Forest Service will start a monument management planning process with public meetings in coming weeks. The eventual plan will guide how myriad activities, from plant gathering to motorized recreation, would be regulated. The five tribes behind the monument proposal have empaneled a commission that, under the monument's proclamation, will offer recommendations that the BLM must either incorporate or explain in writing why it cannot.

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6. **Patagonia teams with Google for virtual reality video series on Bears Ears**

Deseret News, March 7 | Herb Scribner

Patagonia and Google are teaming up to save the new Bears Ears National Monument through a new video series.

On Dec. 28, former President Barack Obama made Bears Ears, a region in San Juan County, a national monument. The decision was met with ire from Utah politicians, who called it an abuse of executive power.

In February, Utah lawmakers passed a resolution urging the unraveling of the 1.35 million-acre monument, bristling at the process used under the Antiquities Act and what they say was



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indifference to a majority of statewide sentiment. The resolution was signed by Gov. Gary Herbert.

The the debate then spilled over to the Outdoor Retailer show when the group announced it will end its 20-year tie with Utah after next year's shows, saying it will not consider any bids from the Beehive State because of the industry's frustration with state efforts to undo the new monument.

Patagonia, an outdoor clothing and gear company, is one of the those retailers.

Now, according to Mashable, Patagonia has teamed with Google for a new film series called "This Is Bears Ears National Monument" in an effort to save the monument.

But this isn't a normal movie. It's a 360-degree interactive 10-video series that puts people in Bears Ears.

The video asks viewers to contact Secretary of Interior Ryan Zinke and tell him that they want to save the monument.

Rose Marcario, Patagonia's CEO, said the videos were originally intended to celebrate the national monument. Instead, it now offers a chance to educate people on the Bears Ears issue, according to Mashable.

"And we wanted to get more people just understanding the issue, understanding what's at stake "and coming into the dialogue with us and the environmental fight to protect these public lands," Marcario said.

Watch one of the videos below.

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7. **Hundreds of Mormons tell feds: Keep Bears Ears monument**

The Salt Lake Tribune, March 7 | Bob Mims

More than 200 LDS Church leaders and members have signed a letter urging U.S. Interior Secretary Ryan Zinke and Congress to leave in place the recently designated Bears Ears National Monument in southeastern Utah.

The "sign-on" letter, posted on Facebook by the Mormon Environmental Stewardship Alliance and sent March 1, contained 223 signatures ranging from members nationwide of The Church of



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Jesus Christ of Latter-day Saints who identified themselves as everything from ward counselors, teachers and choir leaders to church historians and professors.

"People just saw the letter on social media and found it resonated with them when it came to how they felt about preserving monuments and public lands," said MESA Chairwoman Ty Markham of Torrey.

Then-President Barack Obama's designation of the 1.3 million-acre monument in San Juan County has drawn opposition from Utah Gov. Gary Herbert, state legislators and Utah's congressional delegation. They have asked President Donald Trump to rescind the monument declaration.

The LDS Church has not weighed in on the issue, but Markham believes the ideals of the monument are consistent with longstanding Mormon beliefs and scriptures.

The letter notes that in addition to centuries of Native American historical, cultural and religious connections to the Bears Ears region, the area also holds a special place in the heritage of Mormon pioneers who settled in Utah in the mid- to late 19th century.

Noting Latter-day Saints own history of religious persecution, which led to their flight to Utah, the letter states that members of the faith "seek to be partners in healing the legacy of religious persecution and displacement anywhere it has happened — including among our Native American brothers and sisters."

"We understand that Native Americans hold their faith histories to be sacred, just as we do ours," the letter adds. "It is imperative that their ancestral lands continue to be protected as a national monument under the advice of the tribes of the Bears Ears region."

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8. **USU Extension protects sage-grouse by clearing conifers**

Cache Valley Daily, March 7 | Shelby Ruud, USU Extension

Research published by Utah State University Extension specialists shows that the removal of invading conifer trees from sagebrush habitats could help boost success for nesting and brooding sage-grouse.



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“Removing trees goes against what we typically think is good for the environment,” said Terry Messmer, USU Extension wildlife specialist. “But this study scientifically validates this practice as a sage-grouse conservation strategy.”

According to the research, the encroachment of conifers into sagebrush habitats is one of several major causes of sage-grouse declines. As trees spread into the sagebrush, predation may increase because the trees provide new nest sites and perches to birds of prey. Conifers also alter sagebrush habitats by robbing the plants of water and nutrients from the soil.

Sage-grouse habitats cover 165 million acres across 11 states in the West, a loss of 56 percent from the species’ historic range. At one time, the greater sage-grouse population numbered in the millions, but is estimated to have dwindled to 200,000 to 500,000 individuals range wide.

“Sage-grouse are considered the ‘umbrella species’ for 350 other species that depend on the sagebrush ecosystem for their survival,” Messmer said. “Conservation actions that benefit sage-grouse also benefit these other species and ensure the viability of the environmental services provided by sagebrush habitats.”

To conduct the study, researchers radio-marked 96 female sage-grouse hens in northwestern Utah and followed them and their chicks over a four-year period. Females that nested in areas cleared of conifers were more likely to successfully nest fledge their chicks.

“The speed at which these space-starved birds colonize our sagebrush restorations is remarkable, and their increased performance is the ultimate outcome in science-based conservation,” said Charles Sandford, former USU graduate student researcher.

Range-wide, 1 million acres of conifers have been cleared to conserve sage-grouse. In Utah alone, 500,000 acres have been cleared.

The study was published in the Journal of Rangeland Management & Ecology and is available online at <http://tinyurl.com/SageGrouseStudy>. More information about sage-grouse restoration can be found at www.utahcbcp.org.

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9. 10 ways to save on camping in Utah

The Seattle Times, March 7 | Marla Jo Fisher, The Orange County Register

I love sitting around a campfire in the many wonderful landscapes of Utah. But, while camping is a great way to save money and enjoy spending time outdoors, it can be surprisingly pricey. Here are my tips for saving money on an outdoors trip to Utah.

Get primitive

Campsites without running water are generally much cheaper than fully developed campgrounds, and also less crowded. For example, you would pay \$20 per night for a developed campground at Capitol Reef National Park, but both of its primitive campgrounds are free. At Canyonlands National Park, the developed Needles campground costs \$20 per night, whereas the primitive Island in the Sky campground, with picnic tables and fire rings but no water, is \$15.

So how do you do it? Get yourself some big, sturdy 5-gallon blue water storage cubes with a pour spout for around \$10 each at any store that sells camping gear, to serve as your temporary “faucets.” Don’t fill them until you’re nearby, though, in case of leakage, and don’t buy those flimsy clear folding ones, which always leak.

No water at a campground means no flush toilets, but chemical ones are much less disgusting than they used to be (really). You can also buy a “sun shower” that uses solar power to heat up the water, then pour it over you for a quick shower.

Look for BLM campgrounds

National park campgrounds are affordable, but you can camp even more cheaply outside their boundaries, if you look for those operated by either the [Bureau of Land Management](#) (BLM) or the [U.S. Forest Service](#) (USFS). Sometimes they’re even free.

These campgrounds are not only less expensive, but easier to get into, because most people don’t know about them. And they’re often just as scenic. You probably won’t have RV hookups and maybe not even running water, but you may have beautiful solitude. For example, the Deer Creek Campground in Escalante-Grand Staircase National Monument had sheer red-rock walls and tons of privacy because, even in high season, there is hardly anyone there. Campsites at Deer Creek and at nearby Calf Creek cost just \$7 per night.



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On one trip, we were disappointed that we couldn't get a site at Arches National Park in Moab, Utah — but not for long. Fifteen minutes later, we pulled into a BLM campsite on Highway 128. It had its own private, sandy Colorado River beach, across the river from the red sandstone cliffs of Arches National Park. We even saw bighorn sheep. We were supposed to pay \$3 per night, but no one ever came around to collect our fees. We had our own water with us, and didn't mind that the toilets didn't flush.

Interested? Learn more about federal campsites and make reservations at [Recreation.gov](https://www.recreation.gov), or do an online search for the area where you want to stay to find the local BLM or Forest Service website.

Camp for free

The BLM also allows free "dispersed camping" on most of its undeveloped lands, which means you just pick a spot away from development and set up camp. You can stay for up to two weeks, though you may need to get a permit. There are rules that vary by district, which may limit how far you can go off a road (generally less than 300 feet if you're car camping), and you need to check whether you can have a fire. They expect you to haul out all signs of your occupancy, and there's typically no camping within 200 feet of water.

The USFS also allows dispersed camping for up to 16 days. You're required to use existing campsites, if you're going where others have been before, to reduce the impact on the land. And don't camp in the middle of a meadow, so you don't spoil the scenic view for others. Check with the local district you plan to visit to find specific regulations.

Stay at Zion Ponderosa for lots of amenities

On the opposite end of the spectrum, the 10,000-acre Zion Ponderosa ranch is only seven winding miles from Zion National Park, but its campsites offer many deluxe resort amenities to enjoy at campground prices — including two swimming pools with a small water slide, ATV excursions, horseback riding, canyoneering, zip-lining, miniature golf, Ping-Pong and pool tables and hot tubs. There are clean showers, a laundry and dishwashing sink, too.

Because it's at 6,800 feet, it's also cooler here in the summer. This is a good choice if you have family members who don't want to camp, because they can stay in cabins and or even luxury homes for rent. It's about an hour's drive from Bryce Canyon National Park, too. Book early for summer; the place sells out.



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RV sites are around \$55 per night, tent sites are \$12 per person per night, and there are also “glamping” tents for \$119. By comparison, Zion’s Watchman campground costs \$20–\$30 per night, but you’re not getting a pool with a water slide there, my friends.

Bring a senior

If someone in your party has an America the Beautiful Senior Pass, you can save 50 percent on camping fees at many federal campsites — and the car you’re driving in gets free admission. For example, at Capitol Reef National Park, passholders get the \$10 entrance fee waived, and when camping pay only \$10 nightly instead of \$20. Only the camping spot occupied by the passholder is entitled to the discount.

You must be at least 62 and a legal permanent resident of the U.S. to qualify for the pass, which costs \$10. Buy in person at a federal recreation site, such as a national park or other ranger-operated location. Bring proof of age and legal status. If you are permanently disabled, you can get a similar pass, but for free. These passes are good for your lifetime. (Note: If you have a Golden Age or Golden Access pass, these are also honored for your lifetime.)

Make a reservation

If you don’t want to find yourself forced into a pricey private campground, make sure you’ve got a reservation for any of the national parks. Search for park campgrounds at [Recreation.gov](https://www.recreation.gov). You can typically reserve six months in advance, and I recommend being online when the reservation period opens up if it’s a popular campground or time of year.

Download a free app

Get free detailed smartphone apps from [Chimani](https://www.blm.gov) for most of the national parks you want to visit. You don’t need Wi-Fi or cellular service to use them inside the park, where there’s often no service available. These apps are chock full of campground info, maps, trail info and other stuff you want to know when you visit. Download in advance using Wi-Fi so it doesn’t suck up all your data.

Go in a group

If you have difficulty making reservations because a campground is very popular, consider this: Group sites are sometimes available to reserve earlier than standard sites. If you have enough campers, consider going for a group site.



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For example, at Utah's Snow Canyon State Park — a family favorite — you can only reserve standard campsites four months ahead, but group sites can be reserved 11 months in advance. While a standard site can hold up to eight people for \$20 per night, a group site costs \$100, but can accommodate 25 people.

Sleep in a tent

Standard tent sites tend to be cheaper than RV sites with full hookups, and you'll save money on gas, too. I know I'm not going to convert any diehard RV fans, but I just love to sleep in tents and feel the night air and maybe hear the coyotes yipping, too.

Hit the KOA

If you want a few more amenities than your average national park provides, note that Utah has 15 Kampgrounds of America (KOA) campgrounds, replete with swimming pools, playgrounds, bike rentals and such. They can be crowded, but fun.

If you buy a rewards Value Kard for \$30, you get a 10 percent discount on camping fees all year, plus other benefits. Sign up for email notifications to learn about deals like the Big Weekend, May 12–13. If you pay for the night of May 12, you get to camp May 13 for only \$10. Also, in September, Value Kard members who buy one night Sept. 15 get the 16th free.

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10. Outdoor Recreation Show And Salt Lake City: The Split's Not Final Until Summer

KUER News, March 7 | Judy Fahys

Utah Governor Gary Herbert and outdoor-industry leaders met to work out their differences last month during a conference call. If they pulled it off, a big trade show would stay in Salt Lake City. Instead, a 20-year relationship seems headed towards divorce, but is there any chance to save this rocky marriage?

Governor Herbert and some aides huddled around a speaker phone in a Capitol office. The governor was talking with outdoor-recreation business executives [in the conference call](#) for almost an hour when he realized what was at stake.

"I didn't know if I understood right," he said. "Are we being excluded from being a part of the RFP?"



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The executives weren't just saying they wanted out of Utah's capital city. They were saying said they won't even look at Salt Lake City again for their Outdoor Retailer trade show because of the Utah GOP's land policies.

"It is now time for you to show leadership on this issue," said Amy Roberts, director of the Outdoor Industry Association.

"And, like I said, you are head of the party. And, so, it's your choice. But we – we're out of time. And we're also concerned about the continuing actions that we see coming out of the state."

For industry executives, it was a last-ditch plea for Herbert to speak up for public lands, especially the new Bears Ears National Monument.

"If you're giving me an ultimatum here on the phone," said Herbert, "then the answer is I, I guess we're going to have to part ways.

Herbert and outdoor-industry leaders had been trying to work out their differences in the conference call. If they had succeeded, the big Outdoor Retailer trade show would stay in Salt Lake City. But they didn't, and now a 20-year relationship seems headed towards divorce.

"Thank you for your time, governor," said an outdoor-industry executive.

"Thank you, sir," said another.

"Alright," said Herbert. "Thank you."

The call may have ended, but not the efforts of people pushing to patch up this rocky marriage.

In the days since the call, Roberts says she's focused on internal unity. Some OIA members want Outdoor Retailer to move out of Utah even before its current contract runs out. The outdoor gear company, Patagonia, is leading a boycott.

Meanwhile, Roberts sees no interest from Utah leaders in reconciling.

"It seems like, instead of kind of tapping the brakes and thinking about their decisions," she said in her Colorado office, "they're sort of just hitting the gas pedal."

Roberts insists that outdoor companies tried to meet Utah Republicans partway. She pointed out that industry leaders stuck with Rep. Rob Bishop, R-Utah, on his public lands compromise through December, when President Barack Obama created the Bears Ears monument.



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"The monument is now in place," Roberts said, "because Congressman Bishop did not do his job to get the legislation done."

But Utah leaders have doubled down ever since, she added. One example is the State Legislature's resolution to shrink the Grand Staircase Escalante National Monument -- that Herbert signed. Another is how Utah Republican Rep. Jason Chaffetz launched a congressional probe of a tweet about Bears Ears.

She said it's unlikely Utah leaders can patch things up before bidding starts about two months from now.

"The state that we go to next will also have the additional halo impact of having this crown jewel trade show," Roberts said. "But it's also saying this is the right policy and this is kind of the outdoor economy of the future."

Oregon and Montana say they're interested in Outdoor Retailer. Colorado even asked for an invitation last week in a bipartisan letter from its U.S. Senators and governor.

And this comes after the Outdoor Industry Association was able to prove its value in a bigger arena, Washington. OIA's own study five years ago shows Americans spend around \$646 billion on outdoor recreation -- more than pharmaceuticals and cars, combined. Then, last year, the association persuaded Congress to request a study of outdoor recreation as a part of the Gross Domestic Product. It's a sign the industry's being taken seriously on the national stage.

Back in Salt Lake City, local businesses are having a hard time accepting the idea Outdoor Retailer is leaving.

"I was shocked," said Adam Swillinger, owner of Laser Exhibitions. "I was shattered."

Companies like Swillinger's will be hit hard by Outdoor Retailer's exit. It employs 100 workers who set up booths here for the show each summer and winter. He says there's a lot on the line because the convention pumps nearly \$50 million dollars each year into the local economy.

"You've got 50,000 people to visit Salt Lake twice a year," Swillinger said. "They fly in on our airplanes. They take taxis and eat our food. They visit our doctors. They buy the soda pop here. So, it impacts everybody in the city. In addition, it affects our tax base."

He wants to see counseling, not bickering.



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“Nobody's clearly explained to me, and I think the citizens of Salt Lake City, what the outdoor industry wants. And I've not heard exactly what's unacceptable for our government.”

Scott Beck is CEO of Visit Salt Lake, the convention bureau also based at the Salt Palace. He was listening in on that conference call when the two sides agreed to part ways, but he's still smiling.

“Well there's things that Utah can do, clearly -- whether or not Utah will do that is a different question,” he said.

“We are not an organization that deals with public policy. We have a really good sense of what needs to be in the RFP. We know what they need from room commitments. We know what they need for commitments of exhibit space. So that's what we've always done and that's what we will do.”

The effort to keep the trade show in Salt Lake City continues. There's talk about sweetening Utah's bid with more state funding. And local outdoor businesses are pressing OIA to reconsider.

Beck's not giving up either. He's submitting a bid this spring -- even if Outdoor Retailer snubs it.

“We are not taking ourselves out of the running, because there's a there's a long time between now when the RFP closes,” said Beck. “There may be changes of heart and maybe -- who knows what could happen?”

The request for proposals is expected in April or May, and the split won't be final until the industry decides, probably this summer. It's possible that supporters can convince the state and the industry to make up before then. But, for now, they're giving each other the silent treatment.

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E&E/NATIONAL NEWS – FULL STORY

1. Refuge manager, fish biologist tell jurors how they felt scared, violated during occupation

The Oregonian/OregonLive, March 7 | Maxine Bernstein

The manager of the Malheur National Wildlife Refuge and its former fish biologist returned to the witness stand Tuesday to testify about the fears they felt just before and during the armed takeover of the federal bird sanctuary.



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Manager Chad Karges, who was aware Ammon Bundy and followers were in the Burns area in late November and December 2015, said he placed loaded guns at every door of his home "just because of the threats I had seen" involving Bundy and his family's standoff with federal agents in Bunkerville, Nevada, in 2014.

After Christmas that year, Karges told his children and grandchildren not to venture into Burns.

Karges said he didn't feel comfortable reporting to work at the refuge after the seizure by Bundy and his followers on Jan. 2, 2016, because of the presence of armed guards in the refuge tower and on its premises as he'd seen in media reports.

Karges said he also received a law enforcement briefing five days after the takeover and learned of threats made by the occupiers. He ordered his staff to evacuate from Harney County, he said.

Karges wasn't permitted by the judge to share the specific threat that law enforcement officers shared with him on Jan. 7, 2016. Occupiers planned to kidnap a refuge employee and exchange that worker for someone held in custody, according to Assistant U.S. Attorney Geoffrey Barrow.

During cross-examination, Karges said it was his own decision to place guns by every door in his home and that he had already left the county before that Jan. 7.

Fish biologist Linda Beck testified that she bought a gun because she feared for her safety during the occupation.

Before the takeover, she said she noticed "militia was kind of building their presence" in and around Burns.

Asked if she felt comfortable going to work at the refuge, Beck said: "I did not. I wanted to leave. I feared for my safety and the safety of my employees."

Beck learned of the takeover via text message from a friend in Wisconsin, she said.

Asked why she didn't report to work then, Beck said she had seen pictures in social media "of people with sniper rifles in our tower" and on the refuge grounds.

"It made me feel really scared and violated," she said.



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On Jan. 7, 2016, Beck said she learned that occupier Ryan Bundy had referred to her by her full name, "Linda Sue Beck," and called her "carp lady" in a Reuters story that ran with photos of rifles resting against a pillar in her office.

"I was very fearful," she testified. "I ran out to my gate in my driveway and locked the gate."

She said she also called her parents to protect them because she had heard a reporter from New York had contacted them.

"I was very unsettled and started feeling very unsafe," she said.

The government finished calling rebuttal witnesses and rested its case shortly after the refuge employees' testimony and the playing of a Jan. 9, 2016, Oregon Public Broadcasting interview with Ryan Bundy.

Four defendants -- Jason S. Patrick, 43, of Bonaire, Georgia, Duane L. Ehmer, 46, of Irrigon, Oregon, Darryl W. Thorn, 32, of Marysville, Washington, and Jake E. Ryan, 28, of Plains, Montana -- are charged with conspiring to impede federal employees from doing their work at the refuge through intimidation, threat or force. Three face firearms charges, and two are charged with digging trenches on government property.

Assistant U.S. Attorney Ethan Knight then delivered his closing argument, which ran about an hour and 25 minutes.

"This case is about four defendants who went too far," Knight said.

They embraced occupation leader Ammon Bundy's call to take a hard stand in the protest of the federal government and its prosecution of two Harney County ranchers, Dwight Hammond Jr. and son Steven Hammond. The Hammonds were ordered to return to federal prison on Jan. 4, 2016, to serve out five-year sentences for setting fire to public land.

But the defendants "pushed the limits of civil society," Knight argued.

He advised jurors once again not to search for evidence of a formal agreement or contract between the defendants, but to evaluate all the evidence, statements by the defendants and their alleged co-conspirators and social media posts -- and infer what occurred.



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He urged them to consider the armed guards stationed at the refuge tower and gates, strangers living and sleeping in refuge buildings and more than 20,000 rounds of ammunition found on the refuge property after the occupation ended.

"The only way to protest the Hammonds in the way these people wanted was to keep employees out" of the refuge, Knight said.

"This case is not about the Hammonds," he said. "It's what these defendants did with that motivation."

Defense lawyers will provide their closing arguments separately after court resumes at 12:30 p.m.

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2. Seeking speed in public land lawsuits

Finance and Commerce, March 6 | The Associated Press

Supreme Court nominee Neil Gorsuch has shown a willingness to limit the participation of environmental groups in lawsuits involving public lands, writing in one case that allowing conservationists to intervene could complicate and slow down the judicial process, according to an Associated Press review of his rulings as a federal appeals court judge.

Gorsuch has spent a decade on the Denver-based 10th U.S. Circuit Court of Appeals, which hears disputes about public lands ranging from energy companies' drilling rights to the use of off-road vehicles in national forests across six Western states.

With public lands cases and other contentious issues, Gorsuch applied a uniform set of legal principles, said Donald Kochan, associate dean and professor at Chapman University Dale E. Fowler School of Law.

"I think that his record, although the number of cases is quite limited, shows that at times it has led to decisions that one might consider environmentally favorable, and about an equal number of times it has led to decisions some might think are environmentally unfavorable," Kochan said. "For those who think that he will lean toward one outcome or another, I think they'll be surprised on how the more neutral application of his philosophy will often lead to confounding results."

In public lands cases in which he sought to limit environmental groups' participation, Gorsuch at times has favored the position of federal agencies. But his record on such cases is relatively



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limited considering that the territory the appeals court covers contains vast swaths of national forests and parks.

Denise Grab, a lawyer with New York University Law School's Institute for Policy Integrity, said Gorsuch has a "mixed bag" of rulings related to public lands and the environment, yet seems "unusually eager to throw roadblocks in the way of public interest groups who want their day in court."

In 2013, Gorsuch parted from the two-judge majority on a panel that said environmental groups should have the chance to participate in a particular suit. The New Mexico Off-Highway Vehicle Alliance had challenged a plan that reduced the number of roads and trails available to off-road vehicles in Santa Fe National Forest.

His colleagues on the appeals court said the groups should be allowed to join the case because "there is no guarantee that the Forest Service will make all of the environmental groups' arguments in litigation."

Gorsuch disagreed, saying there was only one issue to consider and no conflict between the groups and government over how to approach it.

"An intervenor becomes a full-fledged party, able to conduct discovery, file motions, and add new issues and complexity and delay to the litigation," Gorsuch wrote.

Grab called that "very unusual," and noted that neither party in the suit had objected to the environmental groups intervening.

"An environmental group is not the government. It has different goals," Grab said. "In most cases, intervention is allowed."

Gorsuch doesn't always take the road less traveled, and often sides with other members of the 10th Circuit.

When an outdoor group sued the U.S. Forest Service over a temporary order that allowed motorcycles to ride on certain trails inside western Colorado's San Juan National Forest, Gorsuch wrote a unanimous opinion in May 2015 for the three-judge panel dismissing the case on procedural grounds.

Backcountry Hunters and Anglers could not establish their ability to bring the case because if the order they challenged as being too lenient was struck down, the agency would revert to an



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earlier, even less-strict version of the trail plan, so the organization's conservation goal would not be advanced, Gorsuch wrote.

"A further victory for Backcountry in this case promises only more, not fewer, vehicles on forest trails and the group hasn't offered a timely argument how that turn of events might help its members," he wrote.

Gorsuch has been sympathetic to outdoor enthusiasts, even when ruling against them, and has shown his Colorado roots in his writings.

"Everyone enjoys a trip to the mountains in the summertime. One popular spot is Mount Evans — a fourteen thousand foot peak just a short drive from Denver and with a paved road that goes right to the summit," he wrote in a 2011 case.

In that case, Gorsuch was on a panel that found that the Forest Service could legally charge fees to visit the summit because it provided amenities such as a nature center, which thousands of visitors use annually. Those who sued had challenged the fee policy, saying it overstepped the Forest Service's statutory authority to charge visitors.

Writing for the panel, Gorsuch said the fees were permissible, but he left open the possibility that the fees could be challenged, just not the way the plaintiffs sought to.

"In rejecting the plaintiffs' facial challenge we hardly mean to suggest that the Service's policy can't be attacked at all. It might well be susceptible to a winning challenge as applied to certain particular visitors, perhaps even the plaintiffs themselves. But that's a path the plaintiffs haven't asked us to explore and so one we leave for another day," Gorsuch wrote.

In 2011, Gorsuch showed his distaste for drawn-out litigation when he sided with a majority of other judges who found The Wilderness Society lacked standing in a suit related to off-road vehicles on federal land, including in Grand Staircase-Escalante National Monument.

Officials in Kane County, Utah, had asserted rights on roads crossing the federal land and removed U.S. Bureau of Land Management signs prohibiting off-road vehicles. The county put up its own signs and passed an ordinance allowing the vehicles.

The environmental groups sued, saying the county's actions violated federal rules pertaining to public lands. The district judge ruled in favor of the environmental groups, a decision upheld by a three-judge panel of the 10th U.S. Circuit Court of Appeals.



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A review by the full appeals court found that the environmental groups had no valid rights of their own in the property and vacated the district court's ruling.

Gorsuch concurred, but wrote that most of the suit was moot by that point, anyway. The county had long ago rescinded its ordinance and removed the signs and decals that had allowed off-road vehicles.

"There are no (off-highway vehicles) left to fight over; the Society won exactly the relief it sought merely by filing its lawsuit; still, this litigation has lumbered on," he wrote. "We don't usually prolong litigation in this way, allowing the fight to continue after one side has thrown in the towel. Especially when carrying on the fight requires us to decide novel and hotly disputed questions of law."

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3. **U.S. Senate revokes Obama federal land-planning rule**

The Duluth News Tribune, March 7 | Reuters Media

WASHINGTON -- The U.S. Senate on Tuesday, March 7, revoked a rule that aimed to give the public more input into federal land management decisions, the latest move by the Republican-led Congress to undo Obama administration environmental regulations it sees as a burden.

The Senate voted 51-48 to approve a resolution to repeal the Bureau of Land Management's Resource Management Planning rule, known as BLM 2.0, finalized in December by the Obama administration.

The rule updated the 30-year process the agency followed when developing land-use plans across the 245 million acres of federal land it manages.

Senators who voted to revoke the rule, such as Republican Lisa Murkowski of Alaska, chair of the Senate Energy and Natural Resources Committee, said it diluted local authority over decisions about how to use land for grazing, energy and mineral development and recreation, and gave outside voices an outsized say in local matters.

Supporters, such as the energy committee's top Democrat, Senator Maria Cantwell of Washington, said the rule modernized the existing BLM process to make it more transparent.



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“When it comes to public lands, we want transparency, we want sunshine, we want a bottom-up approach when it comes to land management,” Cantwell said.

Republicans have taken advantage of a seldom-used law known as the Congressional Review Act to overturn the BLM 2.0 rule as well as other recently enacted regulations with simple majorities in both chambers, denying senators the opportunity to filibuster and stall a vote.

Last month, Republicans repealed a securities disclosure rule aimed at curbing corruption at energy and mining companies and voted to ax methane emissions limits on drilling operations using the CRA.

Some conservation groups said using the CRA to revoke the measure was a "knee-jerk" and unnecessary measure, and that the land planning rule could have been revised by the BLM.

"I struggle to understand why they would waste their time trying to strike down this rule and why not let the administration fix the rule," said Phil Hanceford of the Wilderness Society.

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4. **PUBLIC LANDS: Top Democrat urges Zinke to lift stay of Obama royalty rule**

E & E News, March 7 | Scott Streater

The ranking member of the Senate Energy and Natural Resources Committee wants Interior Secretary Ryan Zinke to lift an indefinite suspension of an Obama administration fossil fuel royalty rule, saying that failure to do so violates federal law and contradicts Zinke's own testimony during his confirmation hearings.

Washington Sen. Maria Cantwell (D) today sent a [letter](#) to Zinke asking him to reverse Interior's Office of Natural Resources Revenue's decision to stay implementation of the rule finalized in July that changed how coal, oil and gas extracted on public land is valued in order to calculate federal royalties.

ONRR last month agreed to revert to previous valuation standards until it can resolve a trio of industry lawsuits challenging the rule, which took effect Jan. 1 (Greenwire, Feb. 24).

But Cantwell wrote that the formal stay of the rule, which took five years to development, violates Section 705 of the Administrative Procedure Act, which does not give Interior the power to suspend an already implemented rule without public notice or comment.



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She also wrote that the stay fails to meet a four-part test outlined by the federal court system. To stay an existing rule, Interior must first determine:

- The pending lawsuits are likely to succeed.
- The plaintiffs are "likely to suffer irreparable harm" without a stay.
- Postponing the effective date of the rule will not "substantially harm other parties" not involved in the lawsuits.
- Staying the rule serves the public interest.

"The [ONRR] has plainly failed to show sufficient grounds for staying the effective date of the valuation rule's effective date under the four-part test," wrote Cantwell, who voted against Zinke's confirmation.

The Senate last week confirmed Zinke as Interior secretary in a 68-31 bipartisan vote (Greenwire, March 1).

"Postponing the effective date of the new rule in this manner was plainly contrary to law," she added.

She also wrote that keeping the stay in place, which was approved before Zinke was confirmed, contradicts his testimony in January confirmation hearings before Cantwell's ENR Committee.

"One of the fundamental tenets of public land law is that the American people should receive fair market value for the natural resources taken from the public lands," Cantwell wrote. "You assured me, at your confirmation hearing, that you supported this important principle and agreed that 'taxpayers should always get a fair value' for the resources extracted from the public lands."

She concluded: "You testified at your confirmation hearing that you 'will follow the law.' This may be a good place to start. You should lift the stay and let the royalty valuation rule go back into effect."

It is not clear whether Zinke will lift the indefinite stay. Representatives with Interior did not respond to a request for comment for this story in time for publication.

But postponement of the rule isn't the only threat to its existence, as Republicans in both chambers have filed resolutions of disapproval under the Congressional Review Act aimed at killing the rule.



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Montana Sen. Steve Daines (R) last week introduced [S.J. Res. 29](#), which would revoke the standards (Greenwire, March 3).

Rep. Scott Tipton (R-Colo.) and House Majority Whip Steve Scalise (R-La.) introduced the House companion, [H.J. Res. 71](#), last month (Greenwire, Feb. 14).

Those CRA resolutions are among a handful that GOP congressional leaders have approved or are set to approve that would not only kill the targeted rule but prevent the agencies from proposing the rule or anything similar in the future.

While there may not be much that Democrats can do about the CRA resolution, they have complained that the ONRR suspension of the rule last month violates federal law.

Rep. Raúl M. Grijalva (D-Ariz.), the House Natural Resources Committee's ranking member, sent a letter last month to then-acting Interior Secretary Jack Haugrud demanding answers about the ONRR decision to stay the new rule, calling it an unprecedented and, like Cantwell claims in her letter, a legally "questionable" use of the APA (Greenwire, Feb. 28).

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5. **CLIMATE: Enviro attorneys gird for defense of Obama initiatives**

E & E News, March 7 | Amanda Reilly and Hannah Hess

Environmental attorneys outlined a multi-pronged legal strategy today for defending the Obama administration's climate rules, including the Clean Power Plan.

Lawyers for green groups intend to use both the rulemaking process, which includes public notice-and-comment periods, as well as aggressively file litigation with state allies.

"We will make them face the music at every step in this process and in court at the end of the process," David Doniger, director of the Natural Resources Defense Council's climate and clean air program, said on a call with reporters.

President Trump and new U.S. EPA Administrator Scott Pruitt have promised to "refocus" EPA on its core missions of ensuring clean air and clean water, and top officials have questioned the need for government regulations on carbon dioxide (Greenwire, Jan. 26).

At the top of the Trump administration's list is the Clean Power Plan, which called for reducing CO2 emissions from existing power plants.



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As Oklahoma attorney general, Pruitt joined the litigation over the signature Obama administration policy, arguing that it usurped states' rights. An executive order directing EPA to unravel the rule could land this week (Greenwire, March 6).

Environmentalists predicted that the executive order would be similar to one issued last week calling on federal agencies to review and revise or rescind the Obama administration's Clean Water Rule.

Joanne Spalding, a senior managing attorney at the Sierra Club who handles climate litigation, said that greens would be watchful for a replacement climate policy that ignores the record that the Obama EPA built up.

Sean Donahue, an attorney representing the Environmental Defense Fund, said that the Trump administration could become vulnerable to lawsuits if it attempts to rush the process.

"We've seen in some other areas including immigration, that sort of hasty efforts tend to not work very well," he said. "And given the enormous complexity of the Clean Power Plan ... if the administration attempted to sort of sweep it away with a grand gesture, I think that would be extremely vulnerable on judicial review."

Greens also pledged to fight any attempt to halt the litigation over the Obama rule that is currently pending in the U.S. Court of Appeals for the District of Columbia Circuit. In September, the court heard nearly seven hours of oral arguments but has yet to issue a decision.

"The case is all but at the finish line, and there are questions that have been put in this case that would be clearly relevant no matter how the agency might try to recast the rule," Doniger said.

Last week, environmentalists opposed an effort to delay the court's ruling by consolidating it with litigation over EPA's denial of administrative petitions (Greenwire, March 3).

Allowing the court to rule would give Pruitt direction on the legal bounds for a new carbon rule, including whether the Clean Air Act allows regulating outside-the-fence-line emissions, Donahue said.

Although the Supreme Court stayed the rule nationwide in February 2016, greens expect that the courts will uphold its inclusion of CO2 targets that would require the electricity sector to switch to natural-gas-fired power and renewable energy.



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"It's often the case that courts will stay something and upon closer look decide it's lawful and let it go forward," Donahue said. Pruitt "should allow the court to reach a merits decision after months and months of consideration and full briefing."

'Coming assault'

Doniger of NRDC predicted the "coming assault" on EPA climate policy would also include EPA's carbon rule for new power plants, which the agency has been defending in court.

Also potentially on the chopping block are regulations to prevent methane leaks from new and heavily modified oil and gas operations, plus fuel economy standards. Automakers expect to see action from EPA or the Transportation Department on the fuel efficiency rules by midweek (Climatewire, March 6).

Along with challenging efforts by the Trump administration to roll back final EPA rules, greens said they are also exploring ways to challenge the administration if it steps back from rulemaking activities that the Obama administration did not complete.

One such area is methane regulations covering existing oil and gas industry sources.

Pruitt last week yanked a request to operators seeking certain emissions information, including methane data. The request was an early piece of the Obama EPA's plan to slash methane emissions from existing facilities and spawned concerns by states and industry.

"By taking this step, EPA is signaling that we take these concerns seriously and are committed to strengthening our partnership with the states," Pruitt said.

He stated EPA would take "a closer look" at the need for additional information from the industry.

Ann Weeks, senior legal counsel at the Clean Air Task Force, said that EPA already has "sufficient" information to regulate existing sources and that removing the information collection request "doesn't remove EPA's duty to issue the rules."

Doniger would not give details but said that environmentalists are exploring "innovative ways" to get the agency under court-ordered obligations "where it's disregarding the law."

"We're looking at a variety of options," he said, "for potentially challenging the withdrawal last week or the inaction that it seems to portend."



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6. **UTAH: Air regulators take rare step to ask for governor's veto**

E & E News, March 7 | Emma Penrod, Salt Lake Tribune

In a rare move, the Utah Air Quality Board has joined with local advocates in calling on Gov. Gary Herbert to veto a bill that would bar the state from regulating the burning of wood to cook food.

According to a letter to the governor, HB65 "would directly limit the board's ability to approve future air-quality regulation and enforce existing regulations" and "would prevent the board from developing sensible and science-based rules." The eight-member board, which includes local government officials, industry leaders and environmental advocates, approved the letter unanimously.

The bill, passed by the House and Senate, would require the Division of Air Quality to permit wood burning, even during mandatory no-burn days, if the fire was used to cook.

The Air Quality Board has not typically weighed in on recently passed legislation. Stephen Sands, the board's chairman, said the board has not asked the governor for a veto in at least a decade. But in this case, he said, the board felt it was necessary to act in light of the state's difficulty in meeting federal air quality standards.

The EPA proposed to list Logan, Provo and Salt Lake City as "serious" nontainment areas in December, a year after those communities failed to come into compliance with federal air quality standards for short-term concentrations of fine particulate pollution.

Sands, who represents Kennecott and the state's other mining interests on the board, said he thought it was unwise to take food-related emissions off the table in the wake of a serious air quality designation.

Utah is going to be required to adopt new regulations, said Kerry Kelly, vice-chairwoman for the Utah Air Quality Board representing the University of Utah. If the state is barred from looking at all options, she said, "that limits our ability to identify the most cost-effective strategy" because the required reductions will have to come from other sources.



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If the bill stands, she said, "basically anyone the Division of Air Quality wanted to approach about burning could simply claim to be cooking something. That would make wood-burning restrictions basically unenforceable."

But the bill's sponsor, Rep. Mike Schultz, R-Hooper, said he was puzzled by the opposition.

"We worked with the Division of Air Quality early on and asked their opinion of it," he said, "and they said they were fine with it because it didn't really make any changes."

Attempts to reach division director Bryce Bird for comment were unsuccessful. Bird has stated in the past that his division remains neutral on the bill.

Schultz said he agreed to sponsor the bill, which was proposed to him by Traeger Grills, because he was not convinced backyard grills were responsible for Utah's air pollution problems. He said he was worried Utah residents would be stripped of their rights for something that amounted to little more than a "feel-good measure."

"My concern was that the Division of Air Quality or some group would push to stop backyard barbecuing," he said. "I feel people have a right to backyard barbecue."

But Kelly said that smoke from wood fires has shown up in air quality sensors at the University of Utah. And Sands disagreed that the legislation did not do anything to change state regulations.

"I think there was a subtle but important language change," he said. "We are now precluded from looking at cooking food all the time, not just in an emergency, like it used to say. I feel like it takes wood burning for food preparation out of the mix."

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7. Senate advances measure to kill Obama's Planning 2.0 rule

E & E News, March 7 | Kellie Lunney

The Senate last night advanced a measure that would kill a controversial Interior Department rule revising land management plans for millions of acres of federal lands.

The upper chamber approved on voice vote a motion to proceed to H.J. Res. 44, a measure that would repeal the so-called Planning 2.0 rule, finalized by the Bureau of Land Management in December. H.J. Res. 44 is one of several disapproval resolutions Republican lawmakers have



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introduced this session through the Congressional Review Act in an effort to roll back Obama-era regulations.

Debate on the measure could begin as early as today.

The procedural vote on the resolution to repeal the BLM Planning 2.0 rule followed Senate passage of another CRA disapproval resolution related to an Obama rule affecting federal contractors.

BLM has said that the Planning 2.0 rule, which updates a 34-year-old agency planning rule, creates a more efficient process to modernize and revise the roughly 160 resource management plans for millions of acres of federal lands (E&E Daily, Feb. 8).

But congressional Republicans have said the regulation leaves state and local input out of important federal land management decisions.

"BLM Planning 2.0 is yet one more example of Obama-era federal government overreach," Rep. Liz Cheney (R-Wyo.), the measure's sponsor in the House, said during a one-hour floor debate last month. The House passed H.J. Res. 44 by a 234-186 vote on Feb. 8, mostly along party lines. Four Democrats voted for it, and four Republicans against.

"It takes authority away from people and local communities in my home state of Wyoming and all across the West, and it puts Washington bureaucrats in charge of decisions that directly influence and impact our lives," Cheney said at the time. "It significantly dilutes cooperating agency status, and it discounts input from those who are closest to our lands and our resources."

Gene Karpinski, president of the League of Conservation Voters, sent a letter to senators Friday urging them to vote against H.J. Res. 44, calling it "radical" legislation that "would prohibit the BLM from developing any similar measure in the future."

The Planning 2.0 rule "was developed over more than two years during which time the agency received more than 6,000 public comments, while this Congress has yet to even hold a hearing on this extreme legislation," Karpinski wrote.

Karpinski said that the BLM rule makes the land-use planning process "more efficient" by engaging local stakeholders early on "to avoid disputes and revisions later that cost time and taxpayer money."



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The Senate last week voted to confirm President Trump's nominees for three departments — Energy, Housing and Urban Development, and the Interior — which has freed it up to start tackling several of the House-passed CRA disapproval resolutions.

Other resolutions pending in the upper chamber that could see action this week include measures that would repeal the previous administration's venting and flaring standards to reduce methane emissions, and predator-killing measures in national wildlife refuges in Alaska (Greenwire, Feb. 20).

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8. **PUBLIC LANDS: House bill would allow bicycles in wilderness areas**

E & E News, March 7 | Emily Yehle

Two California Republicans want to allow bicycles in wilderness areas, introducing legislation yesterday to remove a ban on "mechanical transport" in the Wilderness Act.

H.R. 1349 would allow federal agencies to decide whether to allow bicycles, wheelchairs, strollers and game carts into wilderness areas on a unit-by-unit basis. The bill — from California Republican Reps. Tom McClintock and Duncan Hunter— appears similar to one introduced in the Senate last year.

The Sustainable Trails Coalition, which was formed in 2015 to reverse wilderness bicycle bans, applauded the legislation as an effort to put mountain bikers "on the same footing as campers, hikers, hunters and equestrians."

"It's important to understand that reversing the ban is not an open permit," STC board member Jackson Ratcliffe said in a statement. "Land management agencies already have the authority to regulate campsite locations, hunting, and where horses are allowed, or not. This legislation will simply return decisionmaking back to local authorities."

The text of the bill was not immediately available. But if it follows the lead of last year's Senate legislation, it would require federal managers of each wilderness area to determine whether to allow bicycles and other nonmotorized transport.

Environmental groups are opposed to lifting the ban. Last year, 115 groups sent a letter to Congress emphasizing that the Wilderness Act was enacted to protect areas from "expanding settlement and growing mechanization."



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"This has meant, as Congress intended, that Wildernesses have been kept free from bicycles and other types of mechanization and mechanical transport," they wrote. "The undersigned believe that this protection has served our Nation well, and that the 'benefits of an enduring resource of wilderness' would be forever lost by allowing mechanized transport in these areas."

Two other bills affecting public lands were also recently introduced: S. 521 would give veterans discounted passes to national parks, and H.R. 1357 would create a semi-postal stamp to help combat invasive species.

The first bill — from Sens. Jon Tester (D-Mont.), James Risch (R-Idaho), Patty Murray (D-Wash.) and Claire McCaskill (D-Mo.) — would apply to the National Parks and Federal Recreational Lands Pass. Current members of the military get the \$80 passes for free, but S. 521 would allow veterans to buy them cheaply.

Rep. Elise Stefanik (R-N.Y.), co-chair of the Congressional Invasive Species Caucus, introduced H.R. 1357, which would direct the U.S. Postal Service to create the "Combating Invasive Species Semipostal Stamp." Proceeds of the stamp would go to the departments of Agriculture and the Interior to fight invasive species.

In the Senate, Environment and Public Works Chairman John Barrasso (R-Wyo.) also introduced a bill targeting invasive species. S. 509 would direct the Interior and USDA to develop a strategic plan with states and stakeholders to reduce invasive species (E&E Daily, March 6).

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9. **INTERIOR: Bishop wants \$50M to offset federal land transfers**

E & E News, March 7 | Kellie Lunney

House Natural Resources Chairman Rob Bishop (R-Utah) wants \$50 million in the budget to offset any costs resulting from transferring federal lands to states and localities.

The federal government generates revenue from public lands through activities like mining and grazing or timber sales. Under "existing budget conventions," says Bishop, a land transfer would be considered a loss to the federal government.

That's why Bishop asked the House Budget Committee to include a \$50 million offset in its fiscal 2018 spending blueprint, according to a ["views and estimates" document](#) the chairman submitted Friday.



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Earlier this year, at Bishop's urging, the House changed its rules to decree that land transfers "shall not be considered as providing new budget authority, decreasing revenues, increasing mandatory spending, or increasing outlays."

The change means lawmakers cannot block a particular land transfer bill from coming to the floor. But the Congressional Budget Office still scores the legislation, potentially leading lawmakers to demand an offset.

Bishop said the budget should also include language eliminating barriers to transferring public lands to state, local and tribal governments.

Bishop, an advocate of more land management by states and localities, has argued that federal lands can be a burden to states and communities because they cannot be taxed and are often in disrepair.

"If a local government or tribe is managing the land, assuming liability risks and developing the resources, it should be entitled to the income generated by those efforts," the document said.

"Allowing individuals with local knowledge to make better economic use of the land would generate state and local tax income, as well as result in significant management, maintenance, and repair cost savings to the federal government," the document said.

'Unpopular and unworkable'

Natural Resources Committee ranking member Raúl Grijalva (D-Ariz.) said Bishop's \$50 million request amounted to the chairman's latest effort "to get others to take responsibility for the costs and likely legal struggles of his anti-public lands campaign."

Grijalva said Bishop's proposal "asking taxpayers to cover the costs of his land giveaways while allowing the committee he chairs to pretend such costs don't exist" shows that the Republican "knows his anti-public lands positions are unpopular and unworkable."

The Center for Western Priorities, a conservation policy and advocacy organization focused on land and energy issues, also criticized Bishop for "asking taxpayers to foot a \$50 million bill" to "start giving away America's natural resources," said Jennifer Rokala, the group's executive director.

The Outdoor Industry Association issued a statement opposing the proposal. As Natural Resources chairman, Bishop "should be the strongest champion of America's public lands," said Alex Boian, the group's vice president of government affairs.



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"But instead of seeking funding for improved management of and access to these lands, Bishop continually attacks and undermines them, this time asking that the fiscal 2018 budget include \$50 million for federal land transfer to states because these lands 'create a burden for surrounding states and communities,'" Boian said.

Parish Braden, communications director for committee Republicans, said the \$50 million request was a reflection of some estimated costs associated with land transfers like surveying and reviewing applications, and the reality that when CBO scores bills, it doesn't necessarily incorporate the benefits to taxpayers.

Braden dismissed criticism that Bishop is trying to "sell federal parks to oil and gas companies," calling his proposals "a more sincere effort" than that.

Other requests

The Natural Resources Committee budget document also includes proposals and perspectives on several other federal programs and priorities under the panel's jurisdiction, including whether the government should acquire more federal land.

"The committee does not support acquiring additional lands until basic responsibilities are met on the 80 million acres managed" by the National Park Service, the document said.

"These funds would be better directed toward maintenance projects addressing aging and neglected infrastructure," it said. NPS currently has a deferred maintenance backlog of \$12 billion.

Bishop said the panel's GOP majority did not support land acquisition by the Forest Service either "until basic stewardship responsibilities are met on the 193 million acres managed by the USFS."

The chairman cited the allocation and management of funds for combating wildfires as impeding the agency's ability to accomplish other aspects of its mission.

"The committee believes that catastrophic wildfires must be treated like any other natural disaster. Expecting the Forest Service to pay for these large mega-fires out of its discretionary budget is unworkable and unrealistic," the document said.

"Worse, funding that should be used to prevent fires is instead used to fight fires. Each year, this problem grows, and less and less of the Forest Service's discretionary budget is dedicated towards actively managing our national forests," it said.



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Bishop urged the administration to amend former President Obama's withdrawal of Arctic and Atlantic waters from oil and gas leasing.

Obama aimed to make the withdrawal permanent, using an obscure provision of the Outer Continental Shelf Lands Act, and it's unclear whether President Trump can undo such protections.

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10. **CONGRESS: Do Republicans have the votes to kill Obama's methane regs?**

E & E News, March 7 | Brittany Patterson

After a week confirming President Trump's Cabinet nominees, the Senate yesterday returned to choking off Obama-era regulations using the wide-reaching Congressional Review Act.

Lawmakers passed a resolution of disapproval to strike down a rule affecting federal contractors. Next on the docket is a resolution to repeal the Bureau of Land Management's so-called Planning 2.0 rule, which updates a 34-year-old agency planning rule to create a more efficient process to modernize and revise the agency's roughly 160 resource management plans encompassing millions of acres of federal lands.

Conspicuously missing from the calendar so far is a vote on a resolution that would kill BLM's Methane and Waste Prevention Rule, finalized by the Interior Department in November.

S.J. Res. 11, introduced by Sen. John Barrasso (R-Wyo.), would strike down the rule designed to limit the venting, flaring and leaking of methane emissions from more than 100,000 oil and natural gas wells on federal and tribal lands. The House passed its version, H.J. Res. 36, last month, largely along party lines.

Aides from the Senate Energy and Natural Resources Committee said there has been no official word from leadership on if and when the resolution would be brought to the floor for debate and a vote.

That may be because Republicans don't have the votes, said Alan Rowsome, senior director of government relations for lands with the Wilderness Society.

"It is becoming increasingly hard to get senators comfortable with using such a blunt tool as the CRA, but we know that many entrenched special interests are asking for it," he said. "That makes



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this a very high-stakes test of whether Congress will support an out-of-touch industry agenda, or act in the public's interest by getting on with the business of governing."

Under the CRA, a resolution of disapproval needs just a simple majority to pass. Four senators, three Republicans and Democrat Heidi Heitkamp of South Dakota, have publicly expressed uncertainty regarding their support of a CRA effort to kill the methane rule (Greenwire, Feb. 24).

If the BLM methane regulation is overturned through the use of the CRA, not only will the methane regulation be invalidated, but the agency will be barred from crafting a similar replacement rule.

A spokeswoman from Heitkamp's office said the senator was still reviewing the issue. In a tweet posted Feb. 21, the senator noted she was hearing from her constituents "on all sides" of the venting and flaring rule.

"Haven't made a decision or told anyone I have," she wrote. "Will be what best serves ND."

Sens. Susan Collins (R-Maine) and Cory Gardner (R-Colo.) have also expressed uncertainty. Kevin Smith, a spokesman for Republican Rob Portman of Ohio, said the senator is still reviewing the proposal.

The BLM methane rule, five years in the making, replaces regulations three decades old. Interior says the rule would reduce methane emissions by as much as 35 percent. Methane is a potent greenhouse gas, 25 times more powerful than carbon dioxide.

It would also boost federal coffers. The agency estimates that between 2009-2014, about 375 billion cubic feet of natural gas was lost off public lands, enough to supply more than 5 million households for a year. Annually, the Government Accountability Office estimates taxpayers lose \$23 million in royalties when methane is intentionally released, burned off or leaked from wells on federal and tribal lands.

The oil and gas industry and congressional Republicans strongly oppose the rule, calling it a "bad rule." Minutes after it was finalized, the Western Energy Alliance and the Independent Petroleum Association of America filed a lawsuit in U.S. District Court for the District of Wyoming calling the regulation "a vast overreach" of Interior's regulatory authority.

A wide-ranging coalition has mounted a campaign to save BLM's methane rule. Last week, a group of more than 60 local officials from Colorado, Utah, New Mexico, Nevada and the Ute Tribe sent a letter to senators asking they vote against the rule (Greenwire, Feb. 28).



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Public health groups have also strongly opposed the repeal of the rule, saying it reduces deadly air pollution.

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11. **FEDERAL AGENCIES: Why Reagan's vaunted 'starve the beast' plan failed**

E & E News, March 7 | Robin Bravender

In his 1981 inaugural address, President Reagan famously said: "Government is not the solution to the problem; government is the problem."

He promised to "curb the size and influence of the federal establishment" and followed up with a federal hiring freeze and plans to abolish two behemoth agencies: the Energy and Education departments.

President Trump has taken a page from the Reagan playbook on the federal workforce.

Trump similarly slammed the notion of Big Government in his inaugural address: "For too long, a small group in our nation's capital has reaped the rewards of government while the people have borne the cost. Washington flourished — but the people did not share in its wealth." Trump also swiftly froze federal hiring, and his chief strategist, Steve Bannon, said that a White House priority is the "deconstruction of the administrative state."

On the campaign trail, Trump advocated eliminating U.S. EPA. He picked an EPA administrator who made his name suing that agency and a DOE chief who had said he would like to eradicate that department. (The president and Energy Secretary Rick Perry have since walked back their comments about abolishing those agencies.)

But Reagan's plans to drastically shrink the size of the federal government and to ax big agencies failed, and many observers predict that the Trump team will face similar hurdles.

When Reagan departed the White House, the federal workforce was even larger then it was when he took office.

There were about 2.2 million federal employees when Reagan left office in 1989, compared to 2.1 million — an uptick of about 95,000 workers — when he entered the White House in 1981, according to [data](#) from the Office of Personnel Management.



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At EPA, staff dropped for three straight years from about 13,000 in 1980 to about 10,800 in 1983. But the EPA workforce climbed back up during the remaining years of the Reagan administration, with about 14,400 employees in 1989, according to agency budget data. EPA's budget of about \$3 billion in 1981 had grown to about \$5 billion in 1989.

'Very hard to abolish an agency'

Reagan's ambitious plans to abolish the Energy and Education departments also fizzled.

In 1981, Reagan approved a plan to eliminate DOE and send most of its functions to the Commerce Department in a new shop called the Energy Research and Technology Administration, [The New York Times reported](#) that year.

Another proposal floated in 1985 would have merged the Interior and Energy departments, the [Times reported](#).

But those proposals fell through amid staunch opposition in Congress.

Then-Senate Budget Chairman Pete Domenici (R-N.M.) said in 1982, according to the Times, that unless administration officials "decide to take a different stance on this issue, it's dead."

It's "very hard to abolish an agency of any size," said John Palguta, an expert on the civil service and former vice president for policy at the Partnership for Public Service, in part because every agency develops a constituency. So if an administration would rather not have the Department of Education or an EPA, "They find that, well, there's a lot of folks that disagree."

In the case of DOE, "we floated the thing a couple of times, and frankly, the Congress was very resistant to it," said John Herrington, who was Reagan's third Energy secretary. He was on board with the plan to dismantle the department and ship off its duties to other offices.

"There are so many activities in the Energy Department that probably ought to be over in the Defense Department," he said in an interview. "When [President] Carter put this all together, they just threw agencies all together and called it the Department of Energy, so it probably was not a good idea the way they did it."

Herrington said he didn't get a lot of pushback from DOE staff at the time, because employees would likely keep their jobs as the programs were sent to other agencies.

And he wasn't worried about losing his job, he said: "President Reagan would have found something else for me to do."



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Where past administrations have failed to dismantle departments, they have instead adopted a "starve the beast" tactic, Palguta said, by trying to limit agencies' reach through budget and staffing cuts.

But that strategy can pose problems, Palguta added. For example, he said, if EPA "took the kind of hit the administration is proposing, something is going to go off the rails."

If the Trump administration were to succeed in slashing EPA's budget ahead of a major environmental disaster, the White House could experience pushback from voters.

Former Reagan-era EPA boss Bill Ruckelshaus today warned the Trump administration in a [New York Times op-ed](#) to learn from previous mistakes (see related story).

"President Reagan discovered that government backsliding on protecting Americans' health and the environment would not be tolerated by an awakened, angry and energized public," Ruckelshaus wrote. "[A]s soon as the agency stops doing its job," he added, voters are "going to be up in arms."

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12. **FEDERAL AGENCIES: Climate science cuts now coming to fruition**

E & E News, March 7 | Scott Waldman

The expected rollback to federal climate science has begun.

In its preliminary budget proposal, the Trump administration has targeted environmental protections and climate change research. And while the cuts are essentially an opening salvo in what promises to be a fight with Congress once the budget requests formally arrive, they also demonstrate the level of hostility many scientists feared their work would face from the White House.

The administration is seeking a nearly 20 percent cut to the National Oceanic and Atmospheric Administration's budget, including to its satellite division, The Washington Post reported. That includes significant cuts to the National Environmental Satellite, Data and Information Service, which has produced research that disproved the notion of a global warming pause. NOAA's satellites provide invaluable data on climate change that are used by researchers throughout the world. The NOAA cuts target the Office of Ocean and Atmospheric Research, which conducts the bulk of the agency's climate research.



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That's on top of proposed reductions to climate research at U.S. EPA, including a 40 percent cut to the Office of Research and Development, which runs much of EPA's major research. The cuts specify work on climate change, air and water quality, and chemical safety. The Trump administration also has proposed 20 percent staffing reduction at EPA.

More than a dozen federal agencies, including the U.S. Geological Survey, the Interior Department and the Department of Energy, conduct climate research. Further cuts are expected, particularly at NASA, which develops and launches the satellites that provide invaluable information on climate change used throughout the world. President Trump has called global warming a "hoax," and some congressional Republicans pushing for climate science cuts have falsely claimed that federal scientists are engaged in a massive conspiracy to defraud the American public into thinking that human activity is causing the planet to warm.

About a third of the American economy relies on weather, climate and natural hazard data, said Chris McEntee, president of the American Geophysical Union, the nation's largest scientific organization. She said much of the federal scientific research and data comes from multiple agencies working together, so cutting one will have a ripple effect.

"It's not just one agency, it's a holistic view here, and cutting one piece also has an impact on the whole enterprise of what we get out of science from the federal government that enables us to have the kinds of tools and information we need to protect the infrastructure, to protect lives, to protect public safety, and to give us knowledge and information to make a more effective economy and country," she said.

For the last quarter-century, through Republican and Democratic administrations, the funding level for climate change research has remained relatively flat. It hovered at about \$2 billion from 1993 to 2014, according to the Government Accountability Office. The funding for science remained flat even as the overall funding for research, technology, adaptation and international assistance climbed from about \$2.4 billion in 1993 to more than \$11 billion in 2014, the GAO reported.

The NOAA cuts, at least as they are initially laid out by the administration, would be devastating to the agency's scientific research across multiple areas, said Erika Spanger-Siegfried, a senior analyst in the climate and energy program at the Union for Concerned Scientists. She said NOAA's satellites provide information for storm warnings, extreme weather preparation, sea-level-rise predictions and basic weather forecasting essential to the agriculture, real estate and energy industries. She said that when an agency like NOAA absorbs substantial cuts, it could have a reverberating effect throughout all of its functions.



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Spanger-Siegfried said the proposed cuts are already impeding the ability of scientists to perform basic scientific research as the agency grapples with how it can lose such a significant part of its functionality.

"This administration clearly has an anti-science agenda, and within that it has a very energized anti-climate-science agenda that's very visible in the cuts that are being prioritized," she said, adding, "Climate science requires these satellites; not just NOAA scientists but scientists around the world depend on the data that NOAA generates."

The targeting of climate science goes beyond the work of NOAA and EPA. The Earth Science Division of NASA is another expected target.

The administration and congressional Republicans have already spoken about removing or replacing climate research at other federal agencies, as well. At a recent hearing of the House Science Committee, which has jurisdiction over NOAA and other agencies that produce federal climate change research, Chairman Lamar Smith (R-Texas) said he wanted to "rebalance" NASA and shift its climate research to other agencies. Trump transition officials have suggested that NOAA handle NASA's earth science research, but cuts to NOAA suggest the administration is not interested in continuing that research. Smith has also suggested additional scrutiny for science grants from the National Science Foundation, which provides significant funding for climate research.

Scientists reacted with dread to the news of the NOAA cuts, pointing out that the agency has been funded through Republican and Democratic administrations for years.

"A reminder: virtually all we know about Earth's atmosphere & oceans comes from sustained decades of government-funded scientific research," tweeted Daniel Swain, a UCLA climate researcher.

Marshall Shepherd, a meteorologist at the University of Georgia and past president of the American Meteorological Society, wrote in his Forbes blog that such cuts would affect research for years.

"Research cuts compromise our ability to sustain and develop new capabilities in the future," he wrote, "Even 1-4 year lags or reductions can cause long-term damage because of erosion of technical skills, scientific expertise, and industry contracts."

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13. **FEDERAL AGENCIES: Climate science cuts now coming to fruition**

E & E News, March 7 | Arianna Skibell

A lawyer with the Pacific Legal Foundation, which promotes property rights and limited government, is putting forward a new legal theory that could allow Congress and agencies to greatly expand the reach of the Congressional Review Act.

The idea — to target longstanding rules that may not have been properly submitted to Congress — is gaining traction in conservative circles and has been promoted a number of times in the editorial pages of *The Wall Street Journal*.

The CRA was signed by President Clinton in 1996. It requires federal agencies to submit final rules to both Congress and the Government Accountability Office before they can take effect. Congress then has 60 legislative days to review the rule. During that time, lawmakers can schedule a simple majority, up-or-down vote on rules they want to overturn using fast-track procedures.

Until this year, the CRA had only been used successfully once to toss out a Labor Department rule in 2001. But with a Republican-controlled White House and Congress, lawmakers have wasted no time submitting resolutions of disapproval. President Trump has already signed a handful.

Once a rule is eliminated under the CRA, agencies are prohibited from issuing a "substantially similar" rule. The definition of "substantially similar" has yet to be tested in the courts.

Todd Gaziano, a top official at Pacific Legal who was the chief legislative counsel to the CRA's sponsor, former Rep. David McIntosh (R-Ind.), said over the years agencies have failed to properly report hundreds if not thousands of rules to Congress as mandated by the CRA. This, he argues, renders the rules legally unenforceable.

Gaziano would like agencies to immediately dispense with all enforcement actions. He said since the launch of his website, redtaperollback.com, he has been fielding hundreds of calls from interested lawyers.

Wayne Crews, vice president for policy and director of technology studies at the Competitive Enterprise Institute, said if rules are identified that were not properly submitted to Congress, he expects there will be legal challenges by affected parties.



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Gaziano said Pacific Legal is already looking into adding this argument to currently pending cases against enforced rules, and potentially bringing new lawsuits against rules he said are being enforced illegally.

Should agencies choose to send these rules now, the window for congressional disapproval would open, giving lawmakers 60 legislative days to toss rules dating as far back as the law itself.

David Vladeck, Georgetown Law professor and former director of the Federal Trade Commission's Bureau of Consumer Protection, said the fast-track procedures of the CRA disapprovals are designed for rules before they take effect.

"It could cause a nightmare of problems for Congress to repeal a rule after it's gone into effect," he said.

Crews said, however, if substantial unreported rules are identified, he's sure some members of Congress will test the CRA on them.

A 2014 [report](#) to the Administrative Conference of the United States (ACUS), an independent federal agency, found that fewer than half the final rules issued during the first half of 2014 were sent to GAO.

While most missing rules from 2012 through 2014 were routine or informational, there are at least six considered "major" under CRA, the report found.

Curtis Copeland, who authored the ACUS report, agreed that if a rule is not submitted to Congress, the regulation cannot take effect under the CRA. But he said many of those rules were submitted by 2015, and most of the remaining outstanding rules are unlikely candidates for repeal, such as veterans' benefits.

According to research from the American Action Forum, a center-right think tank, there are at least five regulations with notable costs and paperwork burdens that were never sent to Congress, including Department of Energy efficiency standards for pre-rinse spray valves.

Gaziano said identified rules are likely just the "tip of the iceberg."

"There are thousands of guidance documents and rules of all types that were never sent to Congress," Gaziano said. "If [the Trump administration] conducts this orderly review, they may find thousands of rules thought to be in effect that are being wrongly enforced."



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Guidance documents

Often agencies will issue so-called guidance documents. These documents include policy statements and interpretative rules — none of which go through a notice and comment period.

"This is the preferred method agencies have for controversial enforcement guidelines," Gaziano said. "The guidance documents, and some of these are major guidance documents, are almost never sent up to Congress, and some of them are arguably more major than a major rule."

Federal agencies are often accused of issuing rules masquerading as guidance documents as a way to skirt notice and comment procedure.

While agencies are not required to publish such documents in the Federal Register, Gaziano said they are required to send them to Congress under the CRA.

"This category may be the most rich group of rules under the CRA that were not sent to Congress that were required to be sent," he said.

Georgetown Law's Vladeck balked at the notion that agencies would be required to send guidance documents to Congress.

"Guidance documents are not rules," he wrote in an email. "The law is clear that guidance documents are not rules because they impose no enforceable obligations."

The definition of "rule" used in the CRA is taken directly from the Administrative Procedure Act of 1946, which defines a "rule" broadly.

"He's right," Richard Pierce, a distinguished law professor at George Washington University, said. "I testified when Congress passed the CRA, and I urged Congress to narrow the definition of rule because I knew it was absurd to expect agencies to submit every guidance to Congress."

In 1987, the U.S. Army Corps of Engineers' "Wetland Delineation Manual" was published, which explained how to delineate wetlands. In 1993, U.S. EPA began developing regional supplements for site-specific updates of the manual.

"One of them is the Alaska supplement," Gaziano said. "It has a very interesting claim. They claim that permafrost, frozen ground, is a navigable water."

He said this "supplement" was not sent to Congress and is an example of a guidance that a new EPA administrator could send to Congress to toss out with the CRA.



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Both Pierce and Vladeck questioned why an agency would go through the trouble of sending a guidance document to Congress when the president could simply repeal it with the stroke of a pen, as President Trump has already done.

"Yes, you can wipe out guidance documents for any reason, whether they were sent to Congress or not, but you might choose to send some to Congress because if Congress rejects them they can never be reissued in substantially similar form," Gaziano said.

"We really do want an orderly process, where its careful, deliberative," he said.

Pierce said he remains skeptical that Congress could coordinate such a feat.

Judicial review

Section 805 of the CRA states that a court may not review any congressional or administrative "determination, finding, action, or omission under this chapter."

This clear statement that no action under the CRA is subject to judicial review has left some scholars unsure how Gaziano could sue agencies to require them to drop unreported rule enforcement.

Another scenario: An agency is statutorily mandated to issue a rule that is overturned with the CRA. The CRA stipulates the agency has one year from disapproval to issue a new substantially different rule to meet the law's requirement. If a regulated entity believes the new rule is "substantially similar" to the old, can that entity sue?

Trump eliminated a Security Exchange Commission rule that is mandated under the Dodd-Frank banking reform law, meaning the courts will likely grapple with the issue in the coming years (E&E Daily, Feb. 10).

"A court would either not take up the case or find that there's no law to apply to answer and dismiss it," Vladeck said.

"It doesn't make any sense, how's a court going to figure out what substantially similar or not means? It doesn't provide the court with any way to decide the question," he said.

Gaziano said while there is confusion around what is judicially reviewable, he pointed to a legislative history released two weeks after the law took effect explaining what elements the drafters intended the courts to review.



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He said Congress' decision to overturn a rule through the CRA cannot be challenged, but a court could make a determination about whether an agency was legally enforcing a rule and what constitutes "substantially similar."

"Lower courts tend to read judicial limitations broadly and the Supreme Court tends to correct them," he said.

Pierce said the courts could certainly define "substantially similar."

"That case would get to court, no question about that," he said. "But that is going to produce a tremendous amount of litigation. There is no remedy for it."

Business backlash

While conservatives and business groups, like the U.S. Chamber of Commerce, have praised Trump and Congress' efforts to dispense with regulations they say cost jobs and slow economic growth, some businesses have already sunk a fistful of cash into compliance costs.

"This is an interesting project, but there is still the question of whether industry wants these regulations repealed," Sam Batkins, director of regulatory policy at the American Action Forum, wrote in an email. "The farther back in time, the more sunk costs are imposed, and there is the possibility the regulation might have run its course."

McIntosh, the CRA drafter who is now president of the conservative Club for Growth, said those regulated entities will have to go back to the drawing board.

"We set out priorities on new and future rules," he told E&E News at a recent Heritage Foundation conference in Washington, D.C. "The core answer is you rely on market forces and have a regulatory regime that gives robust competition and transparency."

Heritage senior legal research fellow Paul Larkin said from the consumer perspective entities may be disadvantaged.

"It's unfortunate," he said. "We'll avoid those problems on a going-forward basis."

Batkins said if industry is vehemently opposed, that would split the Republican caucus and ensure there is no majority.



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"They can't even get votes to overturn recent, somewhat controversial, efficiency regulations," he wrote in an email. "Not sure how decade-old measures that are controversial will unify all Republicans because Democrats aren't joining these votes."

Plausibility

"His theory is plausible," Pierce said. "I don't think Congress will attempt it, frankly."

He added: "They're after money. They can say, 'Wow, we've come up with this new wonderful way to use the CRA.'"

He said backers of the proposal will send it to their donors like the Koch brothers and "suddenly they get millions," he said. "Even though it's stupid. This is really a silly irrelevant debate."

Amit Narang, regulatory policy advocate for Public Citizen's Congress Watch, said the use of the CRA is making a lot of people on Capitol Hill uncomfortable.

"It's being used quite a bit, and, frankly, I'm not sure folks think it's as good a law as they once did," he said. "Those concerns would be heightened by any attempt to use the CRA to go back further than the Obama administration."

Vladeck said the endeavor is a "fool's errand."

Crews said the impact of the new theory will depend on whether Congress has the stomach for it.

"This is a year where the reg state has really come under scrutiny," he said. "There is an effort to do things."

But Gaziano said a coalition of very important think tanks and academic centers are going to join his efforts to further develop the intellectual infrastructure for the administration and Congress to use the CRA in this way.

"There is a reawakening," he said. "The number of people who contacted me is an indication of a tip of the iceberg. There are thousands of lawyers who are now aware."

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14. **FEDERAL AGENCIES: Climate science cuts now coming to fruition**

E & E News, March 7 | Mike Soraghan

A former U.S. EPA official says that while the agency's study of hydraulic fracturing will likely wind up in the Trump administration's "round file," it still has value for academic researchers.

"Where I think this goes is to academia," said Bernadette Rappold, formerly director of the Special Litigation and Projects Division in EPA's enforcement branch, in an interview. "I don't see any regulations coming out on the federal level."

EPA late last year finished the six-year study on how oil and gas development affects drinking water, which Congress requested when it was controlled by Democrats.

The study found that "hydraulic fracturing activities can impact drinking water resources ... under some circumstances." A draft finding that fracking had not caused "widespread, systemic" contamination was dropped from the final report (Energywire, Dec. 14, 2016).

The effects studied were not limited to the specific practice of hydraulic fracturing, in which chemical-laced water and sand are forced underground at high pressure to break apart rock and release oil and gas.

Researchers looked at related activities that are a part of constructing an oil and gas well. EPA officials said they found impacts throughout what they call the "water cycle."

The study identified several stages at which water contamination "can be more frequent or severe." Those include withdrawing water from streams or groundwater, particularly during drought conditions; surface spills; and fracking into poorly constructed wells that lack mechanical integrity.

Other risky aspects include injecting fracking fluid directly into groundwater resources, which is most likely to occur during coalbed methane production rather than shale drilling.

The report did not make any policy recommendation on drilling or fracturing. Rappold said the report's primary value will be for those continuing to look for ways to avoid problems and minimize dangers.

"They've laid the groundwork for future researchers to build on," said Rappold, now in private practice at Greenberg Traurig.



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Beyond academics, she said, state officials might also find the 666-page report useful.

"They have the ability to marry up that research more easily than EPA," she said.

The agency is now preparing another study on the effects of oil and gas drilling, which was ordered by a Republican Congress. The omnibus spending bill passed in December 2015 gave EPA \$3 million to study drilling in the Appalachian Basin, which includes the Marcellus and Utica shale formations (Energywire, Feb. 15).

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