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**Subject:** Morning Energy, presented by POET: DOE, FERC nominees ready for their closeups — Keystone hints in Trump's Paris dilemma — Montana votes on Zinke's seat today  
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By Anthony Adragna | 05/25/2017 05:41 AM EDT

*With help from Esther Whieldon, Eric Wolff, Darius Dixon and Bernie Becker*

**DOE, FERC NOMS STEP INTO THE SENATE SPOTLIGHT:** The Senate Energy and Natural Resources Committee is trying to vet the energy appointees as quickly as possible, so today brings a three-fer: Deputy Energy Secretary candidate Dan Brouillette, and FERC picks Neil Chatterjee and Rob Powelson are all getting their time in the sun today. Brouillette is well liked among those who know him from his work on congressional affairs at DOE in the early years of the George W. Bush administration. But most of energy industry's interest is focused on the potential FERC commissioners, and they are hoping there are no hiccups for Chatterjee and Powelson so that they can be sped off to restore the agency's quorum.

**Smooth sailing?** Chatterjee, an aide to Senate Majority Leader [Mitch McConnell](#), is well-known to just about everyone on the energy committee (ENR Chairwoman [Lisa Murkowski](#) deemed Chatterjee the "energy whisperer" as he helped shepherd last year's energy bill through the Senate). Powelson, who has been a member of the Pennsylvania Public Utilities Commission since 2008, including several years as its chairman, has strong ties to his state's congressional delegation. He did an [extensive interview](#) with POLITICO last fall, shortly after he became the president of the National Association of Regulatory Utility Commissioners, discussing natural gas pipeline infrastructure, the drama unfolding in regional electricity markets and carbon pricing. But Powelson got in [hot water](#) in March for saying that people protesting pipeline projects were engaged in a "jihad" against natural gas.

**Duty calls:** Getting through the hearing is likely to be easier than giant backlog of work that awaits the two nominees at FERC should they be confirmed, as Darius [explained](#) earlier this month. Add to that the constant flow of tasks on physical and cybersecurity matters, income tax issues and conflict around PURPA. Both Chatterjee and Powelson have been in government for more than seven years, which makes their [financial disclosures](#) and [ethics agreements](#) fairly yawn-worthy. For his part, Brouillette is [giving up](#) interests he has in four small utilities, if confirmed. But with Memorial Day recess afoot, FERC's quorumless streak will hit the four-month mark before ENR can even vote on them, let alone the full Senate. The hearing starts at 9:45 a.m. in Dirksen 366.

**GLIMPSES OF KEYSTONE IN PARIS DEBATE:** President Donald Trump's drawn out decision of whether to leave the Paris agreement evokes a political dynamic oddly similar to the one that Hillary Clinton and Barack Obama faced on the Keystone XL pipeline, another largely symbolic decision, Pro's Nick Juliano [reports](#). He faces pressure from Washington elites and foreign allies who want him to stick with the Paris deal — echoing the D.C. establishment and

Canadian government pressure for Obama and Clinton to back Keystone.

**Trump is hearing arguments** that sticking with the nonbinding pact would weaken his domestic energy agenda from [attorneys general](#) in energy-producing states like West Virginia and Texas, and conservative groups in Washington like the [American Energy Alliance](#). But his most diehard supporters are hardly taking to the streets over the Paris deal, and even some conservative Republicans don't seem all that invested in his ultimate decision. "You know, I didn't like the way that President Obama got into that, but as I think one of my colleagues has pointed out it doesn't cost us any money, and it doesn't obligate us to do anything," Sen. [John Cornyn](#) (R-Texas) said Wednesday. "So it's more an appearances issue."

Trump is said to be leaning against remaining in the deal, which he promised to cancel during the campaign. But he has changed his mind on several other issues so far this year, and a decision has been slow in coming amid the divisions within the administration. Sticking with it would send a begrudging yet powerful signal that the U.S. acknowledges that climate change is a problem worth addressing, even as the administration is already in the process of rolling back Obama's rules that limit greenhouse gas emissions from power plants, automobiles and other major sources, while it hurries to open up vast new tracts of federal land and water to fossil fuel development.

**IT'S ANOTHER BUSY DAY IN WASHINGTON!** I'm your host Anthony Adragna, and the Renewable Fuels Association's Rachel Gantz was first to pick out Vice Presidents Spiro Agnew and John Calhoun as the only two to resign. For today: During the Civil War, who was Jefferson Davis' vice president? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

**PROGRAMMING NOTE** — Due to the Memorial Day holiday, Morning Energy will not publish on Monday, May 29. Our next Morning Energy will publish on Tuesday, May 30. Please continue to follow Pro Energy issues [here](#).

**ME FIRST — 21 REPUBLICAN SENATORS: BID ADIEU TO PARIS:** A group of Republican senators are out with [a letter](#) this morning to Trump urging him to leave the Paris agreement, arguing that sticking with it might allow environmentalists to force climate change regulations through litigation. "Leading environmental attorneys have been candid that they intend to use the Paris Agreement and the existing endangerment finding to force EPA to regulate under Section 115 of Clean Air Act," wrote the lawmakers, including [Jim Inhofe](#), [John Barrasso](#) and Senate Majority Leader [Mitch McConnell](#). Interestingly, they argue the U.S. will retain a voice in future discussions through its participation in the UNFCCC, which some conservatives have urged Trump to withdraw from as well.

**But Brown thinks Trump will come around:** California Gov. Jerry Brown told reporters at a climate change conference hosted by the Netherlands in San Francisco he considers Trump a political "realist" who will likely listen to what Pope Francis, China and other world leaders are saying on the issue, POLITICO California's Carla Marinucci [reports](#).

**\*\* A message from POET - one of the world's largest ethanol producers:** With scientists and engineers, POET operates 30 biofuel facilities & America's first cellulosic biofuel plant. We

produce a cleaner fuel for millions of drivers, every day. We're POET and we're driving innovation, from the ground up. Learn more [here](#). \*\*

**MONTANA FILLS ZINKE'S SEAT TODAY:** Big Sky voters head to the polls today to fill Interior Secretary Ryan Zinke's congressional seat. Republicans are saying the race between Republican Greg Gianforte and Democrat Rob Quist is "[closer than it should be](#)" in the traditionally red state. Polls close at 8 p.m. Montana time so it may be a while before we know how this one turns out. There are late-breaking [reports](#) that Gianforte assaulted a reporter Wednesday.

**OPEC EXPECTED EXTEND QUOTA CUTS:** OPEC and non-member oil producers gather in Vienna today, and an extension of output production of up to year appears to be in the cards, Reuters [reports](#). Recent statements from major oil producing nations indicate the cuts will continue through at least the first quarter of 2018.

**NEVER GONNA GIVE YOU UP:** Don't look now, but a bipartisan Senate group is coming together to get a group of energy tax credits finally over the hump. The group will be working on what a Democratic leadership aide called a "few small items that are well-vetted and should have already been processed," including clean energy tax credits that supporters say were mistakenly left out of a 2015 budget deal, a nuclear production tax credit that lawmakers from Georgia and South Carolina have been fighting for, and an incentive for carbon capture. [Tom Carper](#) (D-Del.), [Chris Coons](#) (D-Del.), [Lindsey Graham](#) (R-S.C.), [Heidi Heitkamp](#) (D-N.D.), [Tim Scott](#) (R-S.C.) and [Sheldon Whitehouse](#) (D-R.I.) are all expected to join the group which might see a couple potential legislative vehicles pop up this year, given that lawmakers will have to deal with government funding and the debt ceiling, and are pressing ahead on tax reform. "The nuclear production tax credits just need to be done," Scott said Wednesday, adding he'd work with "any group that's willing to have the conversation about getting that accomplished."

**One name not attached to the working group:** Sen. [Dean Heller](#) (R-Nev.), a backer of renewable energy tax credits who also happens to be an endangered GOP incumbent next year. But the Democratic aide denied Heller was excluded for political reasons, instead saying he didn't take part in efforts to get the tax incentives extended in the most recent budget deal.

**PRUITT MEETS PUBLIC HEALTH GROUP:** EPA Administrator Scott Pruitt [met](#) Wednesday with representatives of the American Academy of Pediatrics to discuss "how we can continue to improve children's environmental health." The group tweeted, "whenever there is an opportunity to advocate for children to those in power, AAP leaders are there."

**E15 WAIVER HEARING STILL COMING:** It's not scheduled yet, but Senate EPW Chairman [John Barrasso](#) told reporters Wednesday that legislation allow year-round sale of gasoline blends with 15 percent ethanol would still get an EPW markup. "We haven't sent a date yet, but we'll do it," he said. ME readers likely remember the promise of a committee vote got a bloc of corn-state Republicans to back an ([ultimately unsuccessful](#)) effort to overturn an Obama-era methane regulation.

**'First step' on RFS reform:** The House Energy and Commerce Committee took its first official step in revamping the Renewable Fuel Standard with a roundtable discussion Wednesday.

"We're looking forward to continuing our thorough review in order to better understand what's working, what's not, and whether the goals of the program are being achieved," a committee aide told ME.

**MURKOWSKI REMAINS COOL TO SPR SELLOFF:** Don't expect Murkowski, chairman of the energy panel and senior appropriator, to get behind the Trump administration's desire to sell off half the nation's emergency oil stockpile. "I think the direction that the administration is taking or as I'm reading the lines there is 'we don't necessarily need as robust a Strategic Petroleum Reserve because what we're going to do is enhance energy production,'" she said. "I like that, but does that really happen? ... There are some things that need to be reviewed and considered." She promised to ask Brouillette about the matter during his confirmation hearing today.

**MAIL CALL! SAVE THE WETLANDS FUNDING:** 175 House members and 45 senators sent letters to top appropriators asking for robust fiscal 2018 funding for the North American Wetlands Conservation Act program. "NAWCa represents a reasonable, cost-effective approach to wildlife conservation," they wrote. "While we understand the fiscal constraints this year, we would like to point to this program's demonstrated success at developing non-federal sources and diverse partnerships for the conservation of wildlife habitat." Both letters received significant bipartisan support.

**LAWMAKERS TO GAO: TAKE A LOOK AT HANFORD:** An eclectic group of House and Senate lawmakers — Senate ENR ranking member Maria Cantwell, House Energy and Commerce Chairman Greg Walden, Sen. Patty Murray, House Energy and Commerce ranking member Frank Pallone, Sen. Ron Wyden, Rep. Dan Newhouse and House Republican Conference Chair Cathy McMorris Rodgers — asked GAO in a letter to look at ongoing cleanup efforts at the Hanford Nuclear Reservation in Washington and examine what remediation still needs to be completed. "We were alarmed by the recent tunnel collapse at the Hanford site, and are concerned that future events could put the safety of workers, the public and environment at risk," they wrote.

**DELAWARE TRADES WANT EPA TO CHANGE RFS OBLIGATION:** The Delaware AFL-CIO and Delaware Building Trades are asking EPA's Pruitt to change which companies bear the obligation of complying with the Renewable Fuel Standard. In a letter sent yesterday, the union argues that the current system, which requires refiners to purchase credits to prove compliance, "puts merchant refiners like the [PBF Energy's] Delaware City at risk." The union joins the United Steelworkers in asking for the change.

**REPORT: SIGNIFICANT PHISHING ATTACK AT INTERIOR:** A major cybersecurity attack in January 2016 that likely originated outside the U.S. resulted in 1,500 Interior employees receiving phishing emails and approximately 100 compromised email accounts, according to a report released Wednesday by the agency's inspector general. In response, official accelerated the deployment of a two-step authentication process for email access and stopped the attack within 11 days of it beginning.

**REPORT: ANTIQUITIES ACT FUELS LOCAL ECONOMIES:** The Mountain Pact, a collection of Colorado towns, released a white paper today analyzing the importance of the

Antiquities Act for sustaining local economies in the West. "Investment in, protection and expansion of public lands is a vital part of ensuring that mountain communities can continue to sustain and grow their outdoor economies," it states.

**PESTICIDES BILL CLEARS HOUSE AGAIN:** Lawmakers voted 256-165 Wednesday in favor of the Reducing Regulatory Burdens Act, which would exempt pesticide applicators from Clean Water Act permitting requirements, Pro's Annie Snider reports. Similar measures have cleared the House multiple times since a 2009 court ruling that mandated the Clean Water Act permits, but the Senate has never taken them up.

**SENATE DEMOCRATS CRY FOUL OVER OVERSIGHT OBSTRUCTION:** Sixteen senior Senate Democrats, led by Minority Leader Chuck Schumer, sent a letter to Trump demanding answers on whether the White House had instructed federal agencies not to respond to the oversight requests of Democrats. "While some agencies have responded to limited number of these requests, most have gone unanswered," they wrote. "If at the instruction of the White House information is being intentionally withheld on a partisan basis, such actions would be simply unacceptable." Tom Carper, top EPW Democrat, has raised serious concerns about the lack of responsive information coming from EPA to his oversight letter requests.

**LIKE A GOOD NEIGHBOR, PERRY'S THERE:** Energy Secretary Rick Perry will receive the U.S.-Mexico Chamber of Commerce's Good Neighbor Award tonight at 9 p.m. in celebration of "his leadership in fostering collaboration between the U. S. and Mexico during his tenure as Governor of the State of Texas."

**UTAH TOURISM OFFICE PROMOTING NATIONAL MONUMENTS IN CROSS HAIRS:** The Utah Office of Tourism is promoting the Bears Ears National Monument even as the state's governor and congressional delegation is pushing Trump to rescind the monument. Gov. Gary Herbert signed a resolution in February urging the administration to remove the designation. But the tourism office within the governor's office has a page on its website dedicated to the monument. "This 1.35-million-acre national monument covers a broad expanse of red rock, juniper forests, high plateau, cultural, historic and prehistoric legacy that includes an abundance of early human and Native American historical artifacts," the website says. "Just as important to the Bears Ears designation are the modern-day connections that the Navajo Nation, Ute Mountain Ute Tribe, Hopi Nation and other tribes have to this land."

**MOVER, SHAKER:** Tom Starrs, vice president of market strategy and policy for SunPower Corp., has been named chairman of the Solar Energy Industries Association board; Michael Maulick, president of SunLink Corp., will be vice chairman.

## QUICK HITS

China Shuts Only Undersea Coal Mine Amid Production Rebound. AP.

9.8 million people employed by renewable energy, according to new report. CNBC.

U.S. should act against proposed Russian gas pipeline, Democratic senator says. MarketWatch.

Presidents can't undo national monuments, new study says. [Salt Lake Tribune](#).

France's Macron to try to convince Trump to back Paris accords: diplomats. [Reuters](#).

## HAPPENING TODAY

8:15 a.m. Environmental and Energy Study Institute event on transmission infrastructure, Reserve Officers Association, 5th Floor, One Constitution Ave NE

9:30 a.m. House Appropriations Committee [hearing](#) on the U.S. Forest Service, 2007 Rayburn

9:45 a.m. "[Nomination Hearing to Consider DOE, FERC Nominees](#)," Senate Energy and Natural Resources Committee, 366 Dirksen

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**\*\* A message from POET - one of the world's largest ethanol producers:** With scientists and engineers, POET is a biofuels company built from innovation. POET operates 30 biofuel facilities across eight states & America's first cellulosic biofuel plant. Across the country, we support 40,000 renewable energy jobs producing a cleaner fuel for millions of drivers, every day. We are securing a cleaner future for all of us. We're POET and we're driving innovation, from the ground up. Learn more [here](#). \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/05/doe-ferc-nominees-ready-for-their-closeups-023001>

## Stories from POLITICO Pro

### **POLITICO Pro Q&A: NARUC President Robert Powelson** [Back](#)

By Darius Dixon | 12/28/2016 06:15 AM EDT

Robert Powelson, a Republican and Pennsylvania state regulator, was elevated in November to the presidency of the National Association of Regulatory Utility Commissioners, which represents state regulators across the country.

Powelson's been a member of the state's PUC since 2008, including five years as its chairman, where he dealt with disasters like Hurricane Sandy in 2012.

Powelson's one-year NARUC presidency begins amid the transition at the White House and across the executive branch, and his group plans to hammer on its issues like energy infrastructure, nuclear waste and pipeline safety. He's also frustrated with grid operators who he feels are "putting their heads down in the sand" when it comes to state initiatives aimed at rescuing nuclear plants and the need for PHMSA to have a leader that isn't "stuck inside the Beltway."

*This interview has been edited for length and clarity.*

**NARUC presidents tend to have a particular issue of focus for their leadership. What are NARUC's priorities for 2017?**

This is one of those rarified opportunities when you're elected to be president of NARUC and you're on a parallel path with a presidential transition. In Pennsylvania, we have great leaders in [GOP] Reps. Bill Shuster and Lou Barletta and what I've tried to stress is that we're all about infrastructure roads, bridges, airports, mass transit, all that but let's not forget what we do as public utility regulators with energy infrastructure.

It's the pipeline replacement and siting, transmission buildout, water infrastructure in a post-Flint, Mich., world where we're having a national discussion about lead contaminants. We're going to be stressing our points around the need to invest in energy infrastructure. We recognize the ports and the airports and the mass transit and intermodal transportation needs and infrastructure, but NARUC's going to be sitting there articulating a message around energy infrastructure as well.

**How high a priority is nuclear waste and potentially moving forward with the Yucca Mountain repository?**

From a NARUC perspective, we're becoming a little impatient with how these markers on Yucca keep getting moved. ... I've been to Yucca Mountain. I've been inside the mountain. I know it's there. I know it's been paid for.

**In the past, NARUC approved a resolution saying the nuclear waste fee imposed on utilities shouldn't be restarted until the Energy Department moves ahead with Yucca or some other program authorized by Congress. If Yucca is back on the table, where is NARUC on the fee?**

As the spent fuel stays onsite, I think policymakers in states like Pennsylvania and Illinois [leading] nuclear production states, at the state legislature level and state homeland security level there's a little bit of heartburn in terms when we're going to have this national solution.

Honestly, we have not had that kind of discussion recently at NARUC. I think a lot of people think about it at the macro level. State PUC commissioners believe it's been paid for and we're being asked to do it again.

**New York approved a clean energy standard that includes subsidies for nuclear plants, and Illinois recently did the same. Do you see other states embracing that?**

The Pennsylvania market a net exporter of power, 46,000-plus megawatts, No. 2 natural gas production in the country next to Texas we've seen close to a 56 percent drop in wholesale power prices since 2008, we've seen a market-based decarbonization since 2008.

Today, because of the benefits of the Marcellus here in the Northeast, we're bringing gas out of the wellhead at a \$1.96 MMBtu. In fact, Pennsylvania gas is almost a dollar cheaper than Henry Hub quoted gas. These are all the real-time, 'what's going on in the marketplace' [elements]. And then we have, at the federal level, a discussion about the Clean Power Plan and a meeting that took place on Capitol Hill about three months ago with DOE officials, representatives from the

Nuclear Energy Institute, the Edison Electric Institute, and now all of a sudden everybody's like, "Oh my God. We've missed the mark on nuclear price formation issues."

Pennsylvania has a renewable portfolio standard. That RPS does not recognize the value of nuclear. It does not recognize the potential investment that a nuclear operator can make with a steam generator retrofit. And Pennsylvania is a devout supporter of competitive markets. [There are the] issues of Diablo Canyon in California and the issue of price distortion because of wind and the federal production tax credit, and the New York example of saving western nuclear units, jobs. Pennsylvania is a very different market than Illinois, New York and California.

We're following it in other states, but the construct would have to be looked at in the policy lens of the renewable portfolio standard in Pennsylvania being amended to recognize the value of nuclear. Granted, we don't regulate generation in Pennsylvania, but we recognize that value when we had the polar vortex in 2013 when we had a 24 percent forced-outage rate across PJM. The darling child that kept the lights on at 5 o'clock at night as people were coming home from work was nuclear power.

This issue needs to be looked at by PJM the issue of nuclear price formation. The RTOs need to deal with the issue. Pushing it back to state regulators by these one-off mechanisms if you're in a restructured market basically puts us back in the business of doing integrated resource planning.

### **So, you're hoping for market-wide approaches?**

Yeah, that, or if Congress wants to solve the problem, then put a value on carbon. But that's not gonna happen either.

I was in the room when [Sen.] [Lamar Alexander](#) in 2008 articulated a vision of a nuclear renaissance. Well, we haven't seen a nuclear renaissance. It's Watts Bar, Vogtle and SCANA and that's it. ... I'd love a nuclear renaissance. The problem is we've also got the gas renaissance taking place.

### **What are the central problems you have with the state-by-state approach to rescuing power plants?**

It creates too many, what I call, energy policy moral hazards, and you're [looking to] state regulators that are not in the business of doing integrated resource planning, and you're asking us to do that. I think it creates a bastardized market construct and at the end of the day, this issue is best resolved with the RTO in our case PJM putting that value on carbon and dealing with it. Sheepishly, RTOs are putting their heads down in the sand and not saying a word.

### **Do you think they're expecting FERC to deal with this?**

I think what they're looking to do is, as these things germinate in states, the RTO is now put in the very awkward position of how does this work in the capacity auction construct, and how does it pass the screen test at the FERC level of not bastardizing the Federal Power Act.

### **Do you get the sense that RTOs are waiting for the courts and FERC to address the New**



## **York clean energy standard before they take their next step?**

That's seems to be the posture that we're seeing in PJM because if you take the Illinois example and assuming there's a discussion in New Jersey, and a discussion here [in Pennsylvania], the RTO is best equipped to address that. If there's going to be a value in the wholesale power market construct in our organized market, the grid operator needs to determine that, not the state regulator.

## **What other big issues are on NARUC's priorities?**

Obviously, the Clean Power Plan is something the new administration will seek our input on. Then there are issues around net-neutrality and some FCC decisions and then you come back to energy. One of the big things after the passage of the SAFE PIPES Act this year, is that there is a disconnect between the states and PHMSA. One of our priorities with the new administration will be how critically important it is to identify a PHMSA administrator that understands the plight of gas safety operations back in the states.

These are largely domiciled in the state public utility commissions, but let's use my state as an example. We've got a lot more responsibility in the last five years. There was a state statute signed into law giving us new jurisdictional oversight. That comes with hiring new personnel, new engineers. Well, guess what there's one training location in the U.S.

This has become a common-thread issue, brought up in a resolution that passed that expressed a concern that [PHMSA] can't expect states to ramp up their safety operations when there's only one training location in the country. When I was on the hill, and I talk to people like [Reps.] Lou Barletta and Bill Shuster and Sens. [Bob Casey](#) and [Pat Toomey](#), they were alarmed to hear that.

Help us solve it. If you don't want to do brick-and-mortar training facilities, that's fine. But let's come up with a reasonable approach. It could be at a community college, it could be a university setting, whatever. But we gotta get beyond this backlog in training because it's really gonna come back and bite us.

PHMSA, at the administrative level, needs an individual in there that understands how state-based gas safety operations work know the modus operandi. They can't be stuck inside the Beltway. You need someone who understands those state issues. It's been a very combative relationship. In fact, with PHMSA directors from [Cynthia] Quarterman to [Marie] Dominguez, we've pulled our hair out trying to get them as speakers. The joke at NARUC is that we know we've hit a homerun when the PHMSA administrator accepts an invitation to speak.

We're equal access. We want to have high-level, key administration folk come through. I give [EPA Administrator] Gina McCarthy a lot of credit. She worked NARUC and met with people who were diametrically opposed to the Clean Power Plan but she took the time to at least talk to us.

*To view online [click here](#).*

[Back](#)

## **New FERC picks face a mountain of difficult business** [Back](#)

By Darius Dixon | 05/09/2017 07:09 PM EDT

President Donald Trump's new picks for FERC should have little trouble winning Senate confirmation, and once they do they will face a mountain of decisions about the future of power markets, the agency's relationship with the states, and its approach to enforcement.

Trump's long-awaited announcement that he would fill two vacancies on the five-seat commission couldn't have come soon enough for Sen. [Lisa Murkowski](#), who is angling for quick confirmation hearings before her Senate Energy and Natural Resources Committee.

"The FERC has been without a quorum since early February and they need the ability to get to work," Murkowski told reporters Tuesday.

Trump nominated Neil Chatterjee, a senior energy adviser to Senate Majority Leader [Mitch McConnell](#), and Robert Powelson, a Pennsylvania regulator with strong relationships in Congress, to the commission, but he has yet to tap a permanent FERC chairman. That position has been expected to go to Kevin McIntyre, a Jones Day lawyer who also is an expert in the Federal Power Act, FERC's core statute. In more than two decades with Jones Day, McIntyre has had a slew of energy industry clients, including South Carolina Electric & Gas Co. and SCANA Corp., making his financial disclosures and ethics paperwork more complicated than those who have been in government for several years.

The agency has been experiencing a traffic jam of energy infrastructure projects needing the leadership's blessing.

"We are already building up quite a backlog," acting FERC Chairwoman Cheryl LaFleur said recently, noting that there'd been a steep drop-off in the number of orders issued since former Chairman Norman Bay's resignation in February dropped it to two members, preventing a quorum needed to conduct a lot of its most critical business.

Many of those orders, dealing with issues such as interstate natural gas pipeline projects and contested electricity rate plans, still require followup decisions to be made when more leaders are brought on. To help ease the agency's pileup, staff have been lining up draft orders for new commissioners to review as soon as they're sworn in.

Perhaps the biggest issue looming over the agency is how it plans to address a growing number of state-level policies tailored to specific energy sources — such as nuclear incentive programs recently approved in New York and Illinois — that are complicating the markets under FERC's jurisdiction.

The Electric Power Supply Association, which represents independent generators, filed complaints in January calling on FERC to ensure electricity prices in upcoming spring auctions in the [New York](#) and the mid-Atlantic area [PJM Interconnection](#) markets were not artificially lowered by state programs that subsidize struggling nuclear plants. But until at least one new member is confirmed, FERC's hands are tied.

Meanwhile, Ohio, Connecticut, New Jersey and Pennsylvania have all started to mull their options for helping power plants in their states just as state regulators and a broad swath of the energy industry has increasingly looked to FERC for policy guidance.

Presidents and Congress typically aim to achieve geographic balance at FERC, and Powelson would be the only representative of a PJM state if he is confirmed.

In addition to being the largest power market overseen by FERC, PJM may test how the agency irons out differences or butts head with with states crafting lifelines for power plants. And Powelson has called for market operators to take a more forceful role in addressing issues such as aiding nuclear power through carbon pricing rather than leaving states to take bites out of the markets.

"I think it creates a bastardized market construct and at the end of the day, this issue is best resolved with the RTO in our case PJM putting that value on carbon and dealing with it," Powelson said in an interview with POLITICO last fall. "Sheepishly, RTOs are putting their heads down in the sand and not saying a word."

Carbon pricing got a lot of airtime at FERC's recent technical conference as perhaps the most market-friendly way to support nuclear power. Still, it was also clear that states within the same electricity market, like New England, couldn't agree on moving ahead with carbon pricing.

Another part of the policy deluge the new commissioners will feel pressure to act on is the agency's closely watched price formation initiative, which focuses on developing new market rules that boost how power plants are paid in an increasingly complex grid. That initiative, which was launched following the 2013-14 polar vortex that caused electricity prices in the Northeast to skyrocket, has been eyed particularly by companies with around-the-clock baseload power plants, like the nuclear industry.

The FERC vacancies also exacerbated uncertainty surrounding the commission's work to protect energy markets against alleged manipulation. Once a new commissioner is confirmed and a permanent chairman in place leaders will have to decide how to respond to recent court losses over how they run enforcement cases. While FERC lawyers handle the particulars of each case, the commission leadership will have to debate any overarching change to its enforcement strategy, particularly if judges are going to force them to practically build the cases from scratch again.

FERC Commissioner Colette Honorable also recently announced that she will leave the agency later this year. Her departure provides another opening for Trump to fill but because FERC's board can't have more than three members of the same political party, tradition indicates that Democrats will pick who fills the seat.

*To view online [click here](#).*

[Back](#)

**Trump's Keystone-style conundrum on the Paris climate deal [Back](#)**

By Nick Juliano | 05/25/2017 05:03 AM EDT

President Donald Trump is dragging out a decision on the Paris climate change pact, creating a political dynamic strangely similar to the one that Hillary Clinton and Barack Obama faced on the Keystone XL pipeline, another policy call that was mostly symbolic.

Whether Trump exits or remains in the international climate pact will have little impact on U.S. greenhouse gas emissions, much like how Obama's decision to block Keystone did not reduce U.S. oil consumption.

The 2015 Paris deal itself was hailed as the major breakthrough in global cooperation to fight climate change, but the pact itself carries little weight, since it's built on individual nations' domestic actions and doesn't include penalties for failing to act. Trump's advisers have split over whether to exit the deal, an approach preferred by conservatives like chief strategist Steve Bannon and EPA Administrator Scott Pruitt, or to stay in and attempt to weaken the U.S. commitment, the preferred approach of Secretary of State Rex Tillerson and Ivanka Trump, among others.

Trump has already begun systematically eliminating the Obama policies that were built into Washington's commitments under the deal and he can continue to do so even if he stops short of withdrawing. Similarly, even if Obama had approved Keystone, that single project would not be enough to counteract the emissions reductions promised by the rest of his climate policies.

Another Keystone parallel: Trump is essentially being asked to side with either the Washington elites and foreign allies who want him to stick with the Paris deal, or the voters who elected him, most of whom doubt the scientific consensus that humanity is responsible for climate change.

"It's the deplorables versus the swamp, the elites versus the deplorables," said Myron Ebell, the director of the conservative Competitive Enterprise Institute's Center for Energy and Environment who initially headed Trump's EPA transition operation.

On his first foreign trip this week, Trump is getting foreign pressure from the Vatican and European leaders to not abandon the climate deal, just as Obama and Clinton were lobbied by the Canadian government to approve the Keystone pipeline.

Many of the same Keystone-inspired activists who chained themselves to the White House fence during the Obama administration have marched by the hundreds of thousands against Trump's environmental policies. And although Trump's white working class base has been mostly silent on Paris deal, several [state attorneys general](#) and conservative groups like the [American Energy Alliance](#) have urged the White House to leave the pact.

CEI ran TV ads ahead of the president's foreign trip urging him to pull out of the deal, and dozens of mostly Washington-based conservative groups have written letters arguing against Paris. Ebell said more groups were expected to sign onto future letters, and Republican members of Congress likely would weigh in next week as well.

But there appears to be little evidence that Trump's genuine grassroots supporters are motivated by the Paris agreement itself, even as they cheer the president's regulatory moves to end what he

calls Obama's "war on coal." Meanwhile, hundreds of thousands of liberal activists marched in Washington and around the world last month to protest Trump's policies.

Like the apathy that settled in around Keystone over time, some conservative Republicans are saying it's not a big deal if Trump decides to stay in.

"You know, I didn't like the way that President Obama got into that, but as I think one of my colleagues has pointed out it doesn't cost us any money, and it doesn't obligate us to do anything," Sen. John Cornyn (R-Texas) said Wednesday. "So it's more an appearances issue."

The Trump administration is in the process of rolling back Obama's rules that limit greenhouse gas emissions from power plants, automobiles and other major sources, while it hurries to open up vast new tracts of federal land and water to fossil fuel development.

Those moves have been cheered in the rural, energy-producing states that helped deliver Trump the presidency and they will have a profoundly greater effect on whether the planet can avoid potentially catastrophic global warming by the end of the century than whether Trump crosses out Obama's signature on the Paris pact documents filed away at U.N. headquarters.

If Trump decides to keep his pen in his pocket, it would send a begrudging yet powerful signal that the United States acknowledges that climate change is a problem worth addressing. That signal to the markets, combined with ambitious actions underway in Europe and China as well as states like California, would support the ongoing shift toward renewable fuels and natural gas hindering the coal industry revival Trump so often promised on the campaign trail.

As a result, the future of the Paris deal has taken on outsized importance in the debates over the president's domestic and foreign policy goals.

"I think the people who look more than a few months ahead in the administration and in the conservative movement, and I'd also say in Congress, understand that Paris threatens that whole agenda," Ebell said, predicting Trump would ultimately exit the deal.

"It will be used in litigation by environmental pressure groups to try to stop major pieces of that agenda" because the voluntary pledge Obama submitted specified that policies like the Clean Power Plan and strict vehicle emissions rules were necessary to meet the U.S. emissions reduction target, he added.

When Trump visited the Vatican Wednesday, Pope Francis presented the president with several books, including a copy of Laudato Si, his encyclical demanding a response to the climate crisis. "Well I'll be reading them," Trump said of the books, according to a pool report.

And Vatican Secretary of State Pietro Parolin pressed Trump to stay in the Paris deal when they met, Tillerson said, and the president has not yet made up my mind.

The meeting included "a good exchange the difficulty of balancing addressing climate change, responses to climate change, and ensuring that you still have a thriving economy and you can still offer people jobs so they can feed their families and have a prosperous economy," Tillerson said. He added: "It's an opportunity to hear from people. We're developing our own

recommendation on that."

Trump is said to be leaning against remaining in the deal, which he promised to cancel during the campaign. But he has changed his mind on several other issues so far this year, and a decision has been slow in coming amid the divisions within the administration.

"It was pretty clear we were winning" when word began circulating a few weeks ago that Trump would decide on Paris before leaving for his foreign trip, Ebell said. But now, "I think this is a period of great danger."

Anti-Keystone activists also used time to their advantage, and they managed to stretch out the saga for five years after then-Secretary of State Clinton said the administration was "inclined" to support the project in 2010. As a presidential candidate, Clinton was dogged by environmentalists over her refusal to take a stand on the project until she finally came out against it in September 2015. Obama formally rejected Keystone two months later citing the U.S. efforts to build support for the Paris agreement among his reasons for turning it down.

Ebell said he is not worried about the lack of anti-Paris protesters in the streets because Trump knows "who elected him and why" and understands that Paris will affect the rest of his agenda.

"We're not trying to replicate the methods of the other side," he said. "We're trying to replicate the intensity, but intensity can be demonstrated in a lot of different ways."

Still, Paris supporters are optimistic that the president does not plan to make up his mind until after he returns from the G-7 summit at the end of this week.

"Every day that goes by that they haven't withdrawn is a good day," Sen. [Brian Schatz](#) (D-Hawaii) told POLITICO. "He is now in the process of getting an earful wherever he goes. And that's good."

*To view online [click here](#).*

[Back](#)

**Brown: Trump will come around on climate change** [Back](#)

By Carla Marinucci | 05/24/2017 06:08 PM EDT

SAN FRANCISCO California Gov. Jerry Brown, one of the Democratic Party's most outspoken critics of Republican climate change policy, said Wednesday he now believes that President Donald Trump is a political "realist" who will likely listen to what Pope Francis, China and other world leaders are saying on the key issue - and that progress under his administration may be "not as disastrous as we thought a few months ago."

Brown cited Trump's meeting with Pope Francis on Wednesday - and the delivery of a papal encyclical on climate change - as one reason for optimism. Other positive signs: China's growing efforts to contain pollution and the effects of global warming, and the Trump administration's approval this week of \$657 million for the electrified Caltrain project in the San Francisco Bay

Area.

"President Trump is a realist - and there's nothing more real than the atmosphere and the chemistry that determines our weather and our long-term climate," Brown told reporters at a climate change conference hosted by the Netherlands in San Francisco on Wednesday. "I don't know that he's going to come aboard immediately - but I do know that with our efforts in California, joining with other states and other provinces in the world, that we will be successful in pushing this agenda.

"There will be some bumps in the road," Brown said. "There's a great deal of denial - I see that in some of the people [Trump has] appointed. But I'd say the trend is toward dealing with climate change - and I don't think President Trump will stand in the way of that, ultimately."

The California governor - who has in the past lambasted Republicans as "luddites" on the climate change issue and Trump as a climate change denier - said he took it as a good sign that the president met with Pope Francis and that the two discussed the issue.

"Don't underestimate the power of the Holy Father," Brown said. "The pope is talking about climate change, he's handing him an encyclical ... and there are many conservative leaders in the world who support" efforts to reduce climate change.

The papal encyclical calls for drastic cuts in fossil fuel emissions, and the gift has been viewed as pressure on Trump to not withdraw from the Paris climate accord.

Trump has recently played up his admiration and positive relationship with Chinese President Xi Jinping, and Brown noted that the fact that "China is asserting such a world leadership role" in the matter is key. Brown will head to China next month to meet with Chinese leaders "and further that effort ... and I don't think President Trump will want to stand aside as this climate story unfolds."

Brown also cited the federal funding for Caltrain - the electrification of a commuter rail project that serves tens of thousands of workers daily in Silicon Valley - as a sign of progress, because it comes in spite of objections from GOP Majority Leader Kevin McCarthy and the Republican House delegation.

"Obviously, President Trump had a very different view than Mr. McCarthy," Brown said. While it appeared initially that the project was in danger from the Republican opposition, "that's the wonderful thing about politics - no matter what someone says today doesn't mean they won't change their minds tomorrow."

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[Back](#)

**Republicans: Montana special election 'closer than it should be' [Back](#)**

By Elena Schneider and Gabriel Debenedetti | 05/24/2017 05:17 AM EDT

GREAT FALLS, Mont. Republican Greg Gianforte's closing motivational speech to voters ahead of Thursday's special House election in Montana is the same thing GOP strategists are whispering in private: "This race is closer than it should be."

It's a recurring nightmare of a pattern for Republicans around the country, as traditional GOP strongholds prove more difficult and expensive for the party to hold than it ever anticipated when President Donald Trump plucked House members like Ryan Zinke, the former Montana Republican now running the Interior Department, for his Cabinet. Gianforte is still favored to keep the seat red, but a state Trump carried by 20 percentage points last year became a battleground in the past few months.

Democrat Rob Quist, a folk singer and first-time candidate, has raised more than \$6 million for his campaign, including \$1 million in the past week alone as energized Democratic donors pour online cash into political causes this year. Quist hopes that enthusiasm also contributes to an outsize turnout as it did in special elections in Kansas and Georgia earlier this year for the oddly scheduled Thursday election, happening just before a holiday weekend.

"I remember talking to people when it first started who said this was a slam dunk, Gianforte's it. And it's not there anymore," said Jim Larson, the Montana Democratic Party chairman. "It is a lot closer than people ever thought it would be."

Gianforte, a technology executive, has led consistently in polls for the special election, but Quist has narrowed that lead to single digits in recent weeks, according to private surveys. "Gianforte has an edge, but it's not going to be a slam dunk," said one national GOP strategist.

Republicans have called on Vice President Mike Pence and Donald Trump Jr. to calm their nerves about turnout and prevent Democrats from having the only energized voting bloc in the special election. Both have rallied voters with Gianforte, and Pence recorded a get-out-the-vote robocall. Gianforte, who said little about Donald Trump when Gianforte ran for governor and lost in 2016, has cast himself as a willing and eager partner of the president this time around.

On Tuesday, surrounded by Trump stickers and some Trump hat-wearing supporters Gianforte said he was eager "to work with Donald Trump to drain the swamp and make America great again," invoking two of the president's campaign slogans. Pence's robocall may give another boost to Republican turnout efforts.

But the environment has changed since Trump's presidential win last fall. One senior Republican strategist warned that, based on the party's performance in special elections so far, if Republicans "cannot come up with better candidates and better campaigns, this cycle is going to be even worse than anybody ever thought it could be."

"The fact that we're talking about Montana a super red seat is amazing," said John Lapp, who led the Democratic Congressional Campaign Committee during the 2006 cycle. "It's also amazing how much money Republicans have to pour into these seats to defend them. It's still a steep climb in Montana, but we know that the reaction there means that there's a tremendous amount of Democratic energy across the country, a tremendous amount of fundraising that will then feed into races that are much fairer fights."



Democrats hope the passage of House Republicans' health care bill just three weeks before the election will put the wind at Quist's back. It has been the subject of Quist's closing TV ads, and he has called the plan "devastating" to Montana.

GOP outside groups have ensured that Republicans have a spending advantage, though, airing more than \$7 million worth of TV ads, versus about \$3 million from Democrats. House Majority PAC, Democrats' main House outside group, on Tuesday added a last-minute \$125,000 TV ad buy to the race, on top of \$25,000 announced last week.

But those ads may have reached a point of diminishing returns in a state that prefers retail politics, said Matt Rosendale, the Republican state auditor.

"The airwaves are saturated, and when people see political commercials come on, they completely block it out. I think there's a lot of money wasted on it," Rosendale said. "It's a necessity in Montana to meet people. You have to be able to go out and meet with them, look them in the eye and answer difficult questions face-to-face."

Operatives in both parties privately grumble about the quality of their candidates, with each arguing their paths to victory might be clearer with a standard-bearer carrying a little less baggage.

Republicans acknowledge that Gianforte has flaws Democrats exploited mercilessly in last year's gubernatorial race, likely cementing negative feelings about him from some voters. Gianforte is dogged by reports that he sued Montana to block access to a stream in front of his ranch, kicking up a public lands dispute that hits home with Montana voters and has "probably followed him into this House race," said Jeff Essman, the state's GOP party chairman.

Democrats, too, acknowledge that Quist isn't without his problems. Republican TV ads repeatedly attack Quist's various personal financial problems, including "a defaulted loan, tax liens, collections, foreclosure notices." Republican groups dug into Quist's medical records and questioned his musical performance at a nudist colony.

"I haven't seen this kind of opposition research on both sides on a House race in a long time," said one Democratic strategist who's worked in the state. "This is what you get when candidates are chosen in a nominating process and there's no vetting. Some people would say Quist is authentic, an outsider, a la Donald Trump, but Quist has a problematic record because he hasn't spent his career in politics being careful."

Quist called in his own big-name reinforcements to activate the Democratic base and cater to the populist streak in the state, as Vermont Sen. Bernie Sanders headlined a handful of rallies alongside Quist last weekend.

It's a gamble, Sen. Steve Daines (R-Mont.) said, that could alienate some in the state, where Trump remains popular.

"Rob Quist is too liberal for Montana — he is very liberal. Democrats who have won statewide in Montana tend to be moderate, and Quist is no moderate," said Daines, who campaigned alongside Gianforte in the final stretch of the race. "Who did he parade across Montana this

weekend? Bernie Sanders."

*To view online [click here](#).*

[Back](#)

## **Montana House GOP candidate cited after reporter says he 'body-slammed me' [Back](#)**

By Hadas Gold and Gabriel Debenedetti | 05/24/2017 08:36 PM EDT

HELENA, Mont. Montana Republican congressional candidate Greg Gianforte was issued a citation late Wednesday after he allegedly "body-slammed" a reporter at a campaign event on the eve of a hotly contested special election.

Ben Jacobs, a reporter for The Guardian [tweeted](#) that Gianforte "body-slammed me and broke my glasses" at a campaign event in Bozeman, Montana minutes before what was to be the last campaign rally of the campaign. Jacobs said he had asked Gianforte about a new budget analysis of House Republicans' effort to repeal and replace the Affordable Care Act.

Late Wednesday, Gallatin County Sheriff Brian Gootkin issued a statement saying the Republican congressional candidate had been cited for "misdemeanor assault" and that Gianforte would have to appear in court by June 7 to resolve the matter. "The nature of the injuries did not meet the statutory elements of felony assault," the sheriff said in his statement.

The incident rocked a closely watched contest, just hours before voters cast their ballots in Thursday's special House election in Montana to replace Ryan Zinke, who is now the Trump administration's secretary of the interior. Gianforte, a technology executive, is running against Democrat Rob Quist, a folk singer and first-time candidate. The race in the traditional Republican stronghold is [turning out to be closer](#) than many thought it would be.

The encounter on election eve immediately captured statewide and even national attention. At least one local station interrupted prime-time programming for a breaking news report and reports bannered all of Montana's biggest newspapers.

[The Billings Gazette](#) subsequently rescinded its endorsement of the Republican candidate, saying: "We're at a loss for words." The newspaper added: "We will not stand by that kind of violence, period."

Gianforte's campaign acknowledged an incident but offered a starkly different version of events one contradicted by witnesses and by audio posted by The Guardian. Gianforte spokesman Shane Scanlon blamed Jacobs for being "aggressive" as he asked questions and for creating a scene.

"Tonight, as Greg was giving a separate interview in a private office, The Guardian's Ben Jacobs entered the office without permission, aggressively shoved a recorder in Greg's face, and began asking badgering questions. Jacobs was asked to leave," Scanlon said.

"After asking Jacobs to lower the recorder, Jacobs declined. Greg then attempted to grab the

phone that was pushed in his face. Jacobs grabbed Greg's wrist, and spun away from Greg, pushing them both to the ground. It's unfortunate that this aggressive behavior from a liberal journalist created this scene at our campaign volunteer BBQ."

Audio of the incident [posted by The Guardian](#) seemed to directly contradict the Gianforte campaign's version, as did a number of witnesses including a Fox News crew that was in the room during Wednesday's incident.

Alicia Acuna [wrote](#) on Fox News' website that she and a crew were preparing for an interview with Gianforte when Jacobs walked into the room, produced a voice recorder and asked Gianforte a question. After Gianforte rebuffed Jacobs, and Jacobs asked a follow-up question, Gianforte grabbed him by the neck, Acuna wrote.

"Gianforte grabbed Jacobs by the neck with both hands and slammed him into the ground behind him," she wrote. "Faith, Keith and I watched in disbelief as Gianforte then began punching the man, as he moved on top the reporter and began yelling something to the effect of 'I'm sick and tired of this!'"

In audio of the incident, Gianforte can clearly be heard getting upset. In it, Jacobs asks Gianforte about the Republican health care bill. Gianforte tells him, "Let me talk to you about that later" as Jacobs continues trying to ask a question. "Speak with Shane," Gianforte says, referring to his spokesman.

"The last guy did the same damn thing," Gianforte says.

"You just body-slammed me and broke my glasses," Jacobs says.

"Get the hell out of here," Gianforte yells.

Gootkin, the sheriff, initially declined to file charges, saying that he had not yet listened to full audio of the incident. He subsequently issued a citation.

In March, Gootkin donated \$250 to Gianforte's campaign, according to an FEC filing.

"After the press conference it was brought to my attention that people were commenting on a contribution that I made to the Gianforte campaign. I did contribute \$250.00 on March 23, 2017. This contribution has nothing to do with our investigation which is now complete," the sheriff stated.

The sheriff said charges followed multiple interviews and an investigation by the Gallatin County Sheriff's Office. He said it was a misdemeanor based on "the nature of Jacobs' injuries."

Other reporters on the scene confirmed via Twitter that they witnessed some sort of altercation between the two.

"I'm not sure I've seen anything like this before," BuzzFeed reporter Alexis Levinson, who was on the scene, [tweeted](#) in a long thread. "This happened behind a half-closed door, so I didn't see it all, but here's what it looked like from the outside. Ben walked into a room where a local TV

crew was set up for an interview with Gianforte. All of a sudden, I heard a giant crash and saw Ben's feet fly in the air as he hit the floor."

"Ben walked out holding his broken glasses in his hand and said: 'He just body-slammed me,'" Levinson continued.

Whitney Bermes, a reporter for the Bozeman Daily Chronicle, tweeted that the police were called to the scene. The Daily Chronicle also reported that Jacobs was treated by an ambulance on the scene, and Bermes later tweeted that one person was transferred to the hospital.

"Gianforte sitting in a Jeep. Sheriff's deputies were talking to him earlier. Now a medic is at the window talking with him," Bermes also [tweeted](#).

Gianforte then left the event before he was scheduled to speak, according to reporter tweets.

In an interview, Jacobs told MSNBC he approached Gianforte and asked him about the Congressional Budget Office's score of the House bill to repeal and replace the Affordable Care Act.

"It was the strangest moment in my entire life reporting," Jacobs said.

He said after calling his editor and police, he went to the hospital to have X-rays because he fell on his elbow.

The Guardian, in a statement released late Wednesday, said it stood by its reporter.

"The Guardian is deeply appalled by how our reporter, Ben Jacobs, was treated in the course of doing his job as a journalist while reporting on the Montana special election," U.S. editor Lee Glendinning said. "We are committed to holding power to account, and we stand by Ben and our team of reporters for the questions they ask and the reporting that is produced."

The Democratic Congressional Campaign Committee called on Gianforte to drop out of the race "after his alleged violent assault of an innocent journalist," spokesman Tyler Law said.

Quist declined to comment on the news after his first Missoula event of the evening, then also didn't address it at his second, a quick rally to thank his supporters at a brewery.

The candidate instead walked on stage, joined his opening act for a song, and repeated much of his stump speech for roughly seven minutes. He then walked off the stage and again declined to answer questions about Gianforte.

*Elena Schneider and Cristiano Lima contributed to this report.*

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[Back](#)

**Senate fails to advance methane CRA [Back](#)**

By Ben Lefebvre | 05/10/2017 10:33 AM EDT

Republicans may have seen their last chance to easily overturn an Obama-era regulation disappear this morning after the Senate failed to advance legislation to repeal an Obama-era rule on methane emissions.

Senators voted 49-51 against a procedural measure to take up the Congressional Review Act resolution reversing the BLM regulation tightening limits on methane leaking from oil wells and pipelines. This week is the last chance for Senate Republicans to block late Obama-era regulations under special CRA rules that block CRA resolutions from being filibustered. Sens. [Susan Collins](#), [John McCain](#) and [Lindsey Graham](#) joined all Democrats in voting against the motion.

Oil companies have fought to repeal the rule, arguing it would raise their cost of doing business. Democrats and environmentalists have said the rule would increase the amount of methane sold on federal lands, increasing royalty payments into federal coffers.

**WHAT'S NEXT:** The failed vote prevents Congress from easily reversing the BLM methane rule, but President Donald Trump has directed his administration to review and possibly revise it.

*To view online [click here](#).*

[Back](#)

## House clears bill exempting pesticides from Clean Water Act permitting [Back](#)

By Annie Snider | 05/24/2017 05:15 PM EDT

The House today has again approved a measure to exempt pesticide applicators from Clean Water Act permitting requirements.

Lawmakers voted 256-165 in favor of Rep. [Bob Gibbs'](#) Reducing Regulatory Burdens Act, similar versions of which have been passed multiple times in the past, but failed to gain traction in the Senate.

Proponents of the bill say that Clean Water Act permitting requirements are duplicative and burdensome, since pesticides must also be registered under the Federal Insecticide, Fungicide, and Rodenticide Act. They also say it hinders the response to public health dangers like mosquitoes carrying the Zika virus.

But Democrats opposing the bill contested both arguments, saying the Clean Water Act requirements are not duplicative since nothing in FIFRA limits the use of pesticides in waterways that are already polluted with too many pesticides. They also point out that applicators can fill out permitting paperwork after the fact when there is a pest emergency.

**WHAT'S NEXT:** Consideration of the pesticide permitting issue moves to the Senate. Although the House has passed similar measures multiple times since a 2009 court ruling mandating the Clean Water Act permits, the Senate has not acted on them.

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[Back](#)

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**Cc:** Megan Bloomgren[megan\_bloomgren@ios.doi.gov]  
**From:** Chambers, Micah  
**Sent:** 2017-05-16T16:26:44-04:00  
**Importance:** Normal  
**Subject:** Re: From Washington Post  
**Received:** 2017-05-16T16:27:31-04:00  
[4-6-17 VF CRA Briefing.docx](#)  
[4-6-17 VF CRA VF Expanded Bullet List.docx](#)

Background docs attached. I wouldn't recommend talking to press about it, but I'll leave that for you all to decide. It's a lose-lose narrative post CRA.

On Tue, May 16, 2017 at 3:38 PM, Swift, Heather <[heather\\_swift@ios.doi.gov](mailto:heather_swift@ios.doi.gov)> wrote:

Meg/Micah - are you familiar with the thinking behind this letter?

-

Heather Swift  
Department of the Interior  
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Hi Folks

I am writing an editorial on the BLM methane rule, given the failed CRA vote last week. Was the outcome of the vote perhaps welcome at Interior, given that using the CRA would have prohibited DOI from issuing a regulation substantially like the rule finalized last year? Sec. Zinke's letter to Sen. Portman on the subject assured that DOI would have maintained the authority needed to restrain fugitive methane emissions, but that authority would have been questionable, no?

As for the letter's content, I would appreciate it if someone could walk through some of the specific options Sec. Zinke mentions, which seem fairly vague (evaluating criteria for venting and flaring, venting and flaring thresholds and time limits; strengthen policies to encourage companies to capture methane to be used for other purposes, etc.). How different could a new rule be than the existing one?

Thank you.

All Best,

Steve

Steve Stromberg

The Washington Post

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Micah Chambers

Special Assistant / Acting Director

Office of Congressional & Legislative Affairs

Office of the Secretary of the Interior



- Encouraging beneficial use of oil or gas on lease
  - Under the Mineral Leasing Act, oil or gas that is used on lease for production purposes is not subject to royalties. NTL-4A provided guidance as to the particular uses of oil or gas termed “beneficial purposes” that would not be subject to royalties. NTL-4A’s “beneficial purposes” included heating oil or gas to condition it for market, compressing gas to place in marketable condition, and fueling drilling rig engines.
  - A non-controversial part of the Venting & Flaring Rule (43 C.F.R. subpart 3178) replaced NTL-4A’s “beneficial purposes” with an expanded and clarified list of “royalty-free uses.” Following a repeal of the Rule, the BLM would consider how the beneficial-use policies of NTL-4A could be strengthened, either through internal guidance or additional rulemaking, in order to encourage conservation through beneficial use of oil or gas on lease.
- Regulating flaring of unmarketable gas from oil wells
  - Oftentimes, especially in tight oil formations like the Bakken, oil production is accompanied by a extensive amounts of gas production, termed “associated gas.” Depending on the value of the associated gas and the availability of gas pipelines, it may not be economical for an oil-well operator to capture the gas, leading the operator to dispose of the gas through flaring.
  - NTL-4A required BLM approval for the routine flaring of associated gas. Such approval could be obtained upon a showing that capture of the gas is not economically justified and that conservation of the gas would lead to a premature abandonment of recoverable oil reserves and ultimately to a greater loss of energy than if the gas were flared. Following a repeal of the Rule, the BLM could consider how NTL-4A’s restrictions on routine flaring could be strengthened, either through internal guidance or through additional rulemaking.
- Conserving unsold gas by injection
  - Operators may find the subsurface injection of gas to be an attractive means of disposing of gas that cannot be economically captured for market. Gas may be injected into the reservoir to enhance oil recovery, or it could be injected with the intent to recover it later. The viability of injecting unsold gas is dependent on the local geology as to whether it is suitable for accepting gas for reinjection to conserve it for future needs.
- Improving ROW timelines and removing obstacles to timely approval for pipeline infrastructure.
  - An important factor driving the flaring of associated gas is the lack of access to gas pipelines. Operators complain that pipeline construction is being delayed by the BLM’s failure to approve rights-of-way (ROW) in a timely manner. ROW approvals are impacted by coordination with other surface managing agencies (BIA/USFS/FWS/BOR/ArmyCOE).
- Recognizing State/tribal policy/rules, such as those in North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana
  - Many states with Federal oil and gas production already have regulations addressing flaring. North Dakota, for example, requires operators to submit waste minimization plans with their APDs and requires operators to capture a certain percentage of the gas they produce. Wyoming and Utah place volumetric limits on flaring, and Colorado has detailed LDAR requirements. The BLM could consider avoiding a duplicative, one-size-fits-all rule that ignores effective regulations already imposed by the states.

## BLM Venting & Flaring Rule

### Summary of the Final Rule:

The “Venting & Flaring Rule” (the Rule) is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). Currently, only 12 percent of operators have reported flared gas from oil well production. The Rule is codified in 43 CFR subparts 3178 and 3179 and became effective on January 17, 2017.

### Statutory Authority and Regulatory History:

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §§ 188–287) subjects federal oil and gas leases to the condition that lessees will “use all reasonable precautions to prevent waste of oil and gas developed in the land . . . .” 30 U.S.C. § 225. Further, the MLA requires lessees to exercise “reasonable diligence, skill, and care” in their operations and requires lessees to observe “such rules for the health and safety of the miners and for the prevention of undue waste as may be prescribed by [the] Secretary [of the Interior].” 30 U.S.C. § 187. The Federal Oil and Gas Royalty Management Act (FOGRMA) makes lessees liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence or the failure to comply with applicable rules or regulations. 30 U.S.C. § 1756. Both the MLA and FOGRMA authorize the Secretary of the Interior to prescribe rules and regulations necessary to carry out the purposes of those statutes. 30 U.S.C. § 189; 30 U.S.C. § 1751.

Before promulgation of the Venting and Flaring Rule, the Bureau of Land Management (BLM) regulated the venting, flaring, and beneficial use of gas pursuant to NTL-4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule included many regulatory changes, including emissions-focused requirements that did not appear in NTL-4A. Multiple states and industry groups believe that these new requirements are actually within the jurisdiction of the Clean Air Act (CAA) and therefore outside the Department’s authority to regulate.

### If the Rule is Not Repealed under the Congressional Review Act (CRA):

Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare for compliance dates. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), imposes restrictions on venting, and clarifies that when gas is “avoidably lost” and it is therefore subject to royalties. Operators must comply with the Rule’s flaring (or “gas capture”) requirements, equipment upgrade/replacement requirements, and leak detection and repair (LDAR) requirements beginning on January 17, 2018.

The BLM expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million, with first year compliance costs estimated to be \$113 million (\$84 million for LDAR alone).

The Rule will continue in effect unless the BLM rescinds or replaces the Rule through the rulemaking process outlined below, or the Rule is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with a minimum litigation cost of \$500,000. If the new rulemaking is overturned in litigation, the Venting and Flaring Rule would come back into effect.

If the Rule is Repealed under the CRA:

If the Rule is repealed under the CRA, NTL-4A would come back into effect immediately. The BLM retains its existing authority under the MLA and FOGPMA to make effective updates to NTL-4A while ceding some of the more duplicative regulatory provisions to states/EPA under the CAA.

The BLM could consider policy actions to curb waste and focus on revisions to NTL-4A to address the following:

- Encouraging beneficial use of oil or gas on lease
- Regulating flaring of unmarketable gas from oil wells
- Conserving unsold gas by reinjection
- Improving ROW timelines and removing obstacles to timely approval for pipeline infrastructure
- Recognizing existing State/tribal policy/rules, such as those in North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana

If a court overturns any replacement or revision of NTL-4A, NTL-4A would come back into effect.

**Table: Rulemaking Schedule**

Activity	Description	Timing
Advanced Notice of Proposed Rulemaking (ANPR)	OPTIONAL. The BLM would solicit input from the public on whether, and how, NTL-4A should be revised.	1 month to publish 2 months for public comment
Notice of Proposed Rulemaking (NPR)	The BLM would develop a NPR based on previous rule experiences or comments received from ANPR process. The Office of Management and Budget (OMB) needs to review and clear the proposal.	3 months to draft NPR 3 months for OMB review
NPR comment period	The NPR is published in the Federal Register for notice-and-comment period.	2 months
Comment review/ Drafting final rule	The BLM reviews the comments and revises the rule in light of those comments. The BLM sends the revised/final rule to OMB for review.	2 months review/drafting 3 months OMB review
Final rule is published	The BLM publishes the final rule in the Federal Register	After publishing, 2 months until effective
Total time to publish		13 months (for NPR) 16 months (including ANPR)
Total cost		\$1.2 2.1 million

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## Bureau of Land Management

Daily update · May 12, 2017

### NEWS

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#### **BLM** to offer leases to oil and gas operators in December

Glenwood Springs Post Independent

The **Bureau of Land Management** seeks public comment on a proposal to offer 28 parcels or 27,280 acres of federal minerals, nearly 5,000 acres of ...

**BLM** looking to lease public lands to oil & gas companies - KKCO-TV

**BLM** seeks public comment on oil and gas leasing proposals - KKCO-TV

Full Coverage



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#### Bennet, Western senators ask Sec. Zinke to reverse suspension of **BLM** resource council meetings

The Denver Post

Sen. Michael Bennet on Thursday joined a group of Western senators in asking the

**Department** of Interior to lift its sudden suspension of advisory ...



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#### GAO provides recommendation to improve **Bureau of Land Management** inspection data ...

Daily Energy Insider

in protecting the environment. According to GAO, **BLM's** field offices document inspections and use data inconsistently, which makes it difficult to ...



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#### Time running out to use Congressional Review Act to reverse regulations

Crain's Detroit Business (blog)

During the Obama Administration, the **Bureau of Land Management (BLM)** promulgated the "Methane Waste Prevention" Rule, which sought to ...



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## The Latest: New Mexico Will Get Budget Boost From Oil Leases

U.S. News & World Report

New Mexico state finances are likely to get a \$70 million boost this month after the U.S.

**Bureau of Land Management** rejected environmental protests ...



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## 3 Conservation Orgs Just Stopped Oil Leasing on 1 Million Acres of Public **Lands** in California

EnviroNews (registration) (blog)

The **BLM** has not opened any oil leases in California since 2013, when a federal judge ruled that the agency had violated the National Environmental ...



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## **BLM** flaring and venting rule repeal flares reactions

Minot Daily News

Heidi Heitkamp, with a key vote, voted on Wednesday against a resolution disapproving the **Bureau of Land Management's** methane flaring and ...

**BLM** rule is only CRA bill voted down - Dodd Frank Update

Our view: Methane rules: A welcome victory - Santa Fe New Mexican

Full Coverage



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## **BLM** plans oil, gas auction in local area

Elko Daily Free Press

RENO – The **Bureau of Land Management** plans to sell more than 100 parcels of oil and gas leases in the Battle Mountain district next month.



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## 8 Democrats urge Zinke to lift suspension of advisory panels

E&E News

The **Bureau of Land Management** in the past week has told members of its 30 resource advisory councils (RACs) to postpone scheduled meetings as ...



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## Firm loses challenge on expired Mesa leases

Grand Junction Daily Sentinel

A federal appeals board has dealt a setback to an oil and gas company and a victory for environmentalists and the **Bureau of Land Management** in ...



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WEB

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## Air quality general conformity evaluation : **Bureau of Land Management** Lower Sonoran and ...

SearchWorks : Stanford - Stanford University

Responsibility: prepared for the **Bureau of Land Management** by ICF International.

Language: English. Publication: [Phoenix, Ariz.] : [U.S. Department ...



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**Subject:** POLITICO's Morning Energy, presented by Trout Unlimited: Taking stock of GOP's CRA push — U.S. signs on declaration urging climate action — Pence tours coal mine in Montana today  
**Received:** 2017-05-12T10:07:22-04:00

By Anthony Adragna | 05/12/2017 10:00 AM EDT

*With help from Ben Lefebvre and Eric Wolff*

**WHAT A CRA-ZY RIDE:** They suffered a setback with the failure of a methane challenge this week, but the Republican-led Congress was positively glowing as the clock ran out Thursday on its fastest tool to overturn their most-hated Obama-era regulations. To review, 13 Congressional Review Act resolutions have been signed into law by President Donald Trump (one more awaits his John Hancock) and four directly relate to energy or the environment. They are:

- Pub.L. 115-4, which nullified an SEC rule that required oil and mining companies to disclose their payments to foreign governments,

- Pub.L. 115-5, which axed Interior's Stream Protection Rule that sought to protect surface and ground water supplies from coal mining pollution,

- Pub.L. 115-12, which tossed out BLM's regulation updating and streamlining the agency's more than 30-year-old process for creating land use plans, and,

- Pub.L. 115-20, which killed a Fish & Wildlife Service regulation that barred certain hunting practices such as baiting, trapping and denning animals like wolves and bears in Alaskan national wildlife refuges.

**Republicans take victory lap:** Senate Majority Leader Mitch McConnell argued in remarks on the Senate floor the resolutions had already improved Kentucky's coal industry: "While we can't simply turn back time or completely erase the negative impact that Obama regulations have had already, the CRA has allowed us to stop a number of them in their tracks while also preventing agencies from creating similarly harmful rules in the future," he said. And Senate EPW Chairman John Barrasso said also hailed the CRAs, while suggesting there's "much more" the Republican-led government would do. "I plan to make sure that the Trump administration keeps up the pace and tosses some of these worst rules and regulations ... into the garbage where they belong," he said in floor remarks.

**Democrats bemoan action:** They say it's soon to know the real impacts from the CRAs, but Democrats fear the actions will severely impede the ability for agencies to issue necessary regulations. "I don't know there are any knock-out blows, but a couple have done some damage," Senate EPW ranking member Tom Carper told ME. "And the damage will occur further down the road in making it nearly impossible for agencies to come back and offer a more thoughtful regulation."

**ICYMI:** Pro's Alex Guillén looked at what happened on the CRA front last week and what questions lie ahead.

**IT'S FRIDAY EVERYONE!** I'm your host Anthony Adragna, and the answer to Thursday's question: former California Rep. Laura Richardson was the last lawmaker formally reprimanded. For today: Who holds the title for second longest-serving governor in U.S. history (after current Iowa Gov. Terry Branstad)? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](https://twitter.com/AnthonyAdragna), [@Morning\\_Energy](https://twitter.com/Morning_Energy), and [@POLITICOPro](https://twitter.com/POLITICOPro).

**TILLERSON SIGNS ONTO STATEMENT WITH CLIMATE MENTIONS:** Even as Trump weighs whether to remain a party to the international pact, Secretary of State Rex Tillerson signed onto the Arctic Council's "Fairbanks Declaration of 2017," which cites the Paris climate change agreement, Pro's Eric Wolff reports. The document - also signed by seven other foreign ministers - notes "the entry into force of the Paris Agreement on climate change and its implementation," and reiterates "the need for global action to reduce both long-lived greenhouse gases and short-lived climate pollutants," while it reaffirms "the United Nations Sustainable Development Goals and the need for their realization by 2030." Tillerson's move stands in sharp contrast to Energy Secretary Rick Perry's refusal at a G-7 energy ministers gathering last month to sign a joint statement that would have included references to the Paris deal.

**The Sierra Club said in response:** "Just five months ago, a standard, commonplace agreement like this to share climate science research and reiterate the importance of global action to reduce climate pollutants would have barely been newsworthy."

**\*\* A message from Trout Unlimited:** For over 50 years, Trout Unlimited has been dedicated to conserving, protecting and restoring North America's coldwater fisheries and watersheds on behalf of today's anglers and coming generations of sportsmen and women. Join us as we support America's public lands and national monuments: <http://bit.ly/2paVoYB> \*\*

**PENCE'S MINER DETOUR:** Vice President Mike Pence heads to Montana today, where he'll tour the Westmoreland Coal Company's Absaloka Mine on the Crow Indian Reservation by horseback and participate in listening sessions with officials in the "energy producing and coal mining industry." The 10,427-acre permitted, single-pit surface Absaloka mine provides coal to Midwestern utilities, including Xcel Energy's Sherburne County Station near Minneapolis, and can produce 7.5 million tons of coal annually, according to its website. Interior Secretary Ryan Zinke and Sen. Steve Daines also tag along.

**After touring the coal mine,** Pence participates in an event for Greg Gianforte, who hopes to succeed Zinke as Montana's congressman. An ad released Thursday argued "Greg Gianforte will fight for our access to public lands" amid attacks from his opponent, Democrat Rob Quist, about his stance on public land stances.

**PRUITT TALKS WOTUS TIMELINE:** Continuing his tour of friendly conservative outlets, EPA Administrator Scott Pruitt told radio host Hugh Hewitt he hopes by "sometime late this year or early next" to have issued a final new Waters of the U.S. regulation. "Folks across the country,



citizens and industry and states and the federal government deserve a clarity on what a Water of the United States equals," he said. "If you are going to determine on a case by case basis what a Water of the United States is, then that doesn't provide advance notice on how to regulate, how to take care of it, and how to invest. So it's a situation we need to get right."

**... And tries to tamp down science adviser controversy:** Pruitt also said controversy over the EPA's decision not to reappoint 12 science advisers was overblown, as many of those people might ultimately get their slots back. "These individuals can apply, will apply, I'm sure, in some instances, and very well could be put back on the board," the administrator said. "But it's the right thing to do to ensure transparency, its activity, peer-reviewed science and geographical representation on the board."

**NEXT STEPS FOR ETHANOL WAIVER:** Bipartisan legislation from Sen. Deb Fischer that would allow year-round sale of gasoline blends with 15 percent ethanol will get a Senate EPW markup and hearing, your host and Pro's Eric Wolff report. Chairman John Barrasso made that commitment as Senate Republicans were trying to secure the support of a small bloc of corn-state Republicans for a CRA to reject the methane rule that ultimately failed on the floor Wednesday. Sen. John Thune told reporters "we'll assume that [commitment] sticks" despite the failed methane vote, though Barrasso's office did not respond to requests for comment.

**CANTWELL WEIGHING FERC PICKS:** Senate Energy ranking member Maria Cantwell told reporters said she worked with Trump FERC pick Neil Chatterjee, a senior energy adviser to McConnell, on issues related to the energy bill last year but hadn't begun to review his nomination in earnest. "I had a brief conversation with Neil yesterday about market manipulation and issues, and I'm sure I'll be diving into questions about why those policies are so important," she said. Cantwell added she didn't know Pennsylvania regulator Rob Powelson, the other FERC selection, and hadn't yet begun to look at his record.

**It's not FERC but** the Senate Energy Committee announced late Thursday it would hold a hearing May 18 on David Bernhardt's nomination to be deputy secretary of the Interior. Trump tapped the lobbyist and former George W. Bush administration official for the post on April 28.

**WADING INTO NAFTA FIGHT:** A possible NAFTA fight is drawing in the American Fuel & Petrochemical Manufacturers, the group's CEO told ME. The refiners association stayed out of TPP discussions, but has put NAFTA on its issues target list in light of drastically increasing U.S. fuel exports to Canada and Mexico. "We're going to start looking at it because the President and his administration has made it an issue. We care more and more about export and trade," CEO Chet Thompson said. The group hired former EIA market analyst and Exxon Mobil senior business adviser Susan Grissom late last year to help analyze trade issues. And while AFPM hasn't yet identified a wish list for any renegotiation, it certainly doesn't support the rip-it-up approach President Trump has espoused. "We are certainly for free trade," Thompson said.

**Ready for Trump to staff up:** The lack of top staff at agencies is frustrating Thompson, who told ME that Trump will struggle to implement his deregulatory agenda if he doesn't get going. "This is across the board, this is every agency feeling this," he said. "We want these vacancies filled ASAP. We're encouraging all of our trade association and companies to urge everybody to do their part to speed this process up." Trump lags each of the past four administration's in filling

Senate-confirmable posts, according to the Partnership for Public Service. Thompson said they're waiting on decisions from EPA that are slowed by lack of political leadership. "That's a problem for everybody, the agency, us, everybody," he said. "We have petitions pending at the agency, ...it's going to be hard for the agency to act on those petitions until the get some leadership up there."

**CYBERSECURITY ORDER TOUCHES ON GRID:** The secretaries of Energy and Homeland Security have 90 days under an executive order signed by Trump Thursday to assess how the nation might respond to a large, sustained power outage caused by a cyber attack, Pro's Darius Dixon reports . Energy Secretary Rick Perry and DHS Secretary John Kelly were asked by Aug. 9 to look at a "potential scope and duration of a prolonged power outage associated with a significant cyber incident," American readiness to respond to such an outage and "any gaps or shortcomings in assets or capabilities required to mitigate the consequences of such an incident."

**In response,** Edison Electric Institute President Tom Kuhn said his organization looked "forward to working with the Administration to ensure industry and government continue to work closely together to protect the energy grid." And the American Public Power Association praised the action as well, adding that "as threats evolve, so too must the efforts of industry and government to mitigate them."

**WIPP IS GOOD:** Perry's tour of DOE facilities this week, which included Idaho National Laboratory and Los Alamos National Laboratory, took him to the the Waste Isolation Pilot Plant in New Mexico on Thursday. The nuclear waste repository "serves a vital national security role. The employees and contractors are proud professionals who help keep America safe," he tweeted.

**MAIL CALL! REINSTATE THOSE ADVISORY BOARDS:** Eight Western Senate Democrats, led by Sen. Ron Wyden, asked Zinke in a letter to lift suspensions of long-standing local committees and advisory boards. "By working through difficult land management issues and getting local input from the beginning, projects are more likely to succeed," they wrote. "Without this tool, many good land management projects would never be completed."

**WARNING SHOT FIRED!** Washington Attorney General Bob Ferguson sent Zinke a letter Thursday stressing any effort to rescind or reduce national monuments in his state would draw a lawsuit. "No President, however, has ever claimed the authority to revoke National Monument status," he writes. "The reason is simple: the [Antiquities] Act does not contemplate any such revocation, and to do so would be contrary to the language of the statute and the structure in which the law delegates Congress's constitutional authority."

**AND I WANT TO THANK YOU:** A lunchtime rally outside EPA HQ today at 11:30 a.m. will thank agency employees for their efforts in honor of Public Service Recognition Week. "We want to let them know that we greatly appreciate their endless work, especially now that their work is more important than ever before," organizers wrote. Hosts of the rally are 500 Women Scientists, AFGÉ and the Earth Day Network.

**PERRIELLO TALKS CLIMATE TODAY:** With a month to go before the Virginia gubernatorial primary, Democrat Tom Perriello will meet with the Chesapeake Climate Action Network in Norfolk at 2 p.m. today to discuss climate issues.

## QUICK HITS

- Lawmaker under investigation after taking money, fighting Superfund cleanup of toxic neighborhoods. [AL.com](#).
- Survey: Internal watchdogs worried about Trump hiring freeze. [AP](#).
- Prison time served, coal CEO Don Blankenship insists explosion not his fault. [SNL](#).
- Trump's climate stance casts shadow over Arctic meeting. [Reuters](#).
- Would creating one big electric grid in the West threaten California? [San Francisco Chronicle](#).
- EPA audit of Michigan drinking water program incomplete after 18 months. [MLive](#).

## THAT'S ALL FOR ME!

**\*\* A message from Trout Unlimited:** For over 100 years the Antiquities Act has been a bipartisan tool for conserving America's public lands and our outdoor heritage. Since the time President Theodore Roosevelt signed the Act into law, the Antiquities Act has provided for the long-term conservation of some of the best fish and wildlife habitat and hunting and angling opportunities in the country, spurring local economies. In these places, locally driven conservation efforts need to be preserved and celebrated. Currently, the Department of the Interior is reviewing national monuments designations. Secretary Zinke has strongly supported keeping America's public lands in public hands. Join us in showing him that we support upholding our national monuments: <http://bit.ly/2paVoYB> \*\*

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## **Conventional Energy:**

### **Continuing Coverage: Interior Department Will Reconsider Seismic Survey Applications.**

[E&E Publishing](#) (5/11) reports in continuing coverage that the Interior Department is allowing ocean seismic survey companies to explore the oil and gas potential in the Atlantic Ocean Basin. The department will reconsider applications from six companies to update the information on the ocean off the Mid-Atlantic coastline. The [Wilmington \(NC\) Star News](#) (5/11, Wagner) reports the Bureau of Ocean Energy Management acting director Walter Cruickshank said, "BOEM's mission is to manage the development of our nation's offshore resources in an environmentally and economically responsible way," and that the "BOEM currently employs mitigation measures and safeguards to reduce or eliminate impacts to marine life." [Subsea World News](#) (5/11) reports that the directive does not guarantee the seismic survey permits, only that the BOEM will resume its evaluation to determine if the companies will be individually approved or denied. The International Association of Geophysical Contractors (IAGC) approved the directive. IAGC president Nikki Martin said, "Today's action to correct the course for sound U.S. energy policy demonstrates this administration's commitment to science over politics and to lawful procedures over rhetoric." [reNews](#) (5/11) reports the Interior said the Obama-era denial had underestimated the benefits of gaining updated geological and geophysical information and ignored an environmental impact statement, which showed "no significant impacts are expected to occur as a result of these seismic surveys."

[Charleston \(SC\) Regional Business Journal](#) (5/11, Heffernan) also provided

coverage.

**Lawmaker Files Bill To Stop Drilling Off South Carolina.** The AP (5/11) reports South Carolina State Representative Leon Stavrinakis filed a bill that would ban offshore drilling in the state. He said, "We need to protect our beaches from the risk of drilling for oil and gas in the Atlantic. ... I cannot stand idly by while this risky scheme imperils South Carolina's tourism jobs, fisheries, and beaches."

The Coastal Observer (SC) (5/11, Best) reports South Carolina State Sen. Stephen Goldfinch sponsored a bill to hold an advisory referendum on oil and gas drilling. Goldfinch said the referendum is the best way to get feedback from the people and inform Gov. McMaster about the issue. Goldfinch said, "I don't see any harm in letting the people of South Carolina tell us what they think about offshore drilling."

Sharon E. Richardson, the executive director of Audobon South Carolina, writes in the Charleston (SC) Post and Courier (5/11, Richardson) that ecologists and economists agree that offshore drilling is a "bad bargain for South Carolina."

**Testing Could Lead To Drilling Off New Jersey.** NJ News (5/11) reports that the directive could lead to drilling off the coast of New Jersey. Rep. Frank Pallone Jr. said, "It is very possible that seismic testing could lead to oil and gas drilling off our coast – threatening public health, coastal communities, and hundreds of thousands of jobs." Pallone, along with US Sens. Robert Menendez and Cory Booker have introduced legislation banning oil and gas drilling in the Atlantic Ocean.

## **Renewable Energy**

### **Maryland Public Service Commission Approves Offshore Wind Farms.**

The Hill (5/11, Cama) reports that "Maryland energy regulators approved two offshore wind farm projects to be built off the state's coast." The Hill adds, "the projects by U.S. Wind Inc. and Skipjack Offshore Energy would have a combined 368 megawatts of capacity with 77 turbines at least 14 miles off the coast," and "they would be the second and third utility-scale offshore wind farms in United States waters." The AP (5/11, Witte) reports that the Public Service Commission "said the two projects are expected to yield more than \$1.8 billion of in-state spending. The agency says the projects are estimated to create nearly 9,700 new and direct jobs and contribute \$74 million in state tax revenues over 20 years." The Baltimore Sun (5/11, Dance) reports that "officials had only been expected to choose one of the vying proposals, but surprised many by giving both the green light, saying they would 'position Maryland as a national leader in offshore wind energy.'"

## **FYSA:**

### **Window Closes For Congress To Roll Back Obama Regulations.**

Bloomberg Politics (5/11, Natter) says the GOP's efforts "to rescind a myriad of Obama-era rules ended with 14 regulations eliminated from the books," which congressional Republicans say is "projected to save \$3.7 billion in total regulatory costs and eliminate 4.2 million hours of paperwork."

### **Media Analyses: Trump's Comments To NBC Contradict White House Line On Comey Firing.**

President Trump's 14-minute interview with NBC's Lester Holt, which focused almost

entirely on the firing of FBI Director Comey and on investigations into alleged ties between Trump's campaign and Russia, is making news on several fronts, primarily over the President's statement that he intended to fire Comey regardless of what Attorney General Sessions and Deputy Attorney General Rosenstein recommended. Reports point out that this contradicts statements by the White House and Vice President Pence, and commentators say that another day of shifting explanations is eroding Administration credibility. Meanwhile, Acting FBI Director McCabe told the Senate Intelligence Committee that Comey had not lost the confidence of the FBI, directly contradicting part of the President's defense of his action.

### **Additional Media Coverage:**

DOI Bulletin Clips can be found [here](#). For additional media coverage of interest to DOI/BOEM see below:

[Democratic senators snubbed with Atlantic energy move](#)

### **Subscription-Based Media Coverage:**

## **OFFSHORE DRILLING**

### **Coastal lawmakers warn Zinke about new leases**

**Kellie Lunney**, E&E News reporter

*Published: Friday, May 12, 2017*

More than 100 House Democrats and Republicans urged Interior Secretary Ryan Zinke yesterday not to allow any new offshore oil and gas drilling in the Atlantic and Pacific oceans.

Citing the \$89 billion economy generated by tourism and fishing on the East and West coasts, the lawmakers asked the secretary to reject any proposals for new leases in the protected Atlantic and Pacific outer continental shelf regions.

"We do not believe that new oil and gas exploration or production activity in the Atlantic and Pacific OCS is compatible with the sustainable coastal economies on which so many of our constituents and communities depend," the members wrote in a [letter](#) yesterday.

Reps. Alan Lowenthal (D-Calif.), Niki Tsongas (D-Mass.), Don Beyer (D-Va.), Anthony Brown (D-Md.), Frank LoBiondo (R-N.J.), Dave Reichert (R-Wash.) and Mark Sanford (R-S.C.) coordinated the letter.

President Trump's April 28 executive order directed Interior to review offshore oil and gas drilling in the Atlantic and Pacific OCS regions, which Obama declared off-limits under a five-year plan ([Greenwire](#), April 28).

Oil and gas industry groups have argued that the Obama decision pre-emptively limited options for exploration and drilling, undermining the country's energy production. They support a new plan, as well as a reversal of Obama's withdrawal.

The executive order has alarmed environmentalists, coastal residents and members of Congress from both parties who represent the regions.

"Thanks to years of effort and input from coastal members of Congress, state and local governments, coastal businesses, and concerned citizens, the 2017-2022 leasing program protects the Atlantic and Pacific coasts — and the roughly \$90 billion tourism and fishing

industries located on those coasts — from oil and gas leasing at least until 2022," said a press release from Lowenthal's office.

"The new executive order puts all of that at risk," it said, "and could result in drilling rigs off our coasts and beaches as early as 2019."

In the letter, the lawmakers also pointed to the risk of offshore drilling accidents that endanger the environment, residents and the economy. They specifically cited the 1969 Santa Barbara blowout, which "killed thousands of birds and marine animals and blackened the beaches of Southern California."

Interior did not immediately respond to a request for comment on the letter.

## Legislation looks to extend offshore tax credit

**Sam Mintz**, E&E News reporter

*Published: Friday, May 12, 2017*

Several New England Democrats are reintroducing legislation that would extend a tax credit for the offshore wind industry, citing the success of a project off the coast of Rhode Island.

The **bill**, known as the "Offshore Wind Incentives for New Development Act," would extend a 30 percent investment tax credit for offshore wind projects, which is currently in place until 2019, through 2025.

Sen. Ed Markey (D-Mass.), the bill's main sponsor in the Senate, said in a statement that the legislation "puts the 'win' in wind energy."

"Offshore wind has the potential to create tens of thousands of jobs in Massachusetts and up and down the East Coast, encourage local innovation, and reduce carbon pollution. But in order to realize this potential, we need to provide this nascent industry the long-term certainty in the tax code that it needs," he said.

The bill's main sponsor in the House, Rep. Jim Langevin (D-R.I.), said he hopes the bill will encourage other states to follow the example of Rhode Island, where the Block Island Wind Farm went online in December. The project could power up to 17,000 homes ([Greenwire](#), Dec. 5, 2016).

"Clean energy is our nation's future, and we need a sustained commitment to investments in more efficient and sustainable energy solutions," Langevin said.

Other sponsors include Democratic Sens. Jack Reed and Sheldon Whitehouse of Rhode Island, Jeff Merkley of Oregon, Elizabeth Warren of Massachusetts, Cory Booker of New Jersey, and Sherrod Brown of Ohio.

The bill was introduced in the House and Senate last year but died in committee in both chambers.

## Republicans cheer killing 14 rules as window for action closes

**Arianna Skibell**, E&E News reporter

*Published: Friday, May 12, 2017*

(Left to right) Senate Majority Leader Mitch McConnell of Kentucky was among Republicans who cheered killing Obama administration regulations through the Congressional Review Act yesterday. Minority Leader Chuck Schumer (D-N.Y.) spoke against recent use of the CRA. Photos courtesy of C SPAN.

Congressional Republicans yesterday celebrated axing 14 Obama-era regulations through the Congressional Review Act before the window for using the law's fast-track rule-busting provisions closed.

A rule to regulate methane drilling waste on public lands was the lone survivor after a CRA resolution of disapproval failed 49-51, much to the chagrin of its GOP backers and energy companies.

Still, Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) hailed the rescinded rules as a boon for the economy and the Trump administration.

"Over the past few months, Congress has passed 14 different resolutions that are going to save the American people money, and it's going to make it a lot easier for our economy to grow," he said from the Senate floor. "Fourteen times since February, we struck down unnecessary, burdensome and costly regulations."

The Senate Republican Policy Committee said the repealed rules will save the economy at least \$3.7 billion and 4.2 million hours of paperwork, citing agency estimates compiled by the American Action Forum, a right-leaning group.

Former EPW Chairman Jim Inhofe (R-Okla.) cheered his successful resolution to toss a Securities and Exchange Commission rule requiring resource extraction companies to disclose financial dealings with governments.

"I am proud to say that I introduced the first CRA in the Senate that was passed this year," he said, also from the floor.

"Thanks to the Congressional Review Act, our oil and gas companies are not at a disadvantage when it comes to international competitors any longer," said Inhofe. "This is just one example of how important this tool is for rolling back harmful regulations."

While top GOP lawmakers took turns celebrating their successful use of the CRA more than a dozen times, Democrats painted a grimmer picture.

### **Misleading the electorate?**

Senate Minority Leader Chuck Schumer (D-N.Y.) accused the majority of misleading the American people following last year's elections.

"These CRAs rig the game even further for wealthy special interests and are nothing to brag about," Schumer said on the floor.

The Democratic Policy and Communications Committee, chaired by Sen. Debbie Stabenow (D-Mich.), yesterday released a report echoing Schumer's comments.

In reference to the SEC rule, the report said the measure would have exposed and helped stop corrupt practices that often lead to global instability and greater risk for American investors.

The rule could have lowered the cost of capital for covered companies by \$6.3 billion to \$12.6 billion, said the Democratic report.

The report said the rollback of a Bureau of Land Management resource planning rule will force taxpayers to bear the cost of a less efficient process. The previous administration intended the measure to update a 1983 regulation and modernize and improve how the federal government manages its land.



House Natural Resources Committee ranking member Raúl Grijalva (D-Ariz.) noted that repealing many of the rules amounted to "blatant attacks" on the environment.

"On our very first day in Congress, House Republicans gave us a glimpse into their extremist, anti-environmental agenda by changing the rules to make it even easier to give away our public lands," Grijalva said in a statement.

But Senate Majority Leader Mitch McConnell (R-Ky.) said, "Of course not all regulations are bad regulations. Many are necessary and even beneficial. But what the Obama administration seemed to forget ... is this key point: Regulations are not issues in a vacuum. They can harm the middle class, they can kill jobs, they can raise prices, they can depress wages, they can reduce opportunity."

McConnell said, "It's one reason Americans decided to go in a pro-growth direction last November."

## **Not over**

President Clinton signed the CRA 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. Within that time, lawmakers can schedule a simple majority, up-or-down vote on whether to overturn it with fast-track procedures.

Once a rule is gone, the CRA prohibits the issuing agency from promulgating a future "substantially similar" one. Because the CRA has never been tested in court, the term "substantially similar" has yet to be defined.

The "substantially similar" clause has been a point of contention for many watching the CRA scenario unfold and will likely lead to future lawsuits, analysts say (*E&E Daily*, May 8).

The watchdog group Public Citizen has compiled a [list](#) of all the rules repealed through the statute. Barrasso and his team have [their own](#).

## **8 Democrats urge Zinke to lift suspension of advisory panels**

**Scott Streater**, E&E News reporter

*Published: Friday, May 12, 2017*

A coalition of Democratic senators from Western states is urging Interior Secretary Ryan Zinke to lift the suspension on dozens of advisory panels that help federal agencies manage hundreds of millions of acres, arguing that the suspensions endanger major projects and public confidence in the federal government.

The coalition of eight senators, led by Oregon Sen. Ron Wyden, the ranking Democrat on the Finance Committee, wrote in a [letter](#) sent yesterday to Zinke that they are "very concerned" over the Interior Department's decision to postpone the scheduled meetings of dozens of resource advisory councils, committees and other advisory panels through September while it conducts a formal review of the "charter and charge" of each one.

The Bureau of Land Management in the past week has told members of its 30 resource advisory councils (RACs) to postpone scheduled meetings as part of the review. That includes canceling meetings of six other BLM advisory committees affiliated with specific sites within the agency's National Conservation Lands system (*Greenwire*, May 5).

"Our offices did not receive notice of the postponements and little information was provided to the members of the RACs explaining the reason behind this action," the letter says. "We are very

concerned about this news and would like an answer as to why the RAC meetings were postponed during the BLM's review of all advisory boards and committees, and how the BLM will continue to support local collaborative efforts, including RACs, going forward so that they can continue to make real progress for our public lands."

In addition to Wyden, the letter was signed by Democratic Sens. Tom Udall and Martin Heinrich of New Mexico, Jeff Merkley of Oregon, Dianne Feinstein of California, Michael Bennet of Colorado, and Patty Murray and Maria Cantwell of Washington.

The Interior Department press office did not immediately respond to a request for comment on the letter.

But Heather Swift, an Interior spokeswoman, told E&E News last week that the advisory panel review is designed to "maximize feedback from these boards" and "necessitates the temporary postponement of advisory committee meetings."

She also acknowledged that the review is designed to ensure compliance with "the president's recent executive orders."

President Trump in the last month signed a number of executive orders, including one requiring the review of all policies that may "potentially burden" energy production activity on federal lands.

Trump last month also signed one requiring Interior to review the boundaries of dozens of national monuments designated within the last two decades to decide whether they should be altered or eliminated ([Greenwire](#), April 26).

Critics have raised concerns that RACs and other advisory panels should be allowed to weigh in on critical issues like these.

Achieving a careful balance on the management and use of public lands "is challenging, which is why RACs were created," the senators' letter says.

"By working through difficult land management issues and getting local input from the beginning, projects are more likely to succeed," they wrote. "Without this tool, many good land management projects would never be completed."

The problem is compounded in Oregon, Wyden writes, where there are several BLM resource advisory committees established under the Secure Rural Schools and Community Self Determination Act of 2000.

The Secure Rural Schools program has compensated counties in Western states hammered in the last two decades by the loss of timber sales and logging and milling jobs.

Though Congress allowed the SRS to expire in 2015, the SRS resource advisory committees review and select forest management projects in Oregon that are funded each year with program funds still available from previous years. The committees "must select and initiate their projects" by Sept. 30.

"If RAC meetings are postponed until September and SRS Committees do not have enough time to meet and initiate projects, they will lose" the federal funding, the letter states.

"This delay could cause counties in Oregon to lose federal funds that could have gone to improve the health of their forests and create local jobs," the letter says.

It's up to Zinke to fix the issue, the senators wrote.

"During your confirmation hearing, you stressed the importance of local input and collaboration on public land management issues," they wrote. "Postponing their progress is a detriment to public land and forest management goals, to jobs and local economies, and to public confidence in federal government.

"It is critical that local voices, including RACs, have the opportunity to provide input and take part in the process at all times," they added, "not just when those local voices align with the Administration or a large special interest."

**To:** Laura\_rigas@ios.doi.gov[Laura\_rigas@ios.doi.gov]  
**From:** POLITICO Pro Energy  
**Sent:** 2017-05-12T05:48:22-04:00  
**Importance:** Normal  
**Subject:** Morning Energy, presented by Trout Unlimited: Taking stock of GOP's CRA push — U.S. signs on declaration urging climate action — Pence tours coal mine in Montana today  
**Received:** 2017-05-12T05:48:53-04:00

By Anthony Adragna | 05/12/2017 05:42 AM EDT

*With help from Ben Lefebvre and Eric Wolff*

**WHAT A CRA-ZY RIDE:** They suffered a setback with the failure of a methane challenge this week, but the Republican-led Congress was positively glowing as the clock ran out Thursday on its fastest tool to overturn their most-hated Obama-era regulations. To review, 13 Congressional Review Act resolutions have been signed into law by President Donald Trump (one more awaits his John Hancock) and four directly relate to energy or the environment. They are:

Pub.L. 115-4, which nullified an SEC rule that required oil and mining companies to disclose their payments to foreign governments,

Pub.L. 115-5, which axed Interior's Stream Protection Rule that sought to protect surface and ground water supplies from coal mining pollution,

Pub.L. 115-12, which tossed out BLM's regulation updating and streamlining the agency's more than 30-year-old process for creating land use plans, and,

Pub.L. 115-20, which killed a Fish & Wildlife Service regulation that barred certain hunting practices such as baiting, trapping and denning animals like wolves and bears in Alaskan national wildlife refuges.

**Republicans take victory lap:** Senate Majority Leader Mitch McConnell argued in remarks on the Senate floor the resolutions had already improved Kentucky's coal industry: "While we can't simply turn back time or completely erase the negative impact that Obama regulations have had already, the CRA has allowed us to stop a number of them in their tracks while also preventing agencies from creating similarly harmful rules in the future," he said. And Senate EPW Chairman John Barrasso said also hailed the CRAs, while suggesting there's "much more" the Republican-led government would do. "I plan to make sure that the Trump administration keeps up the pace and tosses some of these worst rules and regulations ... into the garbage where they belong," he said in floor remarks.

**Democrats bemoan action:** They say it's soon to know the real impacts from the CRAs, but Democrats fear the actions will severely impede the ability for agencies to issue necessary regulations. "I don't know there are any knock-out blows, but a couple have done some damage," Senate EPW ranking member Tom Carper told ME. "And the damage will occur further down the road in making it nearly impossible for agencies to come back and offer a more thoughtful regulation."

**ICYMI:** Pro's Alex Guillén looked at what happened on the CRA front last week and what questions lie ahead.

**IT'S FRIDAY EVERYONE!** I'm your host Anthony Adragna, and the answer to Thursday's question: former California Rep. Laura Richardson was the last lawmaker formally reprimanded. For today: Who holds the title for second longest-serving governor in U.S. history (after current Iowa Gov. Terry Branstad)? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](https://twitter.com/AnthonyAdragna), [@Morning\\_Energy](https://twitter.com/Morning_Energy), and [@POLITICOPro](https://twitter.com/POLITICOPro).

**TILLERSON SIGNS ONTO STATEMENT WITH CLIMATE MENTIONS:** Even as Trump weighs whether to remain a party to the international pact, Secretary of State Rex Tillerson signed onto the Arctic Council's "Fairbanks Declaration of 2017," which cites the Paris climate change agreement, Pro's Eric Wolff reports. The document also signed by seven other foreign ministers notes "the entry into force of the Paris Agreement on climate change and its implementation," and reiterates "the need for global action to reduce both long-lived greenhouse gases and short-lived climate pollutants," while it reaffirms "the United Nations Sustainable Development Goals and the need for their realization by 2030." Tillerson's move stands in sharp contrast to Energy Secretary Rick Perry's refusal at a G-7 energy ministers gathering last month to sign a joint statement that would have included references to the Paris deal.

**The Sierra Club said in response:** "Just five months ago, a standard, commonplace agreement like this to share climate science research and reiterate the importance of global action to reduce climate pollutants would have barely been newsworthy."

**\*\* A message from Trout Unlimited:** For over 50 years, Trout Unlimited has been dedicated to conserving, protecting and restoring North America's coldwater fisheries and watersheds on behalf of today's anglers and coming generations of sportsmen and women. Join us as we support America's public lands and national monuments: <http://bit.ly/2paVoYB> \*\*

**PENCE'S MINER DETOUR:** Vice President Mike Pence heads to Montana today, where he'll tour the Westmoreland Coal Company's Absaloka Mine on the Crow Indian Reservation by horseback and participate in listening sessions with officials in the "energy producing and coal mining industry." The 10,427-acre permitted, single-pit surface Absaloka mine provides coal to Midwestern utilities, including Xcel Energy's Sherburne County Station near Minneapolis, and can produce 7.5 million tons of coal annually, according to its website. Interior Secretary Ryan Zinke and Sen. Steve Daines also tag along.

**After touring the coal mine,** Pence participates in an event for Greg Gianforte, who hopes to succeed Zinke as Montana's congressman. An ad released Thursday argued "Greg Gianforte will fight for our access to public lands" amid attacks from his opponent, Democrat Rob Quist, about his stance on public land stances.

**PRUITT TALKS WOTUS TIMELINE:** Continuing his tour of friendly conservative outlets, EPA Administrator Scott Pruitt told radio host Hugh Hewitt he hopes by "sometime late this year or early next" to have issued a final new Waters of the U.S. regulation. "Folks across the country,

citizens and industry and states and the federal government deserve a clarity on what a Water of the United States equals," he said. "If you are going to determine on a case by case basis what a Water of the United States is, then that doesn't provide advance notice on how to regulate, how to take care of it, and how to invest. So it's a situation we need to get right."

**... And tries to tamp down science adviser controversy:** Pruitt also said controversy over the EPA's decision not to reappoint 12 science advisers was overblown, as many of those people might ultimately get their slots back. "These individuals can apply, will apply, I'm sure, in some instances, and very well could be put back on the board," the administrator said. "But it's the right thing to do to ensure transparency, its activity, peer-reviewed science and geographical representation on the board."

**NEXT STEPS FOR ETHANOL WAIVER:** Bipartisan legislation from Sen. Deb Fischer that would allow year-round sale of gasoline blends with 15 percent ethanol will get a Senate EPW markup and hearing, your host and Pro's Eric Wolff report. Chairman John Barrasso made that commitment as Senate Republicans were trying to secure the support of a small bloc of corn-state Republicans for a CRA to reject the methane rule that ultimately failed on the floor Wednesday. Sen. John Thune told reporters "we'll assume that [commitment] sticks" despite the failed methane vote, though Barrasso's office did not respond to requests for comment.

**CANTWELL WEIGHING FERC PICKS:** Senate Energy ranking member Maria Cantwell told reporters said she worked with Trump FERC pick Neil Chatterjee, a senior energy adviser to McConnell, on issues related to the energy bill last year but hadn't begun to review his nomination in earnest. "I had a brief conversation with Neil yesterday about market manipulation and issues, and I'm sure I'll be diving into questions about why those policies are so important," she said. Cantwell added she didn't know Pennsylvania regulator Rob Powelson, the other FERC selection, and hadn't yet begun to look at his record.

**It's not FERC but** the Senate Energy Committee announced late Thursday it would hold a hearing May 18 on David Bernhardt's nomination to be deputy secretary of the Interior. Trump tapped the lobbyist and former George W. Bush administration official for the post on April 28.

**WADING INTO NAFTA FIGHT:** A possible NAFTA fight is drawing in the American Fuel & Petrochemical Manufacturers, the group's CEO told ME. The refiners association stayed out of TPP discussions, but has put NAFTA on its issues target list in light of drastically increasing U.S. fuel exports to Canada and Mexico. "We're going to start looking at it because the President and his administration has made it an issue. We care more and more about export and trade," CEO Chet Thompson said. The group hired former EIA market analyst and Exxon Mobil senior business adviser Susan Grissom late last year to help analyze trade issues. And while AFPM hasn't yet identified a wish list for any renegotiation, it certainly doesn't support the rip-it-up approach President Trump has espoused. "We are certainly for free trade," Thompson said.

**Ready for Trump to staff up:** The lack of top staff at agencies is frustrating Thompson, who told ME that Trump will struggle to implement his deregulatory agenda if he doesn't get going. "This is across the board, this is every agency feeling this," he said. "We want these vacancies filled ASAP. We're encouraging all of our trade association and companies to urge everybody to do their part to speed this process up." Trump lags each of the past four administration's in filling

Senate-confirmable posts, according to the Partnership for Public Service. Thompson said they're waiting on decisions from EPA that are slowed by lack of political leadership. "That's a problem for everybody, the agency, us, everybody," he said. "We have petitions pending at the agency, ...it's going to be hard for the agency to act on those petitions until the get some leadership up there."

**CYBERSECURITY ORDER TOUCHES ON GRID:** The secretaries of Energy and Homeland Security have 90 days under an executive order signed by Trump Thursday to assess how the nation might respond to a large, sustained power outage caused by a cyber attack, Pro's Darius Dixon reports . Energy Secretary Rick Perry and DHS Secretary John Kelly were asked by Aug. 9 to look at a "potential scope and duration of a prolonged power outage associated with a significant cyber incident," American readiness to respond to such an outage and "any gaps or shortcomings in assets or capabilities required to mitigate the consequences of such an incident."

**In response,** Edison Electric Institute President Tom Kuhn said his organization looked "forward to working with the Administration to ensure industry and government continue to work closely together to protect the energy grid." And the American Public Power Association praised the action as well, adding that "as threats evolve, so too must the efforts of industry and government to mitigate them."

**WIPP IS GOOD:** Perry's tour of DOE facilities this week, which included Idaho National Laboratory and Los Alamos National Laboratory, took him to the the Waste Isolation Pilot Plant in New Mexico on Thursday. The nuclear waste repository "serves a vital national security role. The employees and contractors are proud professionals who help keep America safe," he tweeted.

**MAIL CALL! REINSTATE THOSE ADVISORY BOARDS:** Eight Western Senate Democrats, led by Sen. Ron Wyden, asked Zinke in a letter to lift suspensions of long-standing local committees and advisory boards. "By working through difficult land management issues and getting local input from the beginning, projects are more likely to succeed," they wrote. "Without this tool, many good land management projects would never be completed."

**WARNING SHOT FIRED!** Washington Attorney General Bob Ferguson sent Zinke a letter Thursday stressing any effort to rescind or reduce national monuments in his state would draw a lawsuit. "No President, however, has ever claimed the authority to revoke National Monument status," he writes. "The reason is simple: the [Antiquities] Act does not contemplate any such revocation, and to do so would be contrary to the language of the statute and the structure in which the law delegates Congress's constitutional authority."

**AND I WANT TO THANK YOU:** A lunchtime rally outside EPA HQ today at 11:30 a.m. will thank agency employees for their efforts in honor of Public Service Recognition Week. "We want to let them know that we greatly appreciate their endless work, especially now that their work is more important than ever before," organizers wrote. Hosts of the rally are 500 Women Scientists, AFGÉ and the Earth Day Network.

**PERRIELLO TALKS CLIMATE TODAY:** With a month to go before the Virginia gubernatorial primary, Democrat Tom Perriello will meet with the Chesapeake Climate Action Network in Norfolk at 2 p.m. today to discuss climate issues.

## QUICK HITS

Lawmaker under investigation after taking money, fighting Superfund cleanup of toxic neighborhoods. [AL.com](#).

Survey: Internal watchdogs worried about Trump hiring freeze. [AP](#).

Prison time served, coal CEO Don Blankenship insists explosion not his fault. [SNL](#).

Trump's climate stance casts shadow over Arctic meeting. [Reuters](#).

Would creating one big electric grid in the West threaten California? [San Francisco Chronicle](#).

EPA audit of Michigan drinking water program incomplete after 18 months. [MLive](#).

## HAPPENING TODAY

9:00 a.m. George Mason Energy [Symposium](#), Center for Energy Science and Policy, 3351 Fairfax Drive, Arlington, VA 22201

12:00 p.m. "[Investing in U.S. Infrastructure for Maximum Dividends](#)," Environmental and Energy Study Institute, 2261 Rayburn

## THAT'S ALL FOR ME!

**\*\* A message from Trout Unlimited:** For over 100 years the Antiquities Act has been a bipartisan tool for conserving America's public lands and our outdoor heritage. Since the time President Theodore Roosevelt signed the Act into law, the Antiquities Act has provided for the long-term conservation of some of the best fish and wildlife habitat and hunting and angling opportunities in the country, spurring local economies. In these places, locally driven conservation efforts need to be preserved and celebrated. Currently, the Department of the Interior is reviewing national monuments designations. Secretary Zinke has strongly supported keeping America's public lands in public hands. Join us in showing him that we support upholding our national monuments: <http://bit.ly/2paVoYB> \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/05/taking-stock-of-gops-cra-push-022800>

## Stories from POLITICO Pro

**Trump signs bill killing SEC rule on foreign payments** [Back](#)

By Alex Guillén | 02/14/2017 03:11 PM EDT

President Donald Trump Tuesday signed the first in a series of congressional regulatory rollback bills, revoking an Obama-era regulation that required oil and mining companies to disclose their payments to foreign governments.



That regulation, part of the Dodd-Frank Wall Street reforms, was strongly opposed by the oil and gas industry — including Trump's Secretary of State, Rex Tillerson, who as head of Exxon Mobil personally lobbied to kill the Securities and Exchange Commission's rule that he said would make it difficult to do business in Russia.

"It's a big deal," Trump said at the signing. "The energy jobs are coming back. Lots of people going back to work now."

Today's signing in the Oval Office marked the first time in 16 years that the Congressional Review Act has been successfully used to roll back a regulation, and Congress is queuing up several others to send to the president's desk.

The American Petroleum Institute had challenged the SEC's first version of that rule, known as the 1504 rule after the relevant section of the 2010 Dodd-Frank Wall Street reform bill, forcing the agency back to the drawing board in 2013. In 2015, a federal judge said the SEC was dragging its feet on issuing a new version, and the SEC was ordered to finish the new rule by late June 2016 — putting it just within reach of the CRA's timeframe.

Congress has already passed another resolution gutting the Interior Department's stream protection rule that has been criticized by the coal industry. Trump was reportedly scheduled to sign that one at an event in Ohio on Thursday, but that trip has been scrubbed, and it remains unclear when he will sign the measure.

The Senate is also teeing up votes this week for several others that have already been passed by the House.

*To view online [click here](#).*

[Back](#)

**Senate seals fate of Interior stream rule [Back](#)**

By Alex Guillén | 02/02/2017 03:18 PM EDT

The Senate voted Thursday to send President Donald Trump a measure that will kill the Interior Department's stream protection rule, a key coal mining regulation that was finalized only in December.

The Congressional Review Act resolution passed by a vote of 54-45, just one day after the House approved it. Democratic Sens. Joe Manchin of West Virginia), Claire McCaskill of Missouri, Joe Donnelly of Indiana and Heidi Heitkamp of North Dakota joined every Republican except Maine's Susan Collins in voting for the measure.

If Trump signs the resolution, as he is expected to do, it will mark just the second time that Congress has successfully used the CRA to kill a rule. The only previous use of the CRA was a 2001 vote to nullify a Labor Department ergonomics regulation.

But it will not be the last. Senate Republicans are expected to move immediately to another

House resolution targeting a Securities and Exchange Commission rule that requires drilling and mining corporations to reveal their payments to foreign governments. And the House has several other CRA resolutions on tap this week, including one set to pass Friday that would overturn Interior's venting and flaring rule.

CRA resolutions require only a simple majority to pass and cannot be filibustered in the Senate, though Democrats have been able to force up to 10 hours of debate on each one.

*To view online [click here](#).*

[Back](#)

### **Trump signs bill revoking Interior Department land use planning rule [Back](#)**

By Esther Whieldon | 03/27/2017 04:19 PM EDT

President Donald Trump today signed a bill repealing the Interior Department's updated land-use planning process that fossil fuel energy companies complained would reduce access to resources on federal lands.

The Congressional Review Act resolution, which Congress passed earlier this month, revokes the Bureau of Land Management's December Planning 2.0 rule that had replaced the previous land-use process that took eight years on average to open up new acreage for development.

The previous land-use plans also occasionally triggered lengthy litigation from environmental and outdoor recreation groups, including the court fight over BLM's 2008 plans for lands in Utah that the agency only in January [reached](#) a settlement over. The updated process had allowed earlier input from the public in an attempt to reduce litigation.

But critics of the rule, including fossil fuel companies and agriculture groups, say it decreased states' and field offices' roles in planning decisions and prioritized conservation over tapping into natural resources. The CRA resolution also bars Interior from crafting a new land use planning process in the future that is substantially similar.

**WHAT'S NEXT:** Because the rule was not made because of a court order or a deadline-specific legal mandate, Interior Secretary Ryan Zinke will have to decide whether he wants to try again to revamp the process or to work to improve land-use planning within the limits of the existing rule.

*To view online [click here](#).*

[Back](#)

### **GOP onslaught on Obama's 'midnight rules' comes to an end [Back](#)**

By Alex Guillén | 05/07/2017 07:10 AM EDT

President Donald Trump's inauguration gave congressional Republicans a once-in-a-generation

opportunity to erase a spate of late Obama-era regulations and they used it to make a significant dent before the legislative window closes in the coming week.

Since February, Republicans have used a once-obscure 1996 law to quash 13 "midnight" regulations on topics such as coal mining pollution, gun rights, internet privacy, Planned Parenthood funding, retirement savings and even bear hunting in Alaska. A 14th rule-blocking resolution is heading toward Trump's desk, and GOP lawmakers hope to kill at least one more rule, on methane pollution, before the clock runs out Thursday.

The rollback affects just a fraction of the myriad Obama administration rules that GOP lawmakers and the Trump administration eventually hope to undo, in what White House adviser Steve Bannon has billed as the "deconstruction of the administrative state." But never before have lawmakers made such dramatic use of the Congressional Review Act, which allows lawmakers and the White House to kill recently enacted regulations without having to overcome Senate filibusters.

The results underscore the massive partisan divide on the executive branch powers that President Barack Obama wielded so assertively during his second term.

"This should be a huge lesson to any future president, that if you're going to carry out massive regulations that don't have the support of the American people or the American Congress, then perhaps you shouldn't be doing it in the first place," said Sen. Cory Gardner (R-Colo.), who called the outcome "a success for the American people." He estimated that Congress' nullification of the rules will save companies tens of billions of dollars in compliance costs.

Sen. John McCain (R-Ariz.) portrayed Republicans' enthusiastic use of the review act as a deserved comeuppance for Obama. "I think it was bred by the fact that we had a president who said, 'I've got a pen and I've got a phone,' saying, 'I'm disregarding Congress,'" he said.

But Democratic Sen. Brian Schatz of Hawaii had a warning for Republicans: Someday, his party will retake power in Washington.

"Now that this tool has been exercised, it's available to everybody, and we'll use it too," Schatz said. He added: "As long as the statute's available to us, then we'd be crazy not to utilize it for our purposes as well."

In fact, though, Congress has successfully used the act only once before, to kill a Clinton-era ergonomics regulation in 2001. GOP attempts to use the review act during Obama's presidency either failed to make it through Congress or died in presidential vetoes.

Republicans' control of both Congress and the White House allowed them to dust off the 1996 law, which allows the rule-killing resolutions to pass by simple majority votes in both chambers. The regulations they killed included limits on stream pollution by coal companies, restrictions on broadband providers' reselling of customer data, protections for Planned Parenthood's state funding, and an anti-corruption rule requiring energy companies to disclose their payments to foreign governments.

Under the act, lawmakers can use the tool to bypass Senate filibusters within 60 legislative days

after a rule takes effect, a period that is due to expire on Thursday for Obama's final regulations. Lawmakers could have tried to block any of the dozens of significant Obama-era regulations that took effect after June 2016, but their capacity was limited by other priorities on Congress' calendar, such as confirming Trump's Cabinet nominees and dealing with Obamacare.

In addition, the Obama administration made sure to finish most of its blockbuster regulations long before they would become vulnerable to the congressional attack.

That meant the repeals were as much about symbolically attacking Obama as they were about the substance of each targeted rule, said Philip Wallach, a senior fellow at the Brookings Institution.

"My understanding is the collectivity of these rules kind of seems like largely a rebuke of the Obama administration in a pretty general sense, rather than necessarily showing that Congress thought very hard about exactly what was at stake with each of these rules," he said.

Still, Republicans say they're satisfied with what they accomplished.

"I think we've taken maximum opportunity to look at things the country lived without for 228 years, and the Obama administration lived without for at least 7 1/2," Sen. Roy Blunt (R-Mo.) said. "That kind of late rulemaking probably doesn't deserve to be permanent if you can do anything about it. We did."

Democrats generally expressed dismay over the rules the GOP axed, although many said bigger battles were being waged elsewhere. "They did some damage, but in the scheme of things I don't think you look at those CRAs and say that President Obama's legacy is undermined," Schatz said.

However, the GOP's frequent use of the review act this year could raise new legal questions down the road. That's because the law doesn't just allow Congress to block the targeted regulations — it also prohibits agencies from ever issuing a rule that is "substantially the same."

That prohibition has never been tested by the courts. (The Labor Department never tried to revisit the ergonomics rule that Congress struck down in 2001.) But it was one reason Democratic leaders avoided using the review act in 2009 to attack the George W. Bush administration's midnight regulations — it could have made it harder for Obama's agencies to strengthen the same rules later.

Some of the rules Republicans squashed this year could face similar questions someday. For example, six Senate Republicans who voted to kill the Securities and Exchange Commission's anti-corruption rule later said they hope the SEC will issue a new version with some key changes. But it's unclear whether any alterations would get around the review act's similarity test.

Now that the clock is expiring, the Trump administration is using other, slower methods to try to repeal or weaken Obama-era rules across the government. It could take years for those efforts to yield results and survive the inevitable court challenges, including the EPA's efforts to repeal Obama's power plant climate rule, toughened smog standards and a nationwide regulation

protecting wetlands and waterways.

The Congressional Review Act was a healthy start, Republican lawmakers said.

"I think it's been very helpful, but we still have a couple thousand more [rules] that Obama issued over the last eight years," McCain said. "We're still going to have to work on some of that."

*To view online [click here](#).*

[Back](#)

### **Draft doc shows tension between Trump, allies over fossil fuels [Back](#)**

By Andrew Restuccia | 04/11/2017 06:59 PM EDT

President Donald Trump's abrupt turnaround on U.S. climate policy is fueling tension with several of America's closest allies, which are resisting the administration's demands that they support a bigger role for nuclear power and fossil fuels in the world's energy supply.

The dispute blew up at this week's meeting of G-7 energy ministers, where Trump administration officials pushed to include stronger pro-coal, pro-nuclear language in a proposed joint statement on energy policy. The fight had been simmering behind the scenes for weeks as the White House, Energy Department and State Department clashed with negotiators from other G-7 countries over the statement, according to an internal document obtained by POLITICO and interviews with diplomats.

After a tense back-and-forth at the meeting in Rome on Monday, the G-7 energy ministers which included representatives from Canada, Great Britain and several European Union countries wound up scuttling the statement altogether.

The feud comes as Trump, who often touts his "America first" approach to foreign policy, is considering whether to pull the United States out of the climate change accord that the Obama administration and leaders of nearly 200 other nations negotiated in Paris in 2015. Some Trump advisers have suggested that he should remain in the deal but in return, should demand concessions to aid the fossil fuel sector.

G-7 officials, led by the Europeans, refused to agree to stronger language touting fossil fuels without assurances from the United States that it would stay in the Paris climate change agreement, according to officials briefed on the discussions.

The U.S. emphasis on coal "was seen as an issue for all of us," one G-7 country negotiator told POLITICO, noting that Canada, Europe and Japan all expressed frustration about the Trump administration's position. The United States' refusal to discuss or mention the Paris agreement in the joint statement was EU's "biggest" red line during the meeting, the negotiator added.

The meeting underscored the increasingly wide gulf between the Trump administration and its

allies over climate change. The leaders of the other G-7 nations have all called for a shift away from fossil fuels and toward renewable energy. Meanwhile, Trump has dismissed climate change as a Chinese hoax and sought to revive the ailing U.S. coal industry.

The draft joint statement obtained by POLITICO, which is dated March 31 and is labeled as a "second draft," provides an unfiltered look at the Trump administration's energy policy priorities.

In one instance, the U.S. rewrote the part of the statement to stress that fossil fuels "including coal and natural gas will remain part of the global energy mix for the foreseeable future," striking vaguer language from an earlier draft that said countries would rely on fossil fuels for "some time, as countries progressively reduce greenhouse gas emissions of their energy system."

In another section, the U.S. added a mention of fossil fuels and nuclear power to a line calling on countries to "work together on policies to deploy clean, reliable and affordable energy."

The U.S. also proposed completely eliminating a line stating that since renewable energy will help cut carbon dioxide emissions, the G-7 nations would "take the lead in tackling the challenges of electricity systems with high shares of variable renewable energy and in addressing the resilience of the electricity system" as the energy industry transitions to cleaner sources.

And U.S. officials added a section promoting nuclear power that reads in part, "We note the importance of civil nuclear energy for providing reliable and clean baseload energy."

While the U.S. appeared to back language calling for phasing out "inefficient fossil fuel subsidies that lead to wasteful consumption" over the medium term, it proposed striking a line calling on G-7 countries to "increase efforts to phase them out by 2025."

Ultimately, the Trump administration's demands proved too difficult to overcome, and the G-7 nations scuttled the joint statement. Carlo Calenda, Italy's economic development minister and the chair of the summit, instead released a written summary of the meeting, which noted that the delegation heads of every country but the United States reaffirmed their commitment to the Paris deal.

Energy Secretary Rick Perry, who led the U.S. delegation to the meeting, said the Trump administration "is in the process of reviewing many of its policies and reserves its position on this issue," according to the summary.

It's not the first time the U.S. has been the odd country out in an international meeting since Trump took over. During a March G-20 meeting of finance ministers in Germany, Treasury Secretary Steven Mnuchin pushed for the removal of language calling on countries to help finance efforts to tackle climate change.

In the run-up to the G-7 meeting, Trump administration officials had asked foreign officials not to pack the joint statement with mentions of renewable energy and climate change, noting that they wouldn't be able to sign off on the text because the White House was still weighing its stance on the Paris deal, according to people familiar with the deliberations.

But sure enough, early drafts of the joint statement included frequent mentions of climate

change. And U.S. officials sought to revise the drafts, sparking a fierce round of edits between representatives of the G-7 nations ahead of this week's meeting. One diplomat who worked on the text called it a "slow and complicated process."

At one point during the gathering, tempers flared so high that a European official accused a U.S. official of trying to "internationalize" the Trump administration's focus on fossil fuels, according to one person briefed on the exchange.

Indeed, Trump administration officials have adopted the president's "America first" approach in making the case to industry lobbyists that remaining in the Paris agreement is the best choice for the country, arguing it gives the U.S. leverage to win broader support for technologies to slash emissions from fossil fuels.

During a recent meeting on the Paris agreement, George David Banks, a top White House international energy adviser, pointed to a map of the United States in his office and said, "That's the only thing that matters to me," according to an industry official who attended.

Banks, an advocate of staying in the Paris deal, has been meeting with industry officials for weeks to discuss their views on the agreement. The meetings have had some success: Several coal companies recently endorsed remaining in the pact.

But it remains to be seen whether Trump will ultimately decide to keep the U.S. in the agreement. Steve Bannon, Trump's chief strategist, is said to be opposed to remaining in the deal, while the president's daughter Ivanka and his son-in-law Jared Kushner are said to be supportive of staying.

White House press secretary Sean Spicer has said Trump will make a final decision by late May when he and other world leaders will travel to Italy for a G-7 summit.

Asked for comment, a White House official said Trump "has emphasized the value of the U.S. energy sector as a strategic tool in U.S. foreign policy." The official added: "All U.S. energy resources and technologies, including coal and nuclear, should play an important role in achieving universal access to affordable and reliable energy."

*Kalina Oroschakoff contributed to this story.*

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[Back](#)

**E15 bill to get Senate committee markup** [Back](#)

By Anthony Adragna and Eric Wolff | 05/11/2017 05:56 PM EDT

A bill from Sen. [Deb Fischer](#) (R-Neb.) to allow year-round sale of gasoline blends with 15 percent ethanol will get a markup at the Senate Environment and Public Works Committee, according to a Fischer spokesperson.

The markup stems from an agreement between Fischer and EPW Chairman [John Barrasso](#) to garner her support for a resolution to reject an Obama-era methane rule under the Congressional Review Act. The resolution failed on Wednesday, but bill proponents say the deal is still in place.

"Senator Fischer appreciated Senator Barrasso addressing her concerns and she's happy he committed to hold a hearing and a markup on the [E15] bill," Fischer spokesperson Brianna Puccini wrote in an email.

Earlier in the day, Sen. [John Thune](#) (R-S.D.) had said the hearing was part of the agreement.

"What they agreed to give us was a hearing and a markup on Fischer's bill," Thune said. "And if it can be reported out, then help us get [it] attached to a vehicle that moves."

No one from Barrasso's office or EPW responded to requests for comment.

Under the Clean Air Act, E15 cannot be sold in the summer in some parts of the country. While some in the ethanol industry believe EPA can grant an administrative waiver and EPA Administrator Scott Pruitt said the agency is studying the matter congressional legislation to assure year-round E15 sales would be the safest route.

**WHAT'S NEXT:** EPW will schedule a markup of the bill at a date to be determined.

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[Back](#)

**Senate methane vote may return for 2018 campaigns** [Back](#)

By Nick Juliano and Anthony Adragna | 05/10/2017 06:01 PM EDT

Senate Democrats extended their streak of sticking together on tough votes Wednesday, when they helped defeat Republicans' final shot at overturning an Obama-era energy regulation.

The failure of a Congressional Review Act resolution is a setback for Republicans' and oil backers' hopes for a quick reversal of the BLM rule limiting methane emissions from oil and gas drilling, but they are trying to spin a consolation prize out of Wednesday's vote: a new message to use in 2018 campaign ads.

And though the resolution ultimately failed because three GOP senators crossed the aisle to oppose it, it did put red-state Democratic Sens. [Heidi Heitkamp](#) and [Joe Manchin](#) on the record voting against the industry that plays a big role in their state economies.

While Senate Republicans' campaign arm was silent in the aftermath of the surprise vote, some potential candidates and influential groups said they hoped the vote would hurt Democrats.

"I can't imagine that the voters of North Dakota, a state that President Trump won handily, are too pleased with this vote," said Chris Warren, a spokesman for the American Energy Alliance, a



conservative organization with links to the Koch brothers. "It would not surprise me one bit if this comes back to haunt her in 2018."

Rep. [Kevin Cramer](#) (R-N.D.), who has been mulling a run against Heitkamp, took a shot at his prospective opponent in an interview Wednesday with a local radio station. He said he suspected Senate Democratic leaders prevented her from casting a vote that would have allowed the resolution to pass with a tie-breaking vote from Vice President Mike Pence.

"That's exactly what happened. Her hands were sort of tied because her leadership would never let her be the deciding vote," Cramer [told WDAY](#). "When you have to be the 50th vote, that's when you have to choose between what's good for your state and your country and what your leadership wants."

A former congressional aide who now works with industry groups in the West said he expected the vote may cause oil companies to put resources into a state they would otherwise have ignored.

"The oil and gas industry now has Heitkamp back on the radar. While they were likely set to let her race go before, expect a lot more interest in N.D. now," said the source, who requested anonymity to discuss internal deliberations.

The National Republican Senatorial Committee did not release any statements attacking vulnerable members Wednesday. The campaign arm is chaired by Colorado Sen. [Cory Gardner](#), who remained publicly undecided up to the moment he cast his vote and did not explain why he supported advancing the resolution Wednesday. The NRCC and a spokesman in Gardner's personal office did not immediately respond to requests for comment.

The CRA resolution [failed](#) on a 49-51 procedural vote Wednesday after Republican Sens. [John McCain](#), [Lindsey Graham](#) and [Susan Collins](#) joined all Democrats and independents in opposition.

For her part, Heitkamp said she was not worried about potential campaign attacks next year.

"There isn't a vote you couldn't bring into [an attack ad], so it is what it is," Heitkamp said. She added, "When I believe it's in the best interests of the people of my state, that's how I vote."

Heitkamp and Manchin said they had problems with BLM's methane regulation, even as they voted against using the CRA because it would prevent the government from issuing a similar rule in the future. The two [sent a letter](#) to Interior Secretary Ryan Zinke on Wednesday asking him to revise it, something the department already plans to do.

The methane resolution was the latest in a string of votes on which the minority party has [maintained unity this year](#), even among members facing tough re-election in states President Donald Trump won. That may explain why Republican leaders decided to proceed with a vote that they risked losing: to force Democrats who had remained undecided to go on the record.

"We said we were going to have a vote on this from the beginning, and we did," said Sen. [John Barrasso](#), the resolution's sponsor. "And people got to stand up and say where they voted, and

where their beliefs were. So this was intended to be today and it was."

Sen. [Jim Inhofe](#), Barrasso's predecessor as chairman of the Environment and Public Works Committee and a strong supporter of the resolution, said he was caught off guard by its failure today. But he predicted the vote would come back to haunt red-state Democrats.

"Because the unpopularity of over-regulation crosses party lines ... I think that's a major detraction from their campaigns," Inhofe told reporters.

Environmentalists relished the result Wednesday.

"We thank each and every Senator who stood up against big polluters today and defended these commonsense safeguards from methane pollution," League of Conservation Voters President Gene Karpinski said in a statement. "The battle for a clean, safe environment is far from over, and we will continue to stay vigilant, but today is a victory for all those who are raising their voice in resistance to the anti-environmental Trump administration, Republican leadership and Congress."

And it wasn't just greens cheering.

"We have known about the problem of wasted gas from federal lands for years, and the BLM finally did something about it by updating rules dating back to the Reagan administration when fracking didn't exist," Taxpayers for Common Sense President Ryan Alexander said in a statement. "If Congress had repealed the rule, it would have meant more waste and more losses."

Sen. [Michael Bennet](#) (D-Colo.), who bucked his party to vote for building the Keystone XL pipeline in 2015 and easily won re-election last year, said his colleagues should easily be able to defend their votes on the methane resolution.

"I don't have any doubt that the record Heidi Heitkamp has and Joe Manchin has in their states are reflective of the views of people in their states, and that's what people understand going forward," Bennet told POLITICO. "Again, I think people understand the reason this rule is in place and I don't think they're going to have any trouble explaining their votes at all."

*Ben Lefebvre and Elana Schor contributed to this article.*

*To view online [click here](#).*

[Back](#)

**Trump appoints lobbyist, Bush veteran as Interior deputy secretary** [Back](#)

By Ben Lefebvre | 04/28/2017 10:45 AM EDT

President Donald Trump today nominated lobbyist and former George W. Bush administration official David Bernhardt to be deputy secretary of the Interior.

It was one of several nominations and appointments the White House announced today, just as

Trump is finishing his first 100 days as president. The delay in staffing his administration has slowed work on his priorities and caused headaches for some of his Cabinet heads. Interior Secretary Ryan Zinke [said earlier this month](#) he was "frustrated" by the delays in filling top spots at the agency.

Bernhardt's nomination continues the trends of Trump appointing lobbyists to his government and stocking Interior with Westerners. Bernhardt, born in Colorado, most recently worked as a lawyer chairing the natural resource law practice at law firm Brownstein Hyatt Farber Schreck, LLP.

In that position he helped lead Trump's transition team at Interior. As part of the firm he also lobbied for Westlands Water District, California's powerful Central Valley water district, for legislative changes to how Interior's Bureau of Reclamation implements species protections in the Sacramento-San Joaquin Bay Delta. The firm made \$260,000 on the work last year, according to lobbying disclosure forms.

Bernhardt worked as solicitor, Interior's third-highest position, for the full eight years under Bush. He is also a former U.S. Commissioner to the International Boundary Commission, U.S. and Canada.

Bernhardt most recently served on Virginia's Board of Game and Inland Fisheries.

**WHAT'S NEXT:** Once Trump formally submits Bernhardt's paperwork to the Senate, the Energy and Natural Resources Committee will begin vetting his background and schedule confirmation hearings in the coming weeks.

*To view online [click here](#).*

[Back](#)

**Slow pace of nominations puts Trump agenda at risk** [Back](#)

By Eric Wolff | 03/27/2017 05:04 AM EDT

President Donald Trump is aiming to transform environmental and energy policy through executive orders and steep spending cuts, but the vast number of vacancies at the top of agencies like EPA and the Department of Energy could stall that overhaul.

Without the political appointees to support EPA Administrator Scott Pruitt and Energy Secretary Rick Perry, Trump's policy priorities will depend on career officials serving in acting capacities to fulfill his orders — which could encounter bureaucratic inertia or even resistance from government employees who are reluctant to unravel measures they developed under the Obama administration and have been turning to [secretive communications](#) to shield their conversations.

So far, Trump has called for rewriting the Waters of the U.S. rule and reviewing fuel economy standards, and he's expected to issue an order in the coming days to rewrite the Clean Power Plan and erase other Obama efforts to improve the climate footprint of the federal government.

"I don't think they'll get very much done if they don't get the rest of their leadership in place," said Jeff Holmstead, a former George W. Bush political appointee who ran the EPA's Office of Air and Radiation and is now a partner at Bracewell, a law firm. "The longer that takes, the less they'll be able to do."

Trump and other Republicans have blamed Democrats for delaying the confirmations, but so far the White House is lagging the pace of previous administrations in sending names to the Senate to fill 1,100 positions it must consider. And Trump has indicated he may not seek to fill every post, which would frustrate Democrats, who worry about concentrating power in the White House, as well as Republicans, who have a long list of policy objectives to roll out.

Signs of resistance to the new administration inside agencies abound: A group of EPA alumni issued a report on Wednesday castigating the administration for proposing a 31 percent cut in the agency budget that it said "appears to be nothing less than a full-throttle attack on the principle underlying all U.S. environmental laws."

For the career civil servants now holding down the various undersecretary and assistant administrator jobs at EPA and DOE, making controversial decisions to line up with Trump's goals may be going beyond their job descriptions. Many are part of the 40-year-old Senior Executive Service, created to develop a force of career federal government managers, said Terry Gerton, CEO of the National Academy of Public Administrators, a nonpartisan group aimed at making government work better.

"They're the technicians of the organization," Gerton said. "It's been up to the political appointees to interpret the president's agenda to turn that into policy to direct that to career staff to execute."

And federal managers, whose careers often span multiple administrations, are typically hesitant to make decisions that can result in public approbation or that could come back to haunt them when control of the White House changes political parties.

"Career employees in acting offices feel like they have to be in a holding pattern until political appointees are named," said Jonathan Levy, a former deputy chief of staff in the Department of Energy and who served as an appointee under former Energy secretaries Steven Chu and Ernest Moniz. "Internally or externally, they don't feel like they have enough heft to make these kinds of decisions."

Pruitt appears to have sought to remove that burden when then-EPA adviser David Schnare sent acting officials an email on March 2 obtained by Inside EPA saying that for the next 30 days, Pruitt "wishes to retain approval authority for Agency actions having significant regulatory and enforcement effect."

But the absence of a sub-Cabinet level appointees is preventing agencies from working to capacity. Numerous reports have emerged about a State Department adrift without a high-level staff to help Secretary Rex Tillerson set the direction. And within the Department of Energy, which lacks any permanent political appointees under Perry, career managers are hesitant to advance old policies.

"They're very nervous," said one DOE staffer. "No one's willing to have the fights."

So far, Trump is lagging three of the last four administrations in submitting names to the Senate to fill out the agency jobs, according to data compiled by the Partnership for Public Administration, a nonpartisan nonprofit. The 38 nominations he's submitted as of Friday trails the 101 nominations sent by the same point under former President Barack Obama, the 51 sent by Bill Clinton, and the 45 sent by President George H.W. Bush. Trump also trails President George W. Bush's 40 nominations, notable because Bush lost a month of transition time while courts adjudicate the 2000 contested election.

Trump's pace of nominations is unlikely to accelerate, as the pipeline of new hires seems fairly empty. The Partnership asked for records through public records laws from the Office of Government Ethics, and as of March 7, the administration had submitted 63 nomination reports, a necessary precursor to Senate nomination. By the same point eight years ago, potential Obama nominees had sent 228. Even if there was a wave of new appointments, they would likely get caught in an OGE bottleneck as the tiny department conducts its reviews, Partnership CEO Max Stier said.

"It's a harbinger for the future that if you don't have people going through that process," he said. "It's lengthy."

Trump appears unconcerned with hiring people for many of the positions, telling Fox News last month, "Many of those jobs I don't want to fill."

Another complicating factor: Nominees for jobs Trump may want to fill have been subject to a strict loyalty test, and the White House has kept a tight control over the selections. Axios reported earlier this month that Interior Secretary Ryan Zinke went to Trump and demanded his staff be approved, prompting Trump to reply that Zinke will get his people "as long as they're our people."

For some Trump opponents and environmental activists, that's good news. Groups like the Natural Resources Defense Council spent years pushing to get a carbon rule like the Clean Power Plan developed, so they don't mind if rescinding or altering the rule takes a long time, and possibly is done badly.

"Would I rather have empty chairs than people the like of which we're going to get? An empty chair is better," said David Doniger, NRDC's Director of Climate and Clean Air Program. "It's going to take them months to put out a proposal, if they have any intention that it should be the beginning of a rule that would survive review. ... that's going to take time, even if you had your full crew."

Still, Senate Democrats, who may support the climate regulation, worry that without top officials, the White House will step in and make broad decisions with no pushback from agency experts.

"My sense is if you don't have people in the agencies, the White House will just consolidate power and engage in what I think is even more arbitrary kinds of policies that damage the environment, damage public health and hurt the country," said Sen. Ron Wyden (D-Ore.).

"Things can't work if there's nobody in charge of making them work," said Sen. [Debbie Stabenow](#) (D-Mich.). "I believe that in a democracy there needs to be public accountability and you have to have people in positions making decisions to have that accountability."

Republicans say Democrats are the reason many positions remain unfilled. Sen. [Bill Cassidy](#) (R-La.) said the second-level jobs can't be filled until the top positions were settled, a process that took extra time because of Democrats' foot dragging. But he conceded the slow process is "frustrating." And Sen. [Lisa Murkowski](#) (R-Alaska) has expressed some concern that the White House hasn't submitted names to restore a quorum to FERC, which is needed to help advance major energy infrastructure projects.

[Jim Inhofe](#) (R-Okla.), a Trump supporter, agrees with Trump that every job doesn't need to be filled, but he acknowledged that top cabinet officials can't enact a major deregulatory push alone.

"I think [Pruitt] does need more help, and it's been slow," he said. "It's very frustrating for Scott Pruitt."

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[Back](#)

## **Trump orders DOE to assess grid's cyber attack defenses** [Back](#)

By Darius Dixon | 05/11/2017 03:02 PM EDT

President Donald Trump today ordered the secretaries of Energy and Homeland Security to report back in 90 days on how the nation might respond to a large, sustained power outage caused by a cyber attack.

Trump's [long-awaited executive order on cybersecurity](#) calls on Energy Secretary Rick Perry and DHS Secretary John Kelly to jointly assess by Aug. 9 the "potential scope and duration of a prolonged power outage associated with a significant cyber incident," American readiness to respond to such an outage, and "any gaps or shortcomings in assets or capabilities required to mitigate the consequences of such an incident."

The new order said that Trump administration officials should rely on the definition of a "significant cyber incident" crafted under former President Barack Obama. That [directive](#) defined a "significant" incident as one "likely to result in demonstrable harm to the national security interests, foreign relations, or economy of the United States or to the public confidence, civil liberties, or public health and safety of the American people."

The two secretaries should also consult with the director of National Intelligence, coordinate with states and local governments, and turn their assessment over to Tom Bossert, Trump's homeland security adviser.

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By Eric Wolff

05/10/2017 01:32 PM EDT

The Interior Department is aiming to gut the Obama administration's methane waste rule that the Senate failed to kill off today.

"As part of President Trump's America-First Energy Strategy and executive order, the Department has reviewed and flagged the Waste Prevention rule as one we will suspend, revise or rescind given its significant regulatory burden that encumbers American energy production, economic growth and job creation," said Kate MacGregor, acting assistant secretary of the Interior for Land and Minerals, in a statement.

The Obama-era rule required companies drilling on public land to take steps to eliminate methane leakage or flaring from their operations. The rule was attacked by the industry and many Republicans as too expensive to comply with, but Republican Sens. [John McCain](#) (Ariz.), [Susan Collins](#) (Maine) and [Lindsey Graham](#) (S.C.) today joined with Democrats to [defeat](#) a resolution under the Congressional Review Act that would have nullified it.

"The vote today in the Senate doesn't impact the administration's commitment to spurring investment in responsible energy development and ensuring smart regulatory protections," MacGregor said.

"The rule is expected to have real and harmful impacts on onshore energy development and could impact state and local jobs and revenue. Small independent oil and gas producers in states like North Dakota, Colorado and New Mexico, which account for a substantial portion of our nation's energy wealth, could be hit the hardest," she added.



**WHAT'S NEXT:** Interior will have to issue a proposed rule to revise or withdraw the rule.

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By Jason Huffman | 05/11/2017 05:40 AM EDT

*With help from Jenny Hopkinson, Helena Bottemiller Evich and Catherine Boudreau*

**PERDUE'S BIGGEST MOVE YET:** Agriculture Secretary Sonny Perdue heads to Cincinnati today with a major announcement: He's creating a new undersecretary for trade — a position that Republicans and farm groups have long wanted as an advocate for agricultural exports. Creating this position means another role at this level will have to go away, because there's a statutory cap on undersecretary jobs.

Sources have confirmed that the announcement will include the trade position, it's still unclear who or what will be cut or demoted with this move.

**The budget tea leaves:** There may be more changes to come — and potentially significant cuts to the department. President Donald Trump has called for a 21 percent cut to the department's discretionary spending. International food aid and discretionary programs at the Rural Business and Cooperative Service have been put on the chopping block. Largely spared from cuts were nutrition assistance programs, food safety efforts and wildfire funding.

Perdue is set to announce the changes at 2:30 p.m., and Pro Agriculture's Jenny Hopkinson will be on the ground in Cincy to cover all the details.

**HAPPY THURSDAY, MAY 11!** Welcome to Morning Ag, where your host would like to know what you or maybe some kids you know would name a [rare albino orangutan](#) found in Indonesia. Send your questions, comments and tips to [jhuffman@politico.com](mailto:jhuffman@politico.com) or [@JsnHuffman](#). Follow the whole team at [@Morning\\_Ag](#).

**NEW AG LEADERSHIP TEAM:** Perdue is building out his squad at the Agriculture Department, and Heidi Green, his new chief of staff, has done all of us a service by providing [a memo](#) with interesting biographical details about each member, including herself. Green says she grew up in Northern California but considers herself more a Georgian after moving there. Most recently she worked for Deloitte Touche. Others:

**Chris Young**, deputy chief of staff: He's a "proud son" of Fitzgerald, Ga., with ties to Perdue's [gubernatorial administration](#) in Georgia.

**Julie Gordon**, special assistant to the chief and deputy chief of staff: She's described as a "lifelong Virginian" who will serve as the "primary conduit to the whole USDA team."

**Rachel Pick**, special assistant to the secretary: She's a "self-described farm girl from Iowa" who worked in Sen. Chuck Grassley's office.

**Lauren Sullivan**, director of scheduling: She's "a native and proud Marylander" who most recently worked in the U.S. Senate's Sergeant-at-Arms office.

**Bethany Hudson**, deputy schedule and events and protocol officer: She "hails from North Carolina" and is identified as the go-to for booking Perdue at an internal department event.

**Tim Murtaugh**, director of communications: He's a "native Pennsylvanian" who comes to USDA with a "career built on high-profile strategic communications in the public, political, and private sectors," Green says.

**Michawn Rich**, deputy director and press secretary: She's from Reno, Nev., and worked for both Republican Sens. Dean Heller (Nev.) and Rob Portman (Ohio).

#### **AG WORRIES STOP MCCAIN, SASSE FROM SUPPORTING LIGHTHIZER:**

Republican Sens. [John McCain](#) (Ariz.) and [Ben Sasse](#) (Neb.) are holding back their votes to confirm Robert Lighthizer as the next U.S. trade representative, announcing Wednesday night that they will oppose his nomination because they fear he doesn't get the importance of NAFTA, especially with regard to agriculture. "We fear that you do not have an appreciation for the millions of jobs created by this free trade deal, and that you would not champion agriculture during your time as USTR," they wrote in [a letter](#) to Lighthizer. "A constant theme throughout your confirmation process has been your failure to grasp the importance of protecting agriculture in trade negotiations."

The two lawmakers also rip the Trump administration, saying that its "incoherent and protectionist message on trade has caused serious uncertainty for export markets, and has harmed our valuable relationships with Canada and Mexico."

**Lighthizer will still likely win the 51 votes he needs** for Senate approval even without McCain's and Sasse's support. One name he can add in the "yes" column is Wisconsin Democratic Sen. Tammy Baldwin. She announced her support for his nomination this morning though she noted in her statement that, as trade representative, Lighthizer needs to take immediate action on both Canadian dairy trade barriers and NAFTA. "In Wisconsin, there is an immediate need for the Trump administration to follow through on the promises that have been made to our workers and dairy farmers," she said.

**GREEN PICKED TO LEAD USAID:** In another late Wednesday development, Mark Green was nominated to lead USAID. This follows weeks of speculation that the former GOP congressman from Wisconsin was the sole candidate for the job. Green had been [trying to gain assurances](#) from the Trump administration that, if he accepted the position, funding for USAID wouldn't be gutted and that the agency would not be devoured by the State Department. Whether his conditions were met was not immediately clear. More details for Pros [here](#).

**FFAR SEEKS STUDIES OF POULTRY, SWINE WELFARE:** The Foundation for Food and Agriculture Research is seeking proposals for \$2 million in grant funding to address animal welfare issues in swine and cage free hens. The group is set to announce today that it wants to

fund research aimed at reducing the incidents of bone fractures in poultry kept in aviary housing an increasingly common problem as once more sedentary birds now have more room to move around. The swine grants are aimed at determining methods to produce more female piglets to prevent the need to castrate male piglets, which is done to prevent off-tasting meat caused by certain hormones. FFAR is looking to make grant awards by the end of the year.

**ULTIMATUM FOR TRUMP ON OPIOIDS:** Sen. [Shelley Moore Capito](#) did not mince words in a [letter](#) to Office of Management and Budget Director Mick Mulvaney on the administration's plan [scooped](#) by Pro Health Care to cut 95 percent of the budget for the Office of National Drug Control Policy, the lead federal agency on combating the opioid crisis. The West Virginia Republican, who chairs the Senate Appropriations Subcommittee on Financial Services and General Government (which has jurisdiction over ONDCP), wrote that if the cuts "are proposed in the administration's Fiscal Year 2018 budget, then I will lead a bipartisan group of my colleagues on the Appropriations Committee and in the Senate to reject those proposed cuts."

**'SPEED BUMPS' ON ROAD TO AN INFRASTRUCTURE BILL:** Getting the Obamacare repeal bill through the House has thrown off the Republican legislative plan of attack for 2017 to the point that Sen. [John Thune](#) (R-S.D.), the third-highest ranking Republican in the Senate, [said](#) "it's going to be hard" to tackle infrastructure this year. "The speed bumps along the way, getting health care over here, set us back a little bit," he said, adding that infrastructure could be the odd priority out: "We've gotta do the budget to do tax reform and finish health care first, and now the administration is saying they want to do infrastructure outside of tax reform so it could, yeah, it could be something that gets pushed."

**2018 IMPLICATIONS IN HEITKAMP'S METHANE VOTE?** Sen. [Heidi Heitkamp](#) (D-N.D.) joined 50 of her Senate colleagues on Wednesday in shooting down a Congressional Review Act measure to repeal an Obama-era methane emissions rule [drawing a barbed response](#) from Rep. [Kevin Cramer](#) (R-N.D.), a possible 2018 challenger.

North Dakota is the nation's No. 2 oil and natural gas producer, and many wells there have not yet been hooked up to pipelines that could ship the gas to market, Pro Energy's Ben Lefebvre wrote. Cramer, in a statement after the vote, went out of his way to thank Sen. John Hoeven (R-N.D.) for voting for the CRA, which he called "a huge missed opportunity to protect our energy jobs in Western North Dakota and across America, and any senator who voted against this rule should be ashamed of themselves."

For Heitkamp, it was just politics. "There isn't a vote you couldn't bring into [an attack ad], so it is what it is," Heitkamp [told](#) POLITICO, adding: "When I believe it's in the best interests of the people of my state, that's how I vote."

**TEXAS FARM BUREAU WITHDRAWS SUPPORT FROM EMINENT DOMAIN BILLS:** The Texas Farm Bureau says it is no longer backing state legislation that would have addressed eminent domain issues. The Lone Star state has been a classic eminent domain battle ground, involving fights between ranchers, oil companies, rail lines and even football stadiums. In particular, the farmers group says it dropped its support for [S.B. 740](#) and [H.B. 2684](#), companion bills it had supported since they were introduced in February, because they were both changed to remove a provision that would have required the property taker to pay attorney's fees

if a court ruled that the offer was more than 20% less than the court award. "This was the key for us and it was dropped from the bill," said Gene Hall, the Texas Farm Bureau's spokesman.

The group had also negotiated to have the bills allow landowners introduce evidence of other similar properties and their sales prices, enabling them to prove that their land was worth more than the eminent domain offer. But this provision also was dropped from the bills, Harris said. The groups that would be in favor of both changes to the bills include government entities, utilities and oil and gas companies, he added.

**E15 SHOWING UP BIG IN MINNESOTA:** Monthly E15 sales in Minnesota have, for the first time ever, exceeded 1 million gallons, according to data from the Minnesota Department of Commerce. The March sales totaled 1.03 million gallons, more than double the amount sold in March 2016 (507,607 gallons), [reports](#) Ethanol Producer Magazine. "This is a significant milestone in Minnesota and proof more and more consumers are switching to E15. It's cheaper than regular unleaded, reduces emissions and is made right here in Minnesota," Tim Rudnicki, executive director of the Minnesota Bio-Fuels Association, is quoted as saying.

**GUIDE WARNS AGAINST BUYING 'BABY FISH':** Under the heading of "yes, it's true," the marine conservation group Oceana has developed a digital guide to help consumers avoid buying "baby fish," seafood below minimum legal catch limits. The guide is being promoted in the European Union by actor Miguel Angel Silvestre where Oceana says only 55 types of fish have minimum legal sizes. "In Europe alone, 64 percent of fish stocks are overfished," the group says. "This means that fish populations are caught at a faster rate than what the fish can naturally reproduce, meaning there are fewer and fewer fish in the sea and on our dinner tables." Read more [here](#).

**TYSON NOT EYEING POULTRY BREEDING IN RUSSIA:** Tyson Foods says it's not moving into the Russian poultry breeding market, contrary to a [report](#) published Wednesday by Global Meat News. GMN, which had quoted Russian sources, said the Arkansas-based poultry giant was going to use its Cobb-Vantress subsidiary to buy a 48.25 percent stake in Broiler Budushego (Broiler of the Future), sharing part of a company that owns roughly 40 percent of the sector. "Tyson Foods has no plans to expand into the Russian broiler sector or have its Cobb Vantress subsidiary increase its share in the grandparent company Broiler Budushego," Tyson spokesman Gary Mikelson says.

**FOOD SAFETY GROUP TO DISCUSS NEW STRATEGIC PLAN:** The Interagency Food Safety Analytics Collaboration, a group organized in 2011 by the Obama administration to coordinate food safety efforts by USDA's Food Safety and Inspection Service, the CDC and FDA, will hold a webinar on May 31, from 4 p.m. to 5 p.m., to describe its [new strategic plan](#) for 2017-2021. To register for the event, which is expected to include a question-and-answer session, go [here](#). A recording and transcript will be posted [here](#) at a later time.

### **MA'S INSTANT OATS:**

The Agriculture Department's National Agricultural Statistics Service on Wednesday predicted the 2017 U.S. winter wheat crop would be 25 percent smaller than a year ago, The Associated Press [reports](#).

Ted Kwong, Pennsylvania Sen. Pat Toomey's 2016 campaign communications director and a campaign alum of Wisconsin Gov. Scott Walker, has joined Whole Foods Market as a regional PR director based in New York, POLITICO Playbook [reports](#).

American ranchers traveling in Japan on a U.S. Meat Export Federation mission this week say they are seeing plenty of demand for U.S. beef, DTN [reports](#).

ChemChina has won about 82 percent support from Syngenta shareholders for its \$43 billion takeover of the Swiss company, Reuters [reports](#).

**CALENDAR:** Please write us at [agcalendar@politico.com](mailto:agcalendar@politico.com) to tell us about any upcoming events.

9:15 a.m. Former President Bill Clinton talks about fighting childhood obesity at the Partnership for a Healthier America's seventh annual summit at the Renaissance Washington, D.C., Downtown Hotel.

9:30 a.m. The Senate Committee on Agriculture, Nutrition and Forestry holds a full committee hearing on "Pesticide Registration under the Federal Insecticide, Fungicide, and Rodenticide Act: Providing Stakeholders with Certainty through the Pesticide Registration Improvement Act" at 328 Russell. Livestream [here](#).

**THAT'S ALL FOR MA!** See you again soon! In the meantime, drop your host and the rest of the team a line: [cboudreau@politico.com](mailto:cboudreau@politico.com) and [@ceboudreau](https://twitter.com/ceboudreau); [jhopkinson@politico.com](mailto:jhopkinson@politico.com) and [@JennyHops](https://twitter.com/JennyHops); [hbottemiller@politico.com](mailto:hbottemiller@politico.com) and [@hbottemiller](https://twitter.com/hbottemiller); [bgriffiths@politico.com](mailto:bgriffiths@politico.com) and [@BrentGriffiths](https://twitter.com/BrentGriffiths); and [jhuffman@politico.com](mailto:jhuffman@politico.com) and [@JsonHuffman](https://twitter.com/JsonHuffman). You can also follow [@POLITICOPro](https://twitter.com/POLITICOPro) and [@Morning\\_Ag](https://twitter.com/Morning_Ag) on Twitter.

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<https://www.politico.com/tipsheets/morning-agriculture/2017/05/major-perdue-speech-in-cincinnati-022780>

## Stories from POLITICO Pro

### **Perdue builds out executive office at USDA** [Back](#)

By Catherine Boudreau | 05/10/2017 03:43 PM EDT

Chris Young is serving as deputy chief of staff to Agriculture Secretary Sonny Perdue, who is building out his team at USDA after being confirmed two weeks ago.

Young's name was included in a [memo](#) that Heidi Green, Perdue's chief of staff, sent to USDA employees; it was obtained by The Hagstrom Report. Perdue, while serving as governor of Georgia in 2005, appointed Young as chief of protocol and director of international affairs.

Rachel Pick, whom Perdue gave a shout-out to during a speech in Nevada, Iowa, on Friday, serves as special assistant to the secretary, while Julie Gordon is special assistant to the chief and deputy chief of staff for Green and Young.



Other staff in Perdue's office include Lauren Sullivan and Bethany Hudson, who are serving as director and deputy of scheduling, respectively.

*To view online [click here](#).*

[Back](#)

## **Trump's USAID pick stuck in the mud [Back](#)**

By Ian Kullgren, Daniel Lippman and Josh Gerstein | 05/01/2017 07:06 PM EDT

Former GOP Rep. Mark Green is the Trump administration's expected pick to lead the United States Agency for International Development, but has struggled to close a deal with the Trump administration, according to four sources with knowledge of the talks.

For weeks, Green has been the sole candidate to lead USAID, the agency that sends help to foreign countries in times of disaster. In addition to trying to secure a title bump for himself, Green has been unable to get solid assurances that the agency won't be gutted or devoured by the State Department during Trump's tenure.

Green has been frustrated by his dealings with Secretary of State Rex Tillerson and other Trump officials, the sources said. In addition to wanting the title of USAID administrator, Green is also seeking to be named to a high-ranking position in the State Department. And he is seeking promises that Trump won't dismantle USAID or make it a subsidiary of the State Department, a move that's feared by people in international development circles as a way to sideline foreign aid.

Green made the case to White House Chief of Staff Reince Priebus that he wanted the dual title of USAID administrator and a deputy slot with an office on the 7th floor, and was led to believe that the White House had given him those terms for accepting the job, according to a source close to State.

As of last week, Green was telling those close to him that his status was "still pending," according to another source.

Green's demands could complicate plans by Trump and Tillerson to cut positions in the department. Already they've indicated plans to, in essence, do away with a second deputy secretary spot created by the Obama White House in 2009, though it's not unheard of for USAID administrators to hold another role in the State Department.

Green, for his part, is a known entity in the foreign aid sphere, having served as ambassador to Tanzania under President George W. Bush. From 1999-2007 he represented Wisconsin's 8th District in Congress, serving as assistant majority whip. He is currently president of the Washington, D.C.-based International Republican Institute, a nonpartisan group that works to support democracy abroad by helping other countries build governmental infrastructure.

Trump has so far dismissed foreign aid, proposing a 31 percent cut to USAID in his budget blueprint. That's a departure from past administrations, both Republican and Democratic, which

have generally supported foreign aid as a low-cost investment to stabilize volatile regions of the world.

It's doubtful that Congress would sign off on cuts of that magnitude, but significant funding reductions for aid are possible.

Tillerson has been reluctant, so far, to make any pledges about keeping USAID independent because all federal agencies have been asked to draft reorganization plans aimed at streamlining the federal government, a Green associate said. Those plans are not due to be finalized until September — a timeline that seems in tension with getting a USAID nominee to the Senate soon.

Green did not immediately respond to requests for comment for this story. The White House declined to comment.

In addition to the tussle with Tillerson, there's also a backlog at the State Department, with the administration moving slowly to fill scores of positions.

"I would imagine it's much more about the general holdup than something specific with Mark Green," said Steven Radelet, a senior development adviser for former Secretary of State Hillary Clinton and former chief economist for USAID.

A source familiar with the matter expressed confidence that Green would ultimately be named administrator of USAID. "They are just trying to finalize discussions with Green," the source said.

*To view online [click here](#).*

[Back](#)

**Green nominated to lead USAID** [Back](#)

By Catherine Boudreau | 05/10/2017 07:19 PM EDT

President Donald Trump officially nominated Mark Green to lead USAID, following weeks of speculation that the former GOP congressman from Wisconsin was the sole candidate for the job.

Green had been [trying to gain assurances](#) from the Trump administration that, if he accepted the position, funding for USAID wouldn't be gutted and that the agency would not be devoured by the State Department. Whether his conditions were met was not immediately clear.

Trump proposed a 31 percent cut to USAID in his "skinny" budget, unveiled in March, prompting backlash from the international development community and members of Congress.

Green is currently president of the nonpartisan International Republican Institute, which works to support democracy abroad by helping other countries build governmental infrastructure. He also served as ambassador to Tanzania under President George W. Bush from 2007 to 2009, overseeing major programs in global health and economic development.

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[Back](#)

## **Trump budget would effectively kill drug control office** [Back](#)

By Dan Diamond | 05/05/2017 11:01 AM EDT

President Donald Trump's fiscal 2018 budget would cut about 95 percent of funding for the Office of National Drug Control Policy, effectively ending its mission as the lead agency in charge of combating the opioid crisis and other drug epidemics, according to an internal office email and two sources who spoke with POLITICO.

The office, which received \$388 million in federal funding in fiscal 2017, would only receive \$24 million in fiscal 2018, according to the [budget proposal](#) from the White House. The agency's high-intensity drug trafficking program, which received \$254 million in federal funding in 2017, and its drug-free communities support program, which received \$100 million, would be completely zeroed out under Trump's proposal.

The budget would also cut almost \$7 million in salaries and expenses, leading to projected cuts of as many as 33 full-time equivalents. About 70 people currently work at the drug control office.

"These drastic proposed cuts are frankly heartbreaking and, if carried out, would cause us to lose many good people who contribute greatly to ONDCP's mission and core activities," acting Director Rich Baum wrote in an internal email to staff that was shared with POLITICO.

Baum said that he was working with the White House to save the office's funding, but two sources within ONDCP said that would be unlikely, given that the proposal cleared the White House's budget office this week.

Trump has vowed to address the nation's opioid crisis. But defunding the drug control office "is like removing the tip of the spear," said one source within the agency, noting that ONDCP is the only agency responsible for spearheading the government-wide response to drug use.

Sen. [Rob Portman](#) (R-Ohio), who co-authored a major opioids bill that became law last year, forcefully opposed the proposed cuts to the office.

"We have a heroin and prescription drug crisis in this country and we should be supporting efforts to reverse this tide, not proposing drastic cuts to those who serve on the front lines of this epidemic," he said in a statement.

Presidential budgets are usually nothing more than a wish list, and Congress could be hard-pressed to approve such significant cuts to the office amid a deadly opioid epidemic.

A White House official did not confirm the details of the proposal.

"It would be premature for us to comment or anyone to report on any aspect of this ever-

changing, internal discussion before the publication of the document," the official said. "The President and his cabinet are working collaboratively to create a leaner, more efficient government that does more with less of taxpayers' hard-earned dollars."

Trump recently created a new White House commission on opioids, which is led by New Jersey Gov. Chris Christie and would be supported by Trump's 2018 budget. Advocates urging a more aggressive treatment agenda have said the White House commission is redundant and may encourage a throwback to the "war on drugs" approach to fighting opioid addiction.

Rep. Tom Marino (R-Pa.), a Trump ally who had been tapped by the White House to run the office as its full-time director, earlier this week said he was withdrawing from consideration, citing a family medical issue.

Trump outlined a "skinny" budget in March. He's expected to release a more comprehensive proposal this month.

*To view online [click here.](#)*

[Back](#)

**Thune: 'It's going to be hard' to do an infrastructure package this year** [Back](#)

By Brianna Gurciullo | 05/10/2017 01:49 PM EDT

Senate Commerce Chairman John Thune said today that lawmakers may not be able to squeeze in an infrastructure package this year with health care, a tax overhaul and other issues dominating their schedules.

Thune, the third-highest ranking Republican in the Senate, told reporters that the House's struggle to pass the American Health Care Act held up other GOP priorities.

"Well, I mean, I think the hiccups that the House had, the speed bumps along the way getting health care over here set us back a little bit," Thune said. Now, Thune said, "from a scheduling standpoint, yeah, it's going to be hard" to fit in infrastructure this year.

"We've gotta do the budget to do tax reform and finish health care first," he said. "And now the administration is saying they want to do infrastructure outside of tax reform, so it could, yeah, it could be something that gets pushed."

Thune added that, in theory, the White House could move up "an infrastructure discussion."

"Or I mean they could decide, if the administration wanted to, to try and wedge a, slot an infrastructure discussion before they take on the tax code," Thune said. "I don't know. That's probably a decision that will be made above my pay grade."

*To view online [click here.](#)*

[Back](#)

## **Cramer rips Senate for not repealing methane rule** [Back](#)

By Ben Lefebvre | 05/10/2017 01:43 PM EDT

Rep. [Kevin Cramer](#) (R-N.D.) railed against the Senate's failure to repeal an Obama-era methane emissions rule today, again fueling speculation that he may seek to challenge Sen. [Heidi Heitkamp](#) (D-N.D.) for her seat.

Heitkamp and 50 other senators shot down the CRA in a procedural vote, an outcome that caught many Hill watchers by surprise. Republicans had more than a month to try to build support to repeal the BLM rule.

North Dakota is the nation's No. 2 oil and natural gas producer, and many wells there have not yet been hooked up to pipelines that could ship the gas to market.

The failure to adopt the CRA was "a huge missed opportunity to protect our energy jobs in Western North Dakota and across America, and any senator who voted against this rule should be ashamed of themselves," Cramer said in a statement. "I thank Senator [Hoeven](#) for his unwavering support for the BLM Methane CRA, and I hope we see stronger support from our senators for America's energy industry in the future."

Cramer, an at-large representative, has been mentioned as a possible challenger to Heitkamp when the first-term senator's seat comes up next year. He met with Majority Leader [Mitch McConnell](#) [last year](#) to discuss the move.

A Cramer spokesman did not reply to questions about the representative's plans for 2018. A Heitkamp spokesman did not immediately respond to questions.

*To view online [click here](#).*

[Back](#)

## **Senate methane vote may return for 2018 campaigns** [Back](#)

By Nick Juliano and Anthony Adragna | 05/10/2017 06:01 PM EDT

Senate Democrats extended their streak of sticking together on tough votes Wednesday, when they helped defeat Republicans' final shot at overturning an Obama-era energy regulation.

The failure of a Congressional Review Act resolution is a setback for Republicans' and oil backers' hopes for a quick reversal of the BLM rule limiting methane emissions from oil and gas drilling, but they are trying to spin a consolation prize out of Wednesday's vote: a new message to use in 2018 campaign ads.

And though the resolution ultimately failed because three GOP senators crossed the aisle to oppose it, it did put red-state Democratic Sens. [Heidi Heitkamp](#) and [Joe Manchin](#) on the record voting against the industry that plays a big role in their state economies.

While Senate Republicans' campaign arm was silent in the aftermath of the surprise vote, some potential candidates and influential groups said they hoped the vote would hurt Democrats.

"I can't imagine that the voters of North Dakota, a state that President Trump won handily, are too pleased with this vote," said Chris Warren, a spokesman for the American Energy Alliance, a conservative organization with links to the Koch brothers. "It would not surprise me one bit if this comes back to haunt her in 2018."

Rep. [Kevin Cramer](#) (R-N.D.), who has been mulling a run against Heitkamp, took a shot at his prospective opponent in an interview Wednesday with a local radio station. He said he suspected Senate Democratic leaders prevented her from casting a vote that would have allowed the resolution to pass with a tie-breaking vote from Vice President Mike Pence.

"That's exactly what happened. Her hands were sort of tied because her leadership would never let her be the deciding vote," Cramer [told WDAY](#). "When you have to be the 50th vote, that's when you have to choose between what's good for your state and your country and what your leadership wants."

A former congressional aide who now works with industry groups in the West said he expected the vote may cause oil companies to put resources into a state they would otherwise have ignored.

"The oil and gas industry now has Heitkamp back on the radar. While they were likely set to let her race go before, expect a lot more interest in N.D. now," said the source, who requested anonymity to discuss internal deliberations.

The National Republican Senatorial Committee did not release any statements attacking vulnerable members Wednesday. The campaign arm is chaired by Colorado Sen. [Cory Gardner](#), who remained publicly undecided up to the moment he cast his vote and did not explain why he supported advancing the resolution Wednesday. The NRCC and a spokesman in Gardner's personal office did not immediately respond to requests for comment.

The CRA resolution [failed](#) on a 49-51 procedural vote Wednesday after Republican Sens. [John McCain](#), [Lindsey Graham](#) and [Susan Collins](#) joined all Democrats and independents in opposition.

For her part, Heitkamp said she was not worried about potential campaign attacks next year.

"There isn't a vote you couldn't bring into [an attack ad], so it is what it is," Heitkamp said. She added, "When I believe it's in the best interests of the people of my state, that's how I vote."

Heitkamp and Manchin said they had problems with BLM's methane regulation, even as they voted against using the CRA because it would prevent the government from issuing a similar rule in the future. The two [sent a letter](#) to Interior Secretary Ryan Zinke on Wednesday asking him to revise it, something the department already plans to do.

The methane resolution was the latest in a string of votes on which the minority party has [maintained unity this year](#), even among members facing tough re-election in states President

Donald Trump won. That may explain why Republican leaders decided to proceed with a vote that they risked losing: to force Democrats who had remained undecided to go on the record.

"We said we were going to have a vote on this from the beginning, and we did," said Sen. [John Barrasso](#), the resolution's sponsor. "And people got to stand up and say where they voted, and where their beliefs were. So this was intended to be today and it was."

Sen. [Jim Inhofe](#), Barrasso's predecessor as chairman of the Environment and Public Works Committee and a strong supporter of the resolution, said he was caught off guard by its failure today. But he predicted the vote would come back to haunt red-state Democrats.

"Because the unpopularity of over-regulation crosses party lines ... I think that's a major detraction from their campaigns," Inhofe told reporters.

Environmentalists relished the result Wednesday.

"We thank each and every Senator who stood up against big polluters today and defended these commonsense safeguards from methane pollution," League of Conservation Voters President Gene Karpinski said in a statement. "The battle for a clean, safe environment is far from over, and we will continue to stay vigilant, but today is a victory for all those who are raising their voice in resistance to the anti-environmental Trump administration, Republican leadership and Congress."

And it wasn't just greens cheering.

"We have known about the problem of wasted gas from federal lands for years, and the BLM finally did something about it by updating rules dating back to the Reagan administration when fracking didn't exist," Taxpayers for Common Sense President Ryan Alexander said in a statement. "If Congress had repealed the rule, it would have meant more waste and more losses."

Sen. [Michael Bennet](#) (D-Colo.), who bucked his party to vote for building the Keystone XL pipeline in 2015 and easily won re-election last year, said his colleagues should easily be able to defend their votes on the methane resolution.

"I don't have any doubt that the record Heidi Heitkamp has and Joe Manchin has in their states are reflective of the views of people in their states, and that's what people understand going forward," Bennet told POLITICO. "Again, I think people understand the reason this rule is in place and I don't think they're going to have any trouble explaining their votes at all."

*Ben Lefebvre and Elana Schor contributed to this article.*

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[Back](#)

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By Jason Huffman | 05/10/2017 05:44 AM EDT

*With help from Helena Bottemiller Evich, Catherine Boudreau and Jenny Hopkinson*

**WHY FEINSTEIN'S 'BLUE CARD' BILL LEAVES AG GROUPS WANTING:** When Sen. [Dianne Feinstein](#) rolled out word on Tuesday of a forthcoming House version of her new "blue card" farm worker immigration bill Rep. [Luis Gutiérrez](#) (D-Ill.) will do the honors she drew a comparison to the "Gang of Eight" immigration reform measure she helped negotiate in 2013. That bill [cleared](#) the Senate by a margin of 68-32. Her blue card bill, she said in a phoner with reporters, resurrects the blue-card aspect of the earlier legislation the one part of that failed effort that "everyone agreed to."

The first caveat is that neither Feinstein's measure nor the one Gutiérrez has promised to introduce "in the next week" has a GOP co-sponsor. But what Feinstein did not mention is that her bill doesn't include the part of the 2013 measure that ag interests fought for back then and still want today: a visa program that would allow several hundred thousand new legal immigrants to be brought into the U.S., to ease the agricultural worker shortage. Feinstein's [Agricultural Worker Program Act](#) (S. 1034) would allow qualifying workers to earn a blue card and, in time, become eligible to adjust to a green card or legal permanent residency.

**'Missing wheel':** MA spoke to reps from several prominent agricultural groups, and while no one wanted to go on the record at such an early stage, it was clear that future negotiations could depend heavily on a visa program and enforcement provisions sought by Republicans. "A bicycle needs both wheels," one industry group source said. "This is missing a wheel."

Gutiérrez, who took part in the conference call Tuesday, said undocumented immigrants whose labors are integral to American agricultural output should not be treated "as outsiders." Feinstein's bill, which has four co-sponsors in the Senate, all Democrats, would help to calm the nerves of many undocumented farm workers who have been rattled by stepped-up federal Immigration and Customs Enforcement raids under the Trump administration, he said.

**HAPPY WEDNESDAY, MAY 10!** Welcome to Morning Ag, where your host would like to express his gratitude to multiple readers who responded to our request for pictures of Agriculture Secretary Sonny Perdue wearing a "Don't mess with the RFS" button while in Iowa last week. Some of the best shots come courtesy of [Des Moines Register](#) photographer Michael Zamora. Send your questions, comments and tips to [jhuffman@politico.com](mailto:jhuffman@politico.com) or [@JsnHuffman](#). Follow the whole team at [@Morning\\_Ag](#).

**AMERICA'S SUBURBS ARE KILLING US:** As the car became essential to American life,

our sedentary lifestyles started making obesity and other diseases far worse. Can we reverse-engineer our own towns to fix the problem? The latest issue of **Agenda 2020**, POLITICO's running project on America's long-term policy future looks at new ideas for redesigning how we live. [Read more](#). ALSO: [Why can't Washington fix what we're drinking?](#) | [Fighting for air](#) | [Photo Gallery](#) | [Video: Environmental Health](#)

**THE SNAP DIVIDE: WHERE CONGRESS & VOTERS DIFFER:** The country may be ultra-polarized right now, but there's a surprising level of public consensus on SNAP: Strong majorities back raising benefits and the idea of limiting certain unhealthy purchases. Pro Ag's Helena Bottemiller Evich dug into a groundbreaking survey out of the University of Maryland and how its findings could affect SNAP politics on the eve of the next farm bill cycle. [Read it here](#).

**44: LET SCIENCE RULE ON GMOs:** On questions surrounding GMOs and gene editing, former President Barack Obama says he believes the best approach is to follow the science, just like he did on climate change during his eight years in the White House. Obama's remarks came Tuesday during a more than hour-long appearance at Seeds & Chips, a major food technology summit in Milan, Italy, where he delivered the keynote for an undisclosed sum.

"This debate around genetically modified foods is, I know, a very controversial one," Obama said during a Q&A with Sam Kass, who now invests and advises food tech companies. "The approach I took when I was president of the United States was that in the same way I would let the science determine my policies around climate change, I try to let the science determine my attitude about food production and new technologies."

Obama said he's cool with having a cautious approach to genetic modification technologies, but added: "I don't think we can be closed off to it, but I don't think we can be closed-minded to it. The truth is that humanity has always engaged in genetic modifications. The rice we eat or the corn we eat or the wheat we eat does not look like what corn or rice or wheat looked like 1,000 years ago, and that's because humanity continually learned from experience."

**"We can't stop now in discovering new things," he said. "I do think we need to have some safeguards in how we approach it."** Obama noted that gene editing and other gene-altering techniques are becoming very cheap, and so thinking about how to move forward "in an appropriate way, in a controlled way" will be important.

"It's here. It's going to come anyway, so we might as well make sure we have a smart discussion about how we proceed and how we think about it," Obama said, to applause.

His Seeds & Chips appearance offered the most in-depth window to date into his thinking on a range of food issues, from climate adaptation to nutrition. Here's a quick rundown of other highlights:

— **On the rowdy GMO debate:** "I worry a little bit that somehow, sometimes the conversation has just gotten cut off, as opposed to, 'Let's see what the facts are,'" he said. Obama noted, however, that he understood where some of the distrust comes from, citing examples from the tobacco and pharmaceutical industries, which have at times falsely insisted on their products' safety.

— **On the Paris agreement's future:** "It may be that some of the steps we put in place move more slowly than they otherwise would have, but I'm confident that the United States will continue to move in the right direction," he said, adding: "The private sector has already made a determination that our future is in clean energy. Investments are already moving into clean energy."

— **On meat:** "No matter what, we are going to see an increase in meat consumption, just by virtue of more Indians, Chinese, Vietnamese and others moving into middle-income territory," Obama said when asked whether consumers needed to change their eating habits to be "climate-smart."

"That doesn't mean that we can't teach you and me to have a smaller steak, for our own health," he added. "It doesn't mean we can't make progress in educating the advanced world about the need to reduce just for dietary reasons the amount of meat that we consume at any given meal, particularly if it's wasted; but what it does mean is that we're also going to have to find ways to produce protein in a more efficient way."

— **On the East Wing's food impact:** Obama said he thinks the East Wing where FLOTUS maintains offices had a bigger impact on consumers and public education during his presidency than any policies, per se. "Sam worked with my wife to promote healthy eating and most of the impact that you had was not legislation, it wasn't laws that were passed, but it was just raising awareness with parents about what unhealthy eating was doing to their children," Obama said to Kass. "I think the key from a consumer perspective is just giving people good information."

**Want more?** Helena's story on Seeds & Chips is [here](#).

**WHO IN AG WORLD HAS MET WITH DONALD TRUMP?** It's a legit question and POLITICO has answered it. Since the White House has refused to disclose the names of those who have had meetings with President Donald Trump, Andrew Restuccia and Aidan Quigley compiled a database using public documents, media accounts and original reporting. The list of individuals who have had an audience with Trump either at the White House or at his Mar-a-Lago resort includes more than 1,200 business executives, nearly 350 politicians and 47 world leaders, plus a *yuge* grab bag of other figures from pro golfers to rocker Ted Nugent to digital media maven Matt Drudge.

**Here are some food and ag names:** Secretary Perdue has met with Trump (at least) three times and American Farm Bureau Federation President Zippy Duvall twice. Iowa Agriculture Secretary Bill Northey and North Carolina Agriculture Commissioner Steve Troxler were part of the farmer roundtable on April 25. And from the Senate Agriculture Committee, Chairman Pat Roberts has had three visits, ranking member Debbie Stabenow (1), Michael Bennet (2), John Boozman (2), Chuck Grassley (4) Joni Ernst (3), Heidi Heitkamp (3), Amy Klobuchar (1) and Patrick Leahy (1). Dow Chemical CEO Andrew Liveris: four.

**Check out the [article](#) and the [database](#).**

**ORGANIC ANIMAL WELFARE RULE GETS A HOLD-UP:** The Obama administration's last rule at the USDA could be in line for a revamp, since it missed the CRA boat. Trump's

USDA delayed implementation of the organic animal welfare standard until November and is seeking comment on whether to let it take effect at all. It fell under the category of a "midnight regulation," but Congress' window to kill it off via the Congressional Review Act closes Thursday.

Some GOP lawmakers and large organic egg producers would be happy to see the measure scrapped, arguing it would be costly to implement and could result in the spread of disease. During the Senate Agriculture Committee's farm bill field hearing in Michigan on Saturday, Andy Snider, a turkey, hog, corn and soybean farmer who represented the Michigan Turkey Producers Cooperative, asked Chairman Roberts, who has pushed USDA to pull the rule, about whether he and ranking member Stabenow would contact Secretary Perdue this week to talk about delaying the rule's effective date. Roberts said he'd be "delighted" to request that of Perdue, adding that the secretary "understands agriculture."

In a statement on Tuesday, Roberts said the rule would be "disastrous" for farmers and result in "increased prices at the grocery store; family farmers will be put out of business; and animal health will be put at risk, which will decrease food safety."

**The other side of the egg, err, coin:** Roberts and large organic egg companies are facing off against the Organic Trade Association the industry's biggest lobbying group and animal welfare organizations. OTA wants the measure to take effect to ensure that certified meat, dairy and eggs meet consumer expectations for how the animals should be treated. Wayne Pacelle, president and CEO of the Humane Society of the United States, says the delay is a "veiled maneuver to undercut America's family farmers. This rule is an enormous boon to America's family farmers who will be able to stay on the farm because of the value-added products they will be able to sell to increasingly informed consumers."

**TODAY: DOJ ANTITRUST NOMINEE FACES SENATE JUDICIARY:** Makan Delrahim, Trump's pick for assistant attorney general for DOJ's Antitrust Division, goes before the Senate Judiciary Committee for his confirmation hearing today, and a coalition of 137 farming, environmental and consumer advocacy groups wants him to face tough questioning to see how he will evaluate proposed mergers in the agrochemical industry.

Committee members want Delrahim to take an especially close look at the proposed tie-up of Monsanto and Bayer AG. They want the lawmakers to ensure that he will "devote all necessary resources to the investigation, and hold the welfare of farmers, consumers, workers, and innovation foremost in his mind as he decides whether to block the merger," the coalition wrote in a letter sent to committee and antitrust subcommittee leadership on Tuesday. Delrahim's confirmation hearing was originally scheduled for April 26, but was delayed because the Judiciary Committee hadn't received his ethics paperwork from the White House.

**LEADERSHIP SET FOR AG FUTURE STUDY:** Susan Wessler, a professor of genetics at the University of California, Riverside, and John Floros, dean of Kansas State University's College of Agriculture and director of K-State Research and Extension, will lead a year-long National Academy of Science project aimed at identifying future directions and needs for food and agricultural research, according to an announcement.

The project, dubbed "[Breakthroughs 2030](#)," is aimed at developing a blueprint for how agricultural researchers can help to address food security, environmental issues and public health needs as farmers are asked to increase production to feed a growing population. The first public meeting for the effort will be June 14-15, in Washington, D.C.

## **MA'S INSTANT OATS:**

Scott Gottlieb, a longtime drug industry insider, was confirmed as FDA commissioner on Tuesday in a 57-42 Senate vote. Pro Health has it [covered](#).

Rep. [Raúl Labrador](#) wants to run the show in Idaho he filed Tuesday to run for governor next year. POLITICO's Heather Caygle has that [here](#).

The EPA and Army Corps of Engineers have sent [letters](#) to the states, asking for comments on the Trump administration's planned rewrite of the Waters of the U.S. rule, Pro Energy's Alex Guillén [reports](#).

Secretary Perdue issued a policy statement to USDA staff on Tuesday on the department's commitment to religious liberty and free speech, in line with the president's recent executive order. More [here](#).

In a letter to multiple federal agencies on Tuesday, eight Democratic senators asked for a probe of whether Carl Icahn has benefited from his role as a special adviser to Trump, including from the sale of biofuel credits, DTN [reports](#).

In a move to maximize tax deductions before a potential overhaul of U.S. corporate tax rules, DuPont will make larger payments into its pension, The Wall Street Journal [reports](#).

The National Cattlemen's Beef Association and Public Lands Council kick off an advertising campaign today aimed at promoting grazing on public lands as a way of mitigating wildfire risk. Details [here](#).

**CALENDAR:** Please write us at [agcalendar@politicopro.com](mailto:agcalendar@politicopro.com) to tell us about any upcoming events.

10 a.m. The Senate Environment and Public Works Committee holds a [hearing](#) on "Conservation, Consultation and Capacity: State Views on the Need to Modernize the Endangered Species Act." 406 Dirksen.

2:30 p.m. The Senate Energy and Natural Resources Committee's Water and Power Subcommittee holds a [hearing](#) to talk about six bills, including S.685, the "Clean Water for Rural Communities." 366 Dirksen.

**THAT'S ALL FOR MA!** See you again soon! In the meantime, drop your host and the rest of the team a line: [cboudreau@politico.com](mailto:cboudreau@politico.com) and [@ceboudreau](https://twitter.com/ceboudreau); [jhopkinson@politico.com](mailto:jhopkinson@politico.com) and [@JennyHops](https://twitter.com/JennyHops); [hbottemiller@politico.com](mailto:hbottemiller@politico.com) and [@hbottemiller](https://twitter.com/hbottemiller); [bgriffiths@politico.com](mailto:bgriffiths@politico.com) and [@BrentGriffiths](https://twitter.com/BrentGriffiths); and [jhuffman@politico.com](mailto:jhuffman@politico.com) and [@JsonHuffman](https://twitter.com/JsonHuffman). You can also follow [@POLITICOPro](https://twitter.com/POLITICOPro) and [@Morning\\_Ag](https://twitter.com/Morning_Ag) on Twitter.

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<https://www.politicopro.com/tipsheets/morning-agriculture/2017/05/why-feinsteins-blue-card-bill-leaves-ag-groups-wanting-022760>

## **Stories from POLITICO Pro**

### **The SNAP divide: Congress and voters far apart on restrictions, benefit levels [Back](#)**

By Helena Bottemiller Evich | 05/10/2017 05:01 AM EDT

On the eve of the next farm bill cycle, the Supplemental Nutrition Assistance Program faces a rocky, uncertain political landscape as the right eyes potential reforms amid the Republican push to cut government spending.

But SNAP reform's unpredictable nature isn't solely a product of U.S. politics being mired in one of the country's most polarized periods — as a groundbreaking new survey highlighted recently. The survey of more than 7,400 likely voters, released by the University of Maryland late last month, suggests that Americans on both sides of the aisle broadly agree that SNAP regulations should induce recipients to make healthier choices, whether by banning soda or discounting fruits and vegetables. It also found strong bipartisan support for raising SNAP benefits.

"This survey shows that the American public supports two things about SNAP: having an adequate safety net so people don't go hungry, and, at the same time, making the program even healthier," said Parke Wilde, an economist at Tufts University's Friedman School, who writes the popular blog U.S. Food Policy.

There's just one catch: Congress isn't exactly on the same page.

SNAP — which helps more than 40 million Americans buy groceries, and makes up about three-quarters of the cost of the farm bill — has long been a big target on Capitol Hill for cuts and other reforms, but the pressure has ratcheted up in recent years as the Republican party has moved farther to the right at the same time the SNAP rolls have dramatically increased, largely in response to the Great Recession.

In 2007, some 37 million people received SNAP benefits. By 2013, that total had risen to 51 million, and it is only now starting to come down, though one in seven Americans still receives benefits. In 2015, the program cost taxpayers \$74 billion.

Many Republicans would like to see SNAP reined in during the 2018 farm bill reauthorization, whether it be through more work requirements for able-bodied adults, limiting purchases, or by slimming down the program altogether. The House Agriculture Committee held no fewer than 16 hearings on SNAP between 2015 and 2016 and conducted a "top-to-bottom" review, but reached relatively mild conclusions. The committee highlighted SNAP as a crucial safety net program while hinting at the need to strengthen work requirements and bolster healthy-eating incentives.

House Agriculture Chairman [Mike Conaway](#) has [suggested](#) he's more interested in more moderate reforms and that block grants or drug testing mandates, while not off the table, are not

his priority.

The politics in the broader House GOP caucus is where the wild cards are lurking. Though the program generally has bipartisan support, House Speaker [Paul Ryan](#) has long eyed block-granting SNAP as part of his broader plan to consolidate anti-poverty programs, while hardline members want dramatic cuts, one way or another.

On the other side, anti-hunger groups and a handful of Democrats including Rep. [Jim McGovern](#) (D-Mass.), perhaps the most vocal lawmaker on SNAP policy have repeatedly called on Congress to increase benefits. But there is not likely to be any Republican appetite for doing so, as the majority party on the Hill focuses on cost-cutting while agricultural groups lobby for the farm bill to provide more support for farm programs, like stronger insurance programs for dairy and cotton.

And while anti-hunger advocates will no doubt use the survey's results to advocate for raising SNAP benefits, the findings on SNAP restrictions are much thornier for Democrats but also present a challenge for Republicans, since lawmakers on both sides of the House Agriculture Committee have expressed opposition to the idea.

There's much more room for bipartisan agreement on experimenting with SNAP healthy-eating incentives and the public seems to agree on this point. A full 88 percent of respondents indicated they favor discounting fruits and vegetables in SNAP, including 81 percent of Republicans and 93 percent of Democrats.

"I was just amazed at the level of consensus for the discounts on fruits and vegetables," said Steven Kull, director of Maryland's Program for Public Consultation, which conducted the study. "It's pretty robust."

### **What the public thinks about SNAP**

The survey was notable for its breadth. It was fielded by Nielsen-Scarborough and Communications for Research, Inc., between November and January, and polled a diverse cross-section of likely voters across eight states on an unusually broad range of SNAP policy questions from whether the savings limit should be raised for eligible recipients to whether ice cream should be allowed.

The survey part of a larger polling project on anti-poverty programs that will be released in coming months found broad, bipartisan support for increasing SNAP benefits, something that is politically infeasible on Capitol Hill. Eighty-one percent of respondents, including 66 percent of Republicans and 93 percent of Democrats, said they support raising the benefits for individuals after being told that a recipient living alone earning an average of \$542 per month gets about \$140 in SNAP benefits.

Slightly less 78 percent said they support raising benefits after being told a single mother with one child earning \$760 per month gets about \$253 in SNAP benefits.

Before answering questions about the program, respondents went through a brief "policymaking simulation," which presented them with pro and con arguments for each question language

that advocates and congressional staffers on all sides of the issue helped craft.

The argument for raising benefits did about 20 points better when respondents were asked which arguments they found convincing. The pro-side argued the current benefit of \$140 is "simply not enough" and that people want to work but often can't find jobs. "Food is a basic human need and it is simply wrong to keep people on the edge of hunger with benefits so low," the argument stated.

On the flip side, the argument against raising benefits noted that SNAP costs taxpayers \$74 billion each year. "We should not increase it," the argument said. "The economy is better now and there are more jobs out there. We need to encourage people to get out there and try harder in this improving labor market. We shouldn't make it easier for them not to make the effort."

The findings, similar to the [results of a 2013 poll](#), suggest there's likely to be extensive public support for states that seek to ban sugary drinks or candy from SNAP at the state level, as [Maine is trying](#) to do.

Overall, 76 percent of respondents said candy purchases should not be permitted under SNAP, including 85 percent of Republicans and 68 percent of Democrats. Support was slightly lower for restrictions on "sweetened soda," with 73 percent of respondents indicating it should get bounced from the program. Republicans took a harder line against sugary drinks, with 82 percent saying it should be out of the program, compared with 67 percent of Democrats.

Last year Maine Gov. Paul LePage, a Republican, requested a waiver to bar state SNAP recipients from buying sugary drinks and candy, but was rebuffed by the Obama administration. "It's time for the federal government to wake up and smell the energy drinks," LePage wrote to then-USDA Secretary Tom Vilsack afterward, threatening to withdraw from the program.

"The Obama administration goes to great lengths to police the menus of K-12 cafeterias but looks the other way as billions of taxpayer dollars finance a steady diet of Mars bars and Mountain Dew," LePage added.

One of the biggest questions surrounding SNAP is whether President Donald Trump has a nose for energy drinks, as it were. The LePage administration is pressing the Trump administration to green-light its proposal, citing how Maine is New England's most obese state.

Last week Agriculture Secretary Sonny Perdue [told the Associated Press](#) he's already met with LePage, but wouldn't say how he would come down on the waiver request. Perdue did say the governor "has some very creative programs that we're exploring." Similar efforts to limit SNAP purchases have bubbled up in Tennessee, Alabama and several other states.

State restriction efforts are mostly Republican-led, but the issue spans the political spectrum, since public health groups, which generally lean left, have become increasingly vocal about the need to remove sugary drinks from the program. Earlier this year, the [American Heart Association](#) became the first major health group to call for a pilot program to test removing sugary drinks from SNAP, combined with adding incentives for fruit and vegetable purchases.

### **The slippery slope of restrictions**



Support for purchasing restrictions starts to drop off somewhat when people are asked about whether SNAP recipients should be able to buy cookies, cakes and donuts (59 percent said no) as well as ice cream (43 percent) and chips and snack crackers (40 percent).

Craig Gunderson, professor of food and ag economics at the University of Illinois, sees this as a slippery slope. "Why stop with sugar sweetened beverages and candy?" he asked, somewhat incredulously, adding: "Other people could say, 'Look, it's bad to have orange juice, since it's heavy in sugar.'"

Gunderson said he also sees GOP support for restrictions as a thinly-veiled attempt to take pot shots at low-income people. "There's a group of Republicans who want to stigmatize poor people," he said, arguing that party leaders also know such restrictions could lead to fewer people participating in the program.

The survey, however, found that voters saw the argument for SNAP restrictions as much more compelling than the argument against such limits. The argument for including language like: "We should not encourage people to waste money on food that can damage their health. The rise in obesity and diabetes from eating fatty and sugary foods is a serious strain on America's healthcare system."

On the other side, respondents were presented with a statement that read, in part: "Just because people are poor does not mean the federal government should tell them what to eat. Individuals can make their own decisions about nutrition. Furthermore, administering such rules could be expensive." The statement also argues that Congress would have to battle "armies of food-industry lobbyists," who would try to keep their products in the program.

In all, 82 percent of respondents found the argument for SNAP restrictions very or somewhat convincing, while 42 percent believed the opposing argument convincing. Diving in deeper, 52 percent found the pro argument very convincing and just 19 percent found the anti-argument very convincing.

"That's an unusually low number," said Kull, of the University of Maryland. He said the numbers were surprising to him because, in these types of surveys, a majority of respondents usually find pro and con arguments convincing.

Of course, food industry leaders and anti-hunger groups do find the arguments against restricting SNAP purchases quite convincing. They argue that banning certain foods will increase stigma surrounding them, reduce participation and turn cashiers into food police. They also note that drawing lines around what's healthy and what's not — even sugary drinks, which may seem like a simple category — would be extremely complicated: Would Capri Sun be forbidden alongside Mountain Dew? What about Sunny Delight versus orange juice?

"Transforming SNAP from an efficient government assistance program to one that requires more regulation and more bureaucracy to run with no clear nutrition benefit is not in the best interest of SNAP participants, businesses or taxpayers," said Chris Gindlesperger, spokesman for the National Confectioners Association.

Gunderson also expressed disdain for the idea that SNAP purchases should be further limited

(recipients already can't buy alcohol, hot prepared foods and household supplies) and questioned the survey's findings. "Most Americans really have no idea regarding this issue, in terms of the potential consequences," he said. "It'll drive up food prices because this is a major administrative burden."

"If this were to be implemented, it's patronizing toward low-income households in a way that we'd never do to others," he added. "It would lead to increases in hunger."

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[Back](#)

## **Obama on food and climate: People hate being told 'what to eat, how to grow' [Back](#)**

By Helena Bottemiller Evich | 05/09/2017 01:43 PM EDT

Barack Obama believes global agriculture must do more to reduce its contribution to climate change, but significant barriers exist — including our collective emotional attachment to food.

The former president delivered a keynote address Tuesday at Seeds & Chips, a major food technology summit in Milan, Italy, and his decision to focus on food and agriculture in one of his first major post-presidency speeches was seen as a sign that he intends to be active on these issues in coming years. During his speech and a question-and-answer session with Sam Kass, Obama said efforts to fulfill the Paris climate accord's goals will continue regardless of what the Trump administration chooses to do with the agreement, since the private sector has begun the shift and "locked it into the economy."

But reducing emissions from agriculture and adapting food production to rising temperatures will be critical, Obama said. Food production is already the second-largest contributor after energy production, though its effects are generally less well known. Obama said political leaders haven't talked enough about agriculture's role as a leading contributor of greenhouse gases.

"I think people naturally understand that big smoke stacks have pollution in them and they understand air pollution, so they can easily make the connection between energy production and the idea of greenhouse gases," he said during the Q&A with Kass, who quarterbacked food policy during much of the Obama administration.

Kass noted that when he was in Paris during the COP 21 negotiations barely anyone was talking about food and agriculture — talk of energy predominated. "People aren't as familiar with the impact of cows and methane," Obama said, with a slight chuckle — perhaps wanting to avoid direct reference to bovine flatulence. "Unless you are a farmer, and then you know what takes place there."

Another key impediment to action, Obama said, is that food is an emotional issue. "Because food is so close to us and is part of our families and what we do every single day, people, I think, are more resistant to the idea of government or bureaucrats telling us how to eat, what to eat, how to grow, etc.," he said.

Obama also spoke about the Paris accord from a geopolitical perspective, in his first comments on the agreement since leaving office. He argued that leadership from the U.S., China and the European Union is essential because the two economic superpowers and the regional bloc are the world's biggest greenhouse gas emitters. The timing of Obama's comments was intriguing, given that a meeting of White House advisers on Tuesday to discuss the Paris agreement was put off, marking the second time a Trump administration Paris-related meeting was delayed.

As Obama sees things, even if the Trump administration were to reverse course, it would not mean an end to efforts in the U.S. to curb climate change.

"The key to the Paris agreement is not that it solved climate change — the agreement did not set high enough standards," he said. "But what it did was put together the architecture, the mechanism, where each country could progressively do more to reduce its carbon emissions, and as technology improved, you would steadily see a reduction in greenhouse gases."

Obama acknowledged the Trump administration has a different stance on climate policy and conceded that change may "move more slowly" than many would like, but said he was "confident the United States will continue to move in the right direction," because the private sector and global economic forces have already begun to evolve on the subject.

"The private sector has already made a determination that our future is in clean energy," Obama said. "Investments are already moving into clean energy. ... Those things are locked in now, into the economy."

In the U.S., however, there are significant challenges to tackling agriculture's contribution to greenhouse gases, in part because of the political clout of the ag lobby, Obama said.

"The truth is that the agricultural communities in every country are very strong, politically," he said. "Historically, in the United States, the one area where Democrats and Republicans agree is on the agriculture committee because they usually come from agricultural states and they're very good at joining across party lines to protect the interests of food producers."

Still, Obama said he thinks the agricultural sector is making progress in reducing its environmental footprint and will continue to do so as long as policies take into account the interests of food producers.

"Obviously, a large portion of agriculture is dominated by large agribusiness, but I think that you can show small and medium-sized farmers ways to do things better, that will save them money, or at least doesn't cost them money; they're happy to adopt some of these new processes and systems," Obama said. "But if what they see is you putting the environmental issues as a priority over their economic interest, then they'll resist."

That comment comes as the Trump administration makes a concerted deregulatory push away from Obama-era policies, an effort that is supported by many farmers.

During the discussion, Kass asked Obama if consumers needed to tweak their eating habits to be "climate-smart," perhaps by cutting back on beef, but the president stopped short of urging major changes.

Obama suggested he is under no illusion that the world is going to cut back on meat consumption over concerns about climate change. "No matter what we are going to see an increase in meat consumption, just by virtue of more Indians, Chinese, Vietnamese and others moving into middle-income territory," he said.

"That doesn't mean that we can't teach you and me to have a smaller steak, for our own health," he added. "It doesn't mean we can't make progress in educating the advanced world about the need to reduce just for dietary reasons the amount of meat that we consume at any given meal, particularly if it's wasted; but what it does mean is that we're also going to have to find ways to produce protein in a more efficient way."

Obama's White House made a determined, if ultimately unsuccessful, push to include sustainability language in the dietary guidelines, a move the meat industry saw as an existential threat. After a protracted war on Capitol Hill, the language was kept out of the 2015 guidelines.

The conversation with Kass also touched on Obama's own eating habits. Kass said he'd made thousands of steaks for Obama during a decade of cooking for him. "I don't know about thousands," Obama said. "Maybe hundreds."

"What is true is I am not a vegetarian," he added. "I respect vegetarians, but I am not one of them."

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[Back](#)

**USDA delays organic animal welfare rule — again** [Back](#)

By Jenny Hopkinson | 05/09/2017 11:07 AM EDT

The Department of Agriculture has put a six-month delay on implementation of its organic animal welfare standard and intends to seek more public input on whether the measure should take effect.

In a Federal Register [notice](#) set for publication on Wednesday, USDA says that "significant policy and legal issues" warrant the rule be reviewed further. The measure went final the day before President Donald Trump's inauguration, and was originally supposed to take effect on March 20, but that deadline was initially pushed back to May 19 under the general rule freeze put in place by the Trump administration.

In the notice, USDA says it will seek public comment on whether the rule should take effect or whether the department should delay it further, suspend it indefinitely or withdraw it.

The animal welfare standards have long been a priority of many in the organic industry, [who argue](#) consumers expect a certain standard of treatment of animals that are raised to provide meat and dairy products carrying USDA's green-and-white organic seal. The rule rests heavily on a 2011 recommendation from the department's organic advisory board.

However, some large organic egg producers have pushed back against the measure, arguing that provisions requiring more indoor and outdoor space for egg-laying hens would be cost-prohibitive and expose birds to disease.

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[Back](#)

### **Delrahim confirmation hearing rescheduled for May 10 [Back](#)**

By Li Zhou | 05/03/2017 04:34 PM EDT

The Senate Judiciary Committee has rescheduled the confirmation hearing for Makan Delrahim, President Donald Trump's nominee for DOJ antitrust chief, for May 10.

Delrahim's original hearing had been slated for April 26, but was postponed due to ethics paperwork not yet received by the Judiciary Committee.

Democratic senators have said they intend to question Delrahim on his ability to maintain independence from the White House in this role along with his plans for recusing himself from cases involving former clients. Delrahim has worked as a lobbyist for companies including [AT&T](#), [Qualcomm](#) and [Google](#).

*To view online [click here](#).*

[Back](#)

### **Gottlieb confirmed as FDA chief [Back](#)**

By Sarah Karlin-Smith and Brent Griffiths | 05/09/2017 05:20 PM EDT

The Senate confirmed Scott Gottlieb as FDA commissioner Tuesday, thrusting the conservative drug industry insider into the heated debate over rising drug costs that President Donald Trump has pledged to address.

Gottlieb, a former FDA and CMS official in the George W. Bush administration, sailed through confirmation on a 57-42 vote. He'll lead a 15,000 person, \$5 billion agency that approves drugs, vaccines, medical devices and regulates tobacco, cosmetics and food.

The perch will make Gottlieb an important player in the Trump administration's plans to speed up the drug approval process and cut back on regulations and red tape, which the president has argued will bring down drug prices.

Gottlieb's nomination raised concerns among Democrats who worry his deep ties to the pharmaceutical industry could compromise his oversight of the companies' products.

Gottlieb is a far more traditional candidate than others Trump initially considered for the job, including associates of activist financier Peter Thiel, who pledged to blow up the entire approval process by no longer mandating drugs demonstrate effectiveness before they can be sold.

However, Gottlieb is still expected to push the boundaries of FDA reviews and use new authority under the 21st Century Cures Act to speed up evaluations.

"While the conventional wisdom is that Gottlieb represents a safe, conventional choice, this is only true if you compare him to two of the other known candidates," Mark Mansour, who specializes in FDA law at Mayer Brown, wrote in a note to clients.

Mansour said Gottlieb will likely be a more "nuanced reformer" than other candidates Trump considered. He "won't eviscerate the FDA," but he could push the agency to speed up product approvals by relying more on anecdotal or real-world evidence and on data collected after a product is already on the market, Mansour said.

Gottlieb has remained mum on drug pricing ideas that Trump pushed on the campaign trail -- including direct government negotiations of drug prices in Medicare -- arguing such decisions are outside the FDA's purview.

He could still be dragged into HHS Secretary Tom Price's efforts to address drug pricing through regulation. Price kicked off a listening tour last week as part of an HHS initiative to address drug pricing expected in the next few months. Price will meet with the main drug lobbies, PhRMA, BIO and the Association for Accessible Medicines on Friday.

Gottlieb in the past opposed ideas similar to those put forth by Trump. However, some of Gottlieb's other ideas on pricing wouldn't be as well received by industry groups. He's suggested changing the way Medicare pays for costly physician-administered drugs to try to bring down prices through private-sector bidding. He's also been in favor of more transparency around drug pricing and ending the current system in which drug companies set high list prices but then give rebates to payers.

Before being nominated, Gottlieb served as a partner at a venture capital firm that worked with a number of leading drug companies. He also served on the boards or held advisory positions at companies including GlaxoSmithKline, Bristol Myers Squibb and Vertex Pharmaceuticals. He has pledged to recuse himself for one year from agency decisions involving more than 20 companies.

Republicans view his industry experience as a plus and pointed out that President Barack Obama's second FDA commissioner, Robert Califf, also had close ties with the drug industry.

"It's a good idea to have people serving in government that have the type of experience in the industries," they will work with, said Sen. [Lamar Alexander](#) (R-Tenn.), chairman of the Senate HELP Committee, which oversees FDA. Some of lawmakers who criticized Gottlieb for having worked with the drug industry also criticized Trump's education secretary for not having enough experience in that field, Alexander added.

"You can't have it both ways."

Some Democrats also questioned whether Gottlieb would fail to adequately address the opioid epidemic.

"At this time of crisis, we need a leader at the FDA who recognizes the dangers of prescription painkillers, who will stand up to big pharma and reform the FDA to prevent addiction before it takes hold," Sen. [Ed Markey](#) (D-Mass.) said before the vote. "Dr. Scott Gottlieb is not that individual. Dr. Gottlieb's nomination signals a continuation of FDA policies that have cultivated and fueled the opioid epidemic."

During his confirmation hearing, Gottlieb suggested that fighting opioid abuse would be a priority for the agency.

Republicans agreed. Majority Leader [Mitch McConnell](#) ahead of the vote suggested Gottlieb will be an asset to the cause.

"I'm sure he'll be an ally to states that continue to struggle with the opioid crisis because the FDA has a critical role to play," McConnell said in remarks on the floor before the vote.

*To view online [click here](#).*

[Back](#)

**Labrador to run for Idaho governor** [Back](#)

By Heather Caygle | 05/09/2017 03:05 PM EDT

Rep. [Raul Labrador](#), a conservative Republican who has frequently tangled with GOP leadership, will run for governor of Idaho in 2018.

A founding member of the hard-line House Freedom Caucus, Labrador filed to run for governor on Tuesday. He was first elected to represent Idaho's 1st District in the 2010 wave that gave Republicans a House majority.

"Idaho needs a proven conservative leader who will stand against the special interests and politicians that have picked the winners and losers in our state Capitol for too long," he said in a statement announcing his candidacy.

Labrador is expected to be one of several Republicans vying to replace Gov. Butch Otter, who has long said he wouldn't seek reelection in 2018. Labrador leaves behind a safe Republican seat both he and President Donald Trump won roughly two-thirds of the vote in the district last year.

Labrador has frequently been a leader in the far-right's fights with House Speaker [Paul Ryan](#). Most recently, Labrador joined with other Freedom Caucus members to sink the GOP's first Obamacare repeal effort in March. He eventually signed on to the revised bill, which passed the House last week, but not before being verbally flogged by Trump.

"If [@RepMarkMeadows](#), [@Jim\\_Jordan](#) and [@Raul\\_Labrador](#) would get on board we would have both great healthcare and massive tax cuts & reform," Trump [tweeted](#) after House Republicans' first attempt to dismantle Obamacare imploded.

Labrador refused to vote for then-Speaker John Boehner (R-Ohio) in 2013 as part of a conservative rebellion, sitting in the chamber during the speaker's election and ignoring his name being called when it was time to cast a vote.

In 2014, he launched a long-shot bid for House majority leader after Rep. Eric Cantor's (R-Va.) shocking primary defeat, positioning himself as the conservative candidate in the race before losing to Rep. Kevin McCarthy (R-Calif.).

He's also sparred with rank-and-file members of the caucus, most notably fellow Idaho GOP Rep. Mike Simpson, the only other House member in the state's congressional delegation. The two have been in an on-and-off feud since Labrador's 2013 rebellion against Boehner, with Labrador calling Simpson, a loyal Boehner ally, "a bully." The two went more than a year without speaking.

Labrador's gubernatorial announcement comes a few days after he made headlines by saying, "Nobody dies because they don't have access to health care" a town hall meeting while trying to defend the GOP's Obamacare repeal plan. He issued a statement Saturday attempting to clear up the remark, saying it "wasn't very elegant."

Labrador's departure from Congress isn't a total shock. Insiders have speculated for months he would run for the governor's mansion next year and Labrador did little to tamp down the rumors.

The Puerto Rico native flirted with challenging Otter in 2013 before deciding to stay in the House. His name was also floated as a potential pick for Interior secretary, going so far as to interview with Trump in New York in December.

An immigration lawyer by trade, Labrador was part of the 2013 "Gang of Eight" in the House, a bipartisan group of lawmakers attempting to hammer out an immigration reform bill. He eventually left the group after a disagreement over health care for immigrants, and the talks fell apart.

*To view online [click here](#).*

[Back](#)

**EPA, Army Corps ask states to weigh in on WOTUS rewrite** [Back](#)

By Alex Guillén | 05/09/2017 11:42 AM EDT

EPA and the Army Corps of Engineers want the states to provide comments on their rewrite of the Waters of the U.S. rule, according to letters sent this week.

"Cooperative federalism is a guiding principle for us. We want to clearly understand what definition will work best for your state as we develop a new federal definition of 'waters of the United States' consistent with the Scalia opinion," the agencies wrote, referencing a framework previously laid out by the late Justice Antonin Scalia that has historically been disregarded in favor of a system described by Justice Anthony Kennedy.



"In addition, we are interested in understanding how your state might respond to a reduced scope of federal jurisdiction under the Clean Water Act," they wrote.

State and local governments have until June 19 to comment.

In February, President Donald Trump issued an executive order directing EPA and the Army Corps to revise the rule. The first step toward repealing the Obama administration's 2015 rule is currently under review at the White House Office of Management and Budget.

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[Back](#)

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**From:** POLITICO Pro Energy  
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**Importance:** Normal  
**Subject:** Morning Energy, presented by Trout Unlimited: Senate primed to decide methane rule's fate today — Huge workload awaits Trump's FERC picks — No contamination reported after Hanford tunnel collapse  
**Received:** 2017-05-10T05:47:49-04:00

By Anthony Adragna | 05/10/2017 05:42 AM EDT

*With help from Alex Guillén and Eric Wolff*

**METHANE RULE MEETS ITS FATE:** After months with its fate shrouded in uncertainty, the Obama administration rule to reduce methane emissions from oil drilling on public lands will face a procedural vote today at 10 a.m. in the Senate ahead of a subsequent filibuster-proof Congressional Review Act vote. Republicans projected confidence Tuesday that the measure would pass, but admitted the vote to kill the regulation would be close and subject to some late-breaking lawmakers voting their way. "I think we're okay, but it has tended to move around and some folks are being a bit guarded," Sen. [John Hoeven](#) told ME the night before the vote. Backers of the CRA resolution got some good news when Sen. [John Thune](#) told reporters a bloc of corn-state lawmakers seeking a waiver to allow sales of 15 percent ethanol blended fuel year-round were mostly behind the measure. Assuming the votes are there, expect the Senate to send President Donald Trump his last CRA measure to sign by the end of the day.

**Key votes to watch:** Publicly undecideds include Sens. [Cory Gardner](#) (R-Colo.), [Heidi Heitkamp](#) (D-N.D.), [Dean Heller](#) (R-Nev.) and [Joe Manchin](#) (D-W.Va.). Senate Judiciary Chairman [Chuck Grassley](#) pointedly declined to tell ME how he'd vote on the CRA late Tuesday. One other wildcard is Sen. [Johnny Isakson](#), who's recovering from back surgery and hasn't voted so far this week.

**Unproven promises:** One key vote CRA backers got was that of Sen. [Rob Portman](#), who signed on after Interior Secretary Ryan Zinke promised to address the lost revenue and the emissions of methane through a new rule based on different economic impacts. But as Pro's Ben Lefebvre [reports](#), that rationale hasn't been tested in court and the CRA bars issuing rules "in substantially the same form" without specific congressional authorization. Zinke's reasoning surprised at least one former Interior Department official. "There's no interpretations of what that the 'substantially similar' language means. So that's total speculation on their part," said David Hayes, a fellow at the Center for American Progress. And the Western Values Project filed a [FOIA request](#) Tuesday seeking communications between Portman's office and Interior prior to the senator's backing of the resolution.

**Never too late:** The American Petroleum Institute sent [a letter](#) to Senate leadership Tuesday afternoon urging them to carry the CRA across the finish line. "This rule from BLM, an agency which lacks the authority and expertise to regulate air quality, is an unnecessary layer of federal regulation," Jack Gerard, the group's president, wrote.

**WELCOME TO WEDNESDAY!** I'm your host Anthony Adragna, and Matt Herdman was the first to identify the six current senators (Cruz, McCain, Bennet, Van Hollen, Hirono and Duckworth) who were born outside the U.S. For today: What Supreme Court justice twice led the NFL in rushing yards? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](https://twitter.com/AnthonyAdragna), [@Morning\\_Energy](https://twitter.com/Morning_Energy), and [@POLITICOPro](https://twitter.com/POLITICOPro).

**DAUNTING WORKLOAD AWAITS FERC PICKS:** Trump's two FERC nominees Neil Chatterjee, a senior energy adviser to Senate Majority Leader [Mitch McConnell](#) and Robert Powelson, a Pennsylvania regulator will face a mountain of decisions about the future of power markets, the agency's relationship with the states, and its approach to enforcement once confirmed, [Pro's Darius Dixon reports](#). There's already a traffic jam of energy infrastructure projects needing the leadership's blessing, and staff have been lining up draft orders for new commissioners to review as soon as they're sworn in. And there's arguably no bigger task they'll face than addressing a growing number of state-level policies tailored to support specific energy sources such as nuclear incentive programs recently approved in New York and Illinois that are complicating the markets under FERC's jurisdiction.

**What's next?** Senate Energy and Natural Resources Chairman [Lisa Murkowski](#) wants to move quickly on the picks. "The FERC has been without a quorum since early February and they need the ability to get to work," she told reporters Tuesday. She also said she intends to move nominees through her committee as their paperwork comes in rather than trying to package three or four agency picks together.

**SERIOUS SITUATION AT HANFORD:** No contamination has been found, but officials are still figuring out how to address a partial cave-in of a tunnel at the Hanford Cold War nuclear weapons cleanup site in eastern Washington. In a statement late Tuesday, an Energy Department spokesman said: "The incident is moving from the emergency phase towards the recovery phase. After extensive testing the site remains confident at this point that there has been no indication of worker exposure or an airborne radiological release." Workers first discovered the situation during a routine inspection of the storage tunnel containing rail cars full of radioactive equipment on Tuesday morning. Here's the [emergency webpage](#) from Hanford on the incident.

**ZINKE WRAPPING UP UTAH TREK:** It's the final day of Zinke's four-day visit to national monuments in Utah and today he'll tour the Grand Staircase-Escalante National Monument, the designation of which is under review by the Trump administration. After his second day touring the controversial Bears Ears National Monument, the Interior chief told [one local station](#): "I think there's a solution out there." His day Tuesday included [a rainy hike](#).

**More than 100 hunting and fishing businesses** sent [a letter](#) Tuesday voicing support for "responsibly" using the Antiquities Act to protect public lands. "The Antiquities Act is a tool, and like any tool there is a right and wrong way to use it," they wrote. "We oppose any effort to undermine Theodore Roosevelt's legacy by undoing or modifying it."

**WHAT ARE WE DRINKING?** The Safe Drinking Water Act was supposed to eliminate toxins from American tap water. But not a single new contaminant has been banned under the act in the past 20 years, even as thousands of new chemicals have come onto the market. Even well-known

toxins, like a rocket fuel ingredient called perchlorate, long known to damage brain development, remain in the drinking water of dozens of states. POLITICO Pro's Annie Snider [investigates](#) in The Agenda how the most important law protecting our water got trapped between bureaucracy and the changing science and got stuck there.

**\*\* A message from Trout Unlimited:** For over 50 years, Trout Unlimited has been dedicated to conserving, protecting and restoring North America's coldwater fisheries and watersheds on behalf of today's anglers and coming generations of sportsmen and women. Join us as we support America's public lands and national monuments: <http://bit.ly/2paVoYB> \*\*

**NEXT STEP ON ESA MODERNIZATION:** Senate EPW takes its [next step](#) today toward action on one of Chairman [John Barrasso](#)'s top priorities: overhauling the Endangered Species Act. Lawmakers will get testimony from three state officials on the whether to strengthen the statute, their capacities in species conservation and their existing roles in the process. The witnesses are: [Nick Wiley](#), executive director of the Florida Fish and Wildlife Conservation Commission; [Larry Voyles](#), director of the Arizona Game and Fish Department; and [Janet Coit](#), director of the Rhode Island Department of Environmental Management. "I believe a bipartisan modernization bill can be developed to reform the ESA in a manner that improves efficiency and effectiveness and maintains the Act's original intent," Coit will say. The hearing kicks off at 10:30 a.m. in Dirksen 406.

**ICYMI:** Be sure to check out POLITICO's [searchable database](#) of everyone who has had individual interactions with Trump. Among the people who've met with the president from the energy world: American Energy Corp.'s Casey Crooks; Boich Companies' Matt Evans; Cambridge Energy Research Associate's Daniel Yergin; three people from GE; two people with Koch Industries; six people with Murray Energy Corp., including two interactions with Robert Murray; the National Mining Association's Hal Quinn; the Nature Conservancy's Lynn Scarlett; Harrison County Coal Company's Scott Martin; Marion County Coal Company's Michael Nelson; Marshall County Coal Company's Eric Grimm and TransCanada's Russ Girling. Send any names we may have missed to us at [trumpvisitors@politico.com](mailto:trumpvisitors@politico.com).

**NORTH DAKOTA GOES FIRST ON CARBON WELLS REGULATION:** Hoeven got a long-held wish yesterday when EPA Administrator Scott Pruitt signed a proposed rule granting North Dakota primacy over the federal government when it comes to regulating long-term storage wells for carbon dioxide, Pro's Eric Wolff [reports](#). Hoeven has been laboring since 2009, when he was governor, to create a regulatory structure for those storage wells. The proposed rule will put regulation of the wells, along with certifying that they won't leak carbon back into the atmosphere, in the hands of the state. An EPA spokesperson told ME that North Dakota is the first and only state to ask for primacy on these wells. David Hawkins, director of climate programs for the Natural Resources Defense Council, said his group hasn't reviewed the rule yet, but in general it prefers a single federal rulebook for long-term carbon storage. "The characteristics of a well don't change based on which state they're under," he told ME.

**BLANKENSHIP OUT OF CUSTODY TODAY:** Don Blankenship is out on the streets today, released from a California prison where he served out a year following his misdemeanor conviction related to the 2010 Upper Big Branch mine disaster that killed 29 of his workers. Blankenship actually transitioned to [home](#) confinement back in March, according to the Bureau

of Prisons, and he still has one year of supervised release to go. While in prison and pursuing appeals that ultimately failed, Blankenship maintained he was railroaded by federal prosecutors and, in a booklet apparently composed in prison, portrayed himself as a "[political prisoner](#)." (He also broke his silence to [tweet](#), two days before the election, that "Americans need to elect Donald Trump to build a wall.")

**MAIL CALL! ANSWERS SOUGHT ON ADVISER DEPARTURES:** Top Senate EPW Democrat [Tom Carper](#) wants details from Pruitt on the decision not to reappoint 12 scientists to the agency's Board of Scientific Counselors. "I am concerned that with these planned actions, along with previous steps you have taken to remove mention of climate change from EPA's website, censor the analysis of EPA's career staff and deny the consensus scientific views about the cause of climate change, you are engaging in a broad approach of denying the science that forms the basis of sound environmental regulation," Carper wrote Tuesday. He asked for all documents related to the decision not to bring the scientists back.

**HITCHING A RIDE:** Sen. [Lindsey Graham](#) isn't picky about how Congress extends a nuclear production tax credit but thinks he may be able to craft a standalone bill packed with popular renewable energy and carbon capture credits to get it through the chamber. "Maybe [we'll] have a standalone bill that maybe is so popular you can get it done without a vehicle, but I'm looking for anything that comes through the Senate. Naming the post office, I'll put that on it," Graham quipped Tuesday.

**STATES SUE OVER COAL LEASE LIFT:** California, New York, New Mexico and Washington joined an earlier coalition of environmental activists in [suing](#) Interior over Zinke's order to lift the federal coal leasing moratorium, Pro's Alex Guillén [reports](#). They argue Zinke failed to conduct a new environmental review or update the program's decades-old one, in violation of the National Environmental Policy Act. And they say the agency should have studied whether the coal to be leased will get a fair market value as required under several laws.

**MANCHIN CHALLENGED FROM THE LEFT:** For the second time in two days, Sen. [Joe Manchin](#) has drawn a challenger this time, from his left. Paula Jean Swearengin, the daughter of a coal miner and an environmental activist, faces a steep climb to beat the incumbent in the Democratic primary. "The question we face today is: What are we going to do when the coal is gone? And make no mistake, it's going. No one has given us an answer that doesn't require the sacrifice of our health and our environment. I believe our future is in building a 21st-century, clean economy," her [website](#) says.

**EARLY PITCH ON APPROPS:** More than 100 environmental organizations, including Clean Water Action, Earthjustice, the Sierra Club and the Union of Concerned Scientists, are sending [a letter](#) this morning to congressional appropriators urging them to keep funding for the agencies covered by the Interior, Environment and Related Agencies subcommittee at "no less than continued current funding levels."

**MOVER, SHAKER:** Sue Biniatz has joined the United Nations Foundation as the new senior fellow for climate change; she was the lead climate lawyer for the U.S. State Department for more than 25 years and played a key role in negotiating the Paris agreement. "She possesses an unsurpassed understanding of the legal nuances surrounding this and other critical international

climate and environmental agreements, and is renowned for her ability to resolve the most contentious and seemingly intractable negotiating issues," Elizabeth Cousens, deputy chief executive officer of the foundation, said in a statement.

**FOR SALE:** BLM announced plans for a mid-June online auction for oil and gas leases on 196,000 acres in three Nevada counties, Pro's Esther Whieldon reports. The 10-year leases are for 106 parcels in the BLM's Battle Mountain District in Nye, Lander and Eureka counties. The last auction for the district was held in June under the Obama administration for 50,415 acres and generated \$54,340.

**SPOTTED:** House Majority Leader Kevin McCarthy "on a tour of Lake Okeechobee watershed & Everglades restoration projects" in Florida, per Rep. Francis Rooney.

**REPORT: BIG BUCKS TO SAVE NAVAJO:** The Institute for Energy Economics and Financial Analysis is out with a report today finding the Navajo Generating Station would require \$740 million to \$1 billion to keep open through 2022 and between \$1.4 billion and \$2.4 billion in subsidies to stay open through 2030.

## QUICK HITS

McConnell: Coal miners have suffered the consequences of federal regulation. Kentucky Today.

Arctic Nations to Meet Amid Unsettled U.S. Stance on Climate Change. New York Times.

Tiffany & Co. takes direct aim at Trump in new ad calling for action on climate change. Business Insider.

Seeing 'chilling effect,' unions push back on ethics memo. E&E News.

## HAPPENING TODAY

10:30 a.m. "Conservation, Consultation, and Capacity: State Views on the Need to Modernize the Endangered Species Act," Senate Environment and Public Works, 406 Dirksen

2:30 p.m. Senate Energy and Natural Resources Committee hearing on various bills, 366 Dirksen

## THAT'S ALL FOR ME!

**\*\* A message from Trout Unlimited:** For over 100 years the Antiquities Act has been a bipartisan tool for conserving America's public lands and our outdoor heritage. Since the time President Theodore Roosevelt signed the Act into law, the Antiquities Act has provided for the long-term conservation of some of the best fish and wildlife habitat and hunting and angling opportunities in the country, spurring local economies. In these places, locally driven conservation efforts need to be preserved and celebrated. Currently, the Department of the Interior is reviewing national monuments designations. Secretary Zinke has strongly supported keeping America's public lands in public hands. Join us in showing him that we support

upholding our national monuments: <http://bit.ly/2paVoYB> \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/05/senate-primed-to-decide-methane-rules-fate-today-022756>

## Stories from POLITICO Pro

### **Thune: 'Most' ethanol holdouts now ready to back methane CRA** [Back](#)

By Anthony Adragna | 05/09/2017 03:14 PM EDT

Sen. [John Thune](#) (R-S.D.) said most of the corn state holdouts in the Senate were now ready to back a Congressional Review Act resolution to nullify an Obama-era methane rule after receiving assurances from Republican leadership that they would have a legislative path for a waiver to allow sales of 15 percent ethanol blended fuel year-round.

"I think most of us who are interested in that issue are probably in a place now where we're confident that we're going to get this dealt with," Thune said of the ethanol waiver. "I think most will be on board [with the methane CRA] but I can't speak for them all."

Thune has been part of a small bloc of Republicans, led by Sen. [Chuck Grassley](#) (R-Iowa), pushing for the waiver and withholding their support for the resolution axing BLM's rule aimed at curbing methane emissions from oil operations on public lands.

But he cautioned that "it'll be close" when asked about whether the GOP-led Senate had the votes to pass the CRA.

Even with the corn-state bloc, several key senators [Cory Gardner](#) (R-Colo.) and [Heidi Heitkamp](#) (D-N.D.), chief among them remained publicly undecided today.

*To view online [click here](#).*

[Back](#)

### **Zinke's methane CRA promise based on changing rule's cost** [Back](#)

By Ben Lefebvre | 05/09/2017 05:26 PM EDT

Interior Secretary Ryan Zinke is promising that he will be able to design a methane rule to replace one Republicans are seeking to repeal under the controversial Congressional Review Act as long as it is based on a different economic impact.

Zinke helped convince Sen. [Rob Portman](#) (R-Ohio) to support the CRA resolution to repeal [an Obama-era rule](#) cracking down on methane flared from oil wells and pipelines by promising to address the lost revenue and the emissions of the gas.

But Zinke's reasoning hasn't been tested in court, and environmental groups are accusing Portman of exchanging his vote for promises President Donald Trump's administration may not

keep.

Republicans have made repealing the methane rule a priority this year. Congress targeted it with the CRA, a law that was only successfully used once before Trump took office.

The House voted in February to use the CRA to do away with the methane rule, but it's been stuck since then in the Senate, where some senators have praised the rule for forcing oil and gas companies to capture more methane to sell, which generates royalties for government coffers.

Until Monday, Portman had said he was undecided on using the CRA, which some Republicans have criticized for going too far because it would pre-empt agencies from creating new rules "in substantially the same form" without specific authorization from Congress. Portman had asked Zinke for specific steps Interior would take to minimize methane emissions.

In his reply letter, Zinke said he shared Portman's concerns and said BLM would look at new regulations curbing methane emissions even if the CRA repealed the Obama-era rule.

In meetings, the Interior Department assured Portman's office that any new rulemaking would not be substantially the same as the current rule, a source familiar with the discussions said. Specifically, Interior staff told the senator that the economic impact of any new rule would be different from the current rule, as would the reasoning supporting any new rule, the source said.

That reasoning surprised at least one former Interior Department official.

"There's no interpretations of what that the 'substantially similar' language means. So that's total speculation on their part," said David Hayes, a fellow at the Center for American Progress and former deputy secretary and chief operating officer for Interior under former presidents Barack Obama and Bill Clinton. "One would think a regulation's operative provisions would determine what's substantially similar or not, not the economic analysis around it."

Environmental groups also pounced on Zinke's letter, saying the steps he promised would not have much impact on methane emissions. Those steps included promises to "engage in robust assessment" of methane flaring requirements, strengthen policies to encourage drillers to capture methane, and revise existing BLM flaring restrictions.

"The list of 'strategies' is so devoid of content that it acts to undercut, rather than bolster, the Secretary's assurances," Environmental Defense Action Fund Executive Director Fred Krupp said in an open letter to Zinke. "Only one potential action [on the list] could have any possible meaningful impact on methane waste, and the authority for that action may well be eliminated by use of the CRA."

Portman himself doesn't represent a large oil and gas constituency. Oil production in Ohio ranks below that of Kansas and Montana, according to government data. The state has only 2,000 wells that would be affected by the new rule, according to the Ohio Oil And Gas Association, which supports the repeal.

But as the vote nears, pressure groups on both sides are trying to sway any last-minute votes. The trade association American Petroleum Institute reiterated its support for repealing the rule, while



in Denver, Todd Mitchell, son of fracking pioneer George Mitchell, penned an op-ed in The Denver Post that was most likely aimed at Sen. [Cory Gardner](#) (R-Colo.), saying the methane rule was overall a good thing.

Earlier on Tuesday, Sen. [John Thune](#) (R-S.D.) said most of the corn state holdouts in the Senate were now ready to back the CRA resolution after receiving assurances from Republican leadership that they would have a legislative path for a waiver to allow sales of 15 percent ethanol blended fuel year-round.

*To view online [click here](#).*

[Back](#)

## **New FERC picks face a mountain of difficult business** [Back](#)

By Darius Dixon | 05/09/2017 07:09 PM EDT

President Donald Trump's new picks for FERC should have little trouble winning Senate confirmation, and once they do they will face a mountain of decisions about the future of power markets, the agency's relationship with the states, and its approach to enforcement.

Trump's long-awaited announcement that he would fill two vacancies on the five-seat commission couldn't have come soon enough for Sen. [Lisa Murkowski](#), who is angling for quick confirmation hearings before her Senate Energy and Natural Resources Committee.

"The FERC has been without a quorum since early February and they need the ability to get to work," Murkowski told reporters Tuesday.

Trump nominated Neil Chatterjee, a senior energy adviser to Senate Majority Leader [Mitch McConnell](#), and Robert Powelson, a Pennsylvania regulator with strong relationships in Congress, to the commission, but he has yet to tap a permanent FERC chairman. That position has been expected to go to Kevin McIntyre, a Jones Day lawyer who also is an expert in the Federal Power Act, FERC's core statute. In more than two decades with Jones Day, McIntyre has had a slew of energy industry clients, including South Carolina Electric & Gas Co. and SCANA Corp., making his financial disclosures and ethics paperwork more complicated than those who have been in government for several years.

The agency has been experiencing a traffic jam of energy infrastructure projects needing the leadership's blessing.

"We are already building up quite a backlog," acting FERC Chairwoman Cheryl LaFleur said recently, noting that there'd been a steep drop-off in the number of orders issued since former Chairman Norman Bay's resignation in February dropped it to two members, preventing a quorum needed to conduct a lot of its most critical business.

Many of those orders, dealing with issues such as interstate natural gas pipeline projects and contested electricity rate plans, still require followup decisions to be made when more leaders are brought on. To help ease the agency's pileup, staff have been lining up draft orders for new

commissioners to review as soon as they're sworn in.

Perhaps the biggest issue looming over the agency is how it plans to address a growing number of state-level policies tailored to specific energy sources — such as nuclear incentive programs recently approved in New York and Illinois — that are complicating the markets under FERC's jurisdiction.

The Electric Power Supply Association, which represents independent generators, filed complaints in January calling on FERC to ensure electricity prices in upcoming spring auctions in the New York and the mid-Atlantic area PJM Interconnection markets were not artificially lowered by state programs that subsidize struggling nuclear plants. But until at least one new member is confirmed, FERC's hands are tied.

Meanwhile, Ohio, Connecticut, New Jersey and Pennsylvania have all started to mull their options for helping power plants in their states just as state regulators and a broad swath of the energy industry has increasingly looked to FERC for policy guidance.

Presidents and Congress typically aim to achieve geographic balance at FERC, and Powelson would be the only representative of a PJM state if he is confirmed.

In addition to being the largest power market overseen by FERC, PJM may test how the agency irons out differences — or butts head with — with states crafting lifelines for power plants. And Powelson has called for market operators to take a more forceful role in addressing issues such as aiding nuclear power through carbon pricing rather than leaving states to take bites out of the markets.

"I think it creates a bastardized market construct and at the end of the day, this issue is best resolved with the RTO — in our case PJM — putting that value on carbon and dealing with it," Powelson said in an interview with POLITICO last fall. "Sheepishly, RTOs are putting their heads down in the sand and not saying a word."

Carbon pricing got a lot of airtime at FERC's recent technical conference as perhaps the most market-friendly way to support nuclear power. Still, it was also clear that states within the same electricity market, like New England, couldn't agree on moving ahead with carbon pricing.

Another part of the policy deluge the new commissioners will feel pressure to act on is the agency's closely watched price formation initiative, which focuses on developing new market rules that boost how power plants are paid in an increasingly complex grid. That initiative, which was launched following the 2013-14 polar vortex that caused electricity prices in the Northeast to skyrocket, has been eyed particularly by companies with around-the-clock baseload power plants, like the nuclear industry.

The FERC vacancies also exacerbated uncertainty surrounding the commission's work to protect energy markets against alleged manipulation. Once a new commissioner is confirmed — and a permanent chairman in place — leaders will have to decide how to respond to recent court losses over how they run enforcement cases. While FERC lawyers handle the particulars of each case, the commission leadership will have to debate any overarching change to its enforcement strategy, particularly if judges are going to force them to practically build the cases from scratch

again.

FERC Commissioner Colette Honorable also recently announced that she will leave the agency later this year. Her departure provides another opening for Trump to fill but because FERC's board can't have more than three members of the same political party, tradition indicates that Democrats will pick who fills the seat.

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[Back](#)

### **EPA proposes letting North Dakota regulate carbon injection [Back](#)**

By Eric Wolff | 05/09/2017 11:14 AM EDT

EPA has proposed a rule to grant North Dakota primacy on regulating long-term storage of captured carbon, Sen. [John Hoeven](#) said in a statement today.

North Dakota has been among the leaders in developing policy to regulate the storage of captured carbon deep in rock formations, and the issue was a priority of Hoeven's when he was governor. The state passed legislation to address questions on carbon dioxide storage in 2009 and 2013. North Dakota first applied to become the primary regulator of long-term storage wells, called Class VI wells, in 2013.

"We've worked since 2008 to develop a states-first approach to regulating geological sequestration, which will help our energy industry, both traditional and renewable, to develop new technologies for storing CO<sub>2</sub>," Hoeven said in a statement. "This is important as we work to develop clean coal technologies, as well as projects to sequester CO<sub>2</sub> from ethanol production."

Carbon capture and storage is a long-term goal of the coal industry, as it would allow the continued burning of coal should regulators step up carbon dioxide regulation.

*To view online [click here.](#)*

[Back](#)

### **Blankenship portrays himself as 'political prisoner' in new booklet [Back](#)**

By Alex Guillén | 10/05/2016 11:57 AM EDT

Coal magnate Don Blankenship says he is a "political prisoner" just weeks before his appeal will make its way before a federal court.

In a [blog post](#) and 68-page [booklet](#) published online, the former Massey CEO — now serving a one-year sentence in California for a misdemeanor conviction related to the 2010 Upper Big Branch mine disaster that killed 29 people — alleges that he was specifically targeted by prosecutors as "an American Political Prisoner."

The pamphlet argues that the Mine Safety and Health Administration was actually responsible

for the blast, a claim he made previously in a self-produced 51-minute [video](#).

"The question to all of us is, do we care enough to do something when the government lies about a mine tragedy and imprisons an innocent man for exercising his freedom of speech?" Blankenship writes.

Blankenship said he will send 250,000 copies of the booklet to unnamed recipients. Along with a lengthy description of how Blankenship says federal prosecutors and the courts "railroaded" him, the booklet includes several favorable press clippings, as well as pages of supportive quotes from coal miners. It also swipes at President Barack Obama for calling the disaster a management failure and at Hillary Clinton for saying Blankenship received a light sentence.

The 4<sup>th</sup> Circuit Court of Appeals will hear Blankenship's appeal on Oct. 26.

*To view online [click here](#).*

[Back](#)

### **Four states sue to block lifting of coal leasing moratorium [Back](#)**

By Alex Guillén | 05/09/2017 03:28 PM EDT

Four states today [sued](#) the Interior Department over Secretary Ryan Zinke's order to lift the federal coal leasing moratorium

California, New York, New Mexico and Washington filed the lawsuit in the U.S. District Court for Montana — Zinke's home state and a producer of coal from the Powder River Basin.

Interior failed to conduct a new environmental review or update the program's decades-old one, in violation of the National Environmental Policy Act, the states argued. They also said Interior should have studied whether the coal to be leased will get a fair market value as required under several laws. Zinke has said previously he will continue the three-year-long program review started under the Obama administration.

The states ask the court to block Zinke's order, which was issued following an executive order from President Donald Trump, and to resume the leasing moratorium.

A coalition of environmental groups in March [also sued](#) over the lifting of the moratorium.

**WHAT'S NEXT:** A federal judge in Montana will consider the suits and whether to reinstate the moratorium.

*To view online [click here](#).*

[Back](#)

### **BLM to auction off oil, gas leases in Nevada [Back](#)**

By Esther Whieldon | 05/09/2017 05:02 PM EDT

BLM today announced it will hold an online auction in mid-June for oil and gas leases on 196,000 acres in three Nevada counties.

The 10-year leases are for 106 parcels in the BLM's Battle Mountain District in Nye, Lander and Eureka counties, and will include annual rental fees of \$1.50 per acre for the first five years and \$2 per acre after that until production begins. Once a developer is pulling oil or natural gas from the land, it will pay a 12.5 percent royalty fee.

The next oil and gas sale is scheduled for the week of Sept. 11. The last auction for the district was held in June under the Obama administration for 50,415 acres and generated \$54,340.

**WHAT'S NEXT:** BLM will hold the online auction on June 13.

To view online [click here](#).

[Back](#)

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**To:** Kevin Haugrud[jack.haugrud@sol.doi.gov]  
**From:** Jorjani, Daniel  
**Sent:** 2017-05-09T17:05:49-04:00  
**Importance:** Normal  
**Subject:** Fwd: REQUEST SURNAME ASAP  
**Received:** 2017-05-09T17:08:41-04:00  
[1899s.pdf](#)  
[5-9-17 - DRAFT Response - Gardner.docx](#)

Any edits?

----- Forwarded message -----

**From:** **Howarth, Robert** <[robert\\_howarth@ios.doi.gov](mailto:robert_howarth@ios.doi.gov)>  
**Date:** Tue, May 9, 2017 at 3:29 PM  
**Subject:** REQUEST SURNAME ASAP  
**To:** "Bloomgren, Megan" <[megan\\_bloomgren@ios.doi.gov](mailto:megan_bloomgren@ios.doi.gov)>, "Jorjani, Daniel" <[daniel\\_jorjani@ios.doi.gov](mailto:daniel_jorjani@ios.doi.gov)>, James Cason <[james\\_cason@ios.doi.gov](mailto:james_cason@ios.doi.gov)>, Kathleen Benedetto <[kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov)>, Katharine Macgregor <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)>  
**Cc:** Micah Chambers <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)>, Shane Wolfe <[shane\\_wolfe@ios.doi.gov](mailto:shane_wolfe@ios.doi.gov)>

Hello all. Attached for your review and surname is a response (Word version) to Senator Gardner on the Methane and Waste Prevention Rule. Micah Chambers in OCL has surnamed.

*Per Micah, there are no content revisions to the Gardner draft other than changing the word "letter" to conversations or discussions and there were lines deleted but nothing new added. Would like to have this out the door tomorrow morning.*

Also attached is a similar letter you surnamed that went to Senator Portman on the same issue.

**Please email me your surname by 8:00 a.m. Wednesday, May 10.**

Thanks in advance for your help.

Rob

--

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202-549-8961 (cell)



THE SECRETARY OF THE INTERIOR  
WASHINGTON

MAY 04 2017

The Honorable Rob Portman  
United States Senate  
Washington, DC 20510

Dear Senator Portman:

Thank you for your letter dated May 1, 2017, regarding the Department of the Interior's (Department) Methane and Waste Prevention Rule. I too believe the Department has an integral role to play in this issue, which is why I intend to act within my authority as Secretary to craft solutions that incentivize responsible development.

I share your concerns regarding methane waste and agree that we must manage our public lands in a pragmatic way. Should you and your colleagues choose to rescind the rule through the Congressional Review Act (CRA), the Bureau of Land Management (BLM) will continue to have the authority to meaningfully update its policies to reduce methane waste and will continue to regulate venting, flaring, and beneficial use of gas pursuant to Department guidance, known as Notice to Lessees (NTL) 4A<sup>1</sup>. The NTL-4A was first implemented decades ago, so it should be revised to reflect the realities of today. Whether BLM proposes new rulemaking or revisions to the existing NTL-4A process, we will take concrete action to reduce methane waste. In your letter, you asked me what actions the Department would take in the absence of the current Methane and Waste Prevention Rule. In response, the Department would pursue, among other options, the following strategies:

- Engage in a robust assessment of all venting and flaring requirements to ensure 1) the industry conserves resources and prevents waste, and 2) the taxpayer is assured the fair value of royalties. This includes, but is not limited to:
  - Criteria for approving venting and flaring
  - Venting and flaring thresholds and time limits
  - Beneficial use
  - Royalty requirements;
- Strengthen policies to encourage companies to capture methane to be used for other purposes, such as the beneficial use of methane on lease for generating power, powering equipment, and compressing or treating methane;
- Revise existing BLM restrictions on the flaring of unmarketable methane from oil wells;
- Conserve unsold methane by reinjection into the existing well for enhanced oil recovery or for later recovery;
- Expedite rights-of-way (ROW) approvals and remove obstacles so pipeline and gathering infrastructure can be built quickly; and
- Eliminate BLM policies that conflict with or duplicate flaring restrictions in states such as North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana.

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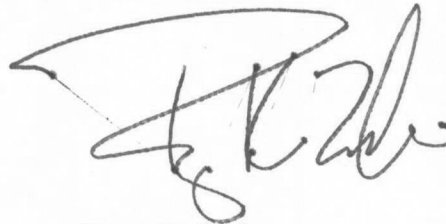
<sup>1</sup> The 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A)

I have been tasked to lead and plan for the Department's future over the next 100 years. As an admirer of President Teddy Roosevelt, the policies I propose will reflect the promise I made to you and your colleagues during my confirmation hearing—we will work together to ensure the use of our public lands reflects higher purpose so that our children's children can look back and say, "we did it right."

As Congress weighs its options, rest assured that the Department is committed to reducing methane waste, and under my leadership, will take important steps to accomplish this goal. Responsible energy development and proper conservation are not mutually exclusive goals, and we will utilize reasonable regulations without hurting job creation and economic growth.

Thank you for your interest in this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan K. Zinke". The signature is stylized with a large, sweeping initial "R" and "Z".

Ryan K. Zinke  
Secretary of the Interior



The Honorable Cory Gardner  
United States Senator  
354 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Gardner:

Thank you for taking the time to talk with me regarding the Department of the Interior's (DOI) Methane and Waste Prevention Rule. Per our conversation, I wanted to formally respond to your inquiries.

Should you and your Senate colleagues choose to rescind the rule through the Congressional Review Act (CRA), the Bureau of Land Management (BLM) will continue to have the authority to meaningfully update its policies to reduce methane waste. If a CRA is passed, the BLM will continue to regulate venting, flaring, and beneficial use of gas pursuant to the DOI guidance known as NTL-4A[1]. NTL-4A was first implemented a few decades ago, so it should be revised to reflect the realities of today. Whether the BLM proposes new rulemaking or revisions to the existing NTL-4A process, we will take concrete action to reduce methane waste. Throughout our conversation, you asked me what actions the Department would take in the absence of the current Methane and Waste Prevention Rule. In response, the Department would pursue, among other options, the following strategies:

- Engaging in a robust assessment of all venting and flaring requirements to ensure the industry conserves resources and prevents waste, and so the taxpayer is assured the fair value of royalties. This includes, and is not limited to:
  - Criteria for approving venting and flaring
  - Venting and flaring thresholds and time limits
  - Beneficial use
  - Royalty requirements
- Strengthening policies to encourage companies to capture methane to be used for other purposes, such as the beneficial use of methane on lease for generating power, powering equipment, and compressing or treating methane;
- Revising existing BLM restrictions on the flaring of unmarketable methane from oil wells;
- Conserving unsold methane by reinjection into the existing well for enhanced oil recovery or for later recovery;
- Expediting rights-of-way (ROW) approvals and removing obstacles so pipeline and gathering infrastructure can be built quickly;
- Eliminating BLM policies that conflict with or duplicate flaring restrictions in states like North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana.

I have been tasked to lead and plan for the Department's future over the next 100 years. As an admirer of President Teddy Roosevelt, the policies I propose will reflect the promise I made to you and your colleagues during my confirmation hearing: we will work together to ensure the use of our

public lands reflects higher purpose so that our children's children can look back and say, "We did it right." As Congress weighs its options, rest assured that the Department is committed to reducing methane waste and under my leadership, we will take the important steps to accomplish that goal. Responsible energy development and proper conservation are not mutually exclusive goals and we will utilize reasonable regulations without hurting job creation and economic growth. Thank you for your interest in this issue, and thank you for taking the time to share your perspective.

Sincerely,

Secretary Ryan Zinke

---

[1] The 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A)



(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (5) [Redacted]

**From:** Hawbecker, Karen [mailto:karen.hawbecker@sol.doi.gov]  
**Sent:** Friday, May 05, 2017 4:16 PM  
**To:** Boronow, Clare (ENRD) <CBoronow@ENRD.USDOJ.GOV>  
**Cc:** Rhymes, Christopher <christopher.rhymes@sol.doi.gov>; Richard McNeer <Richard.McNeer@sol.doi.gov>; Piropatto, Marissa (ENRD) <MPiropato@ENRD.USDOJ.GOV>

**Subject:** Re: FW: BLM Venting & Flaring Litigation - Update on Briefing Issues

Clare, Were there any further developments regarding the briefing schedule? Did you file an alternative proposal to ask for the August date? Thanks. --Karen

On Fri, May 5, 2017 at 1:21 PM, Boronow, Clare (ENRD) <[Clare.Boronow@usdoj.gov](mailto:Clare.Boronow@usdoj.gov)> wrote:

Thanks, Chris. Good catch.

**From:** Rhymes, Christopher [mailto:[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)]  
**Sent:** Friday, May 05, 2017 9:30 AM  
**To:** Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>  
**Cc:** Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>; Richard McNeer <[Richard.McNeer@sol.doi.gov](mailto:Richard.McNeer@sol.doi.gov)>; Piropatto, Marissa (ENRD) <[MPiropato@ENRD.USDOJ.GOV](mailto:MPiropato@ENRD.USDOJ.GOV)>  
**Subject:** Re: FW: BLM Venting & Flaring Litigation - Update on Briefing Issues

Clare,

I have one suggested change for the status update. (b) (5)

[REDACTED]

Thanks,

Chris

On Thu, May 4, 2017 at 7:35 PM, Boronow, Clare (ENRD) <[Clare.Boronow@usdoj.gov](mailto:Clare.Boronow@usdoj.gov)> wrote:

Industry petitioners' proposed schedule is attached. They have stuck with their original schedule and propose that opening briefs be due June 9, responses due June 30, and replies due July 10. At the very least, we will need to request additional time to prepare our response brief. Let's plan to discuss tomorrow.

---

**From:** Eric P. Waeckerlin [mailto:[EPWaeckerlin@hollandhart.com](mailto:EPWaeckerlin@hollandhart.com)]  
**Sent:** Thursday, May 04, 2017 5:22 PM  
**To:** Schroder, Katie <[Katie.Schroder@dgsllaw.com](mailto:Katie.Schroder@dgsllaw.com)>; '[lisa@wyomingoutdoorcouncil.org](mailto:lisa@wyomingoutdoorcouncil.org)' <[lisa@wyomingoutdoorcouncil.org](mailto:lisa@wyomingoutdoorcouncil.org)>; 'Robin Cooley' <[rcooley@earthjustice.org](mailto:rcooley@earthjustice.org)>; 'George Torgun' <[George.Torgun@doj.ca.gov](mailto:George.Torgun@doj.ca.gov)>; 'William Grantham (NM)' <[wgrantham@nmag.gov](mailto:wgrantham@nmag.gov)>; '[aweeks@catf.us](mailto:aweeks@catf.us)' <[aweeks@catf.us](mailto:aweeks@catf.us)>; '[reed@zarsllaw.com](mailto:reed@zarsllaw.com)' <[reed@zarsllaw.com](mailto:reed@zarsllaw.com)>; 'Susannah Weaver ([susannah@donahuegoldberg.com](mailto:susannah@donahuegoldberg.com))' <[susannah@donahuegoldberg.com](mailto:susannah@donahuegoldberg.com)>; Susannah Weaver <[susannah@donahuegoldberg.com](mailto:susannah@donahuegoldberg.com)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Pirocato, Marissa (ENRD) <[MPirocato@ENRD.USDOJ.GOV](mailto:MPirocato@ENRD.USDOJ.GOV)>; Elizabeth Morrisseau <[elizabeth.morrisseau@wyo.gov](mailto:elizabeth.morrisseau@wyo.gov)>; '[mschlichting@mt.gov](mailto:mschlichting@mt.gov)'; '[brandon@buddfalen.com](mailto:brandon@buddfalen.com)' <[brandon@buddfalen.com](mailto:brandon@buddfalen.com)>; '[austin.nimocks@oag.texas.gov](mailto:austin.nimocks@oag.texas.gov)' <[austin.nimocks@oag.texas.gov](mailto:austin.nimocks@oag.texas.gov)>; '[andrew.leonie@oag.texas.gov](mailto:andrew.leonie@oag.texas.gov)' <[andrew.leonie@oag.texas.gov](mailto:andrew.leonie@oag.texas.gov)>; '[sebyp@gtlaw.com](mailto:sebyp@gtlaw.com)' ([sebyp@gtlaw.com](mailto:sebyp@gtlaw.com))' <[sebyp@gtlaw.com](mailto:sebyp@gtlaw.com)>; 'Erik Petersen' <[erik.petersen@wyo.gov](mailto:erik.petersen@wyo.gov)>; Eric P. Waeckerlin <[EPWaeckerlin@hollandhart.com](mailto:EPWaeckerlin@hollandhart.com)>  
**Subject:** RE: BLM Venting & Flaring Litigation - Update on Briefing Issues

Counsel,

Following Katie's email of earlier today, attached please find a draft of the status report we intend to file tomorrow. We would appreciate if you could let us know of your respective positions with respect to the proposed briefing schedule as soon as possible tomorrow.

Thank you and have a good evening

Eric

**Eric Waeckerlin**  
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Denver, CO 80202

Office Phone (303) 295-8086

Cell Phone (406) 544-3546

E-mail: [epwaeckerlin@hollandhart.com](mailto:epwaeckerlin@hollandhart.com)

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**From:** Schroder, Katie [<mailto:Katie.Schroder@dgsllaw.com>]  
**Sent:** Thursday, May 4, 2017 3:07 PM  
**To:** '[lisa@wyomingoutdoorcouncil.org](mailto:lisa@wyomingoutdoorcouncil.org)' <[lisa@wyomingoutdoorcouncil.org](mailto:lisa@wyomingoutdoorcouncil.org)>; 'Robin Cooley' <[rcooley@earthjustice.org](mailto:rcooley@earthjustice.org)>; 'George Torgun' <[George.Torgun@doj.ca.gov](mailto:George.Torgun@doj.ca.gov)>; 'William Grantham (NM)' <[wgrantham@nmag.gov](mailto:wgrantham@nmag.gov)>; '[aweeks@catf.us](mailto:aweeks@catf.us)' <[aweeks@catf.us](mailto:aweeks@catf.us)>; '[reed@zarslaw.com](mailto:reed@zarslaw.com)' <[reed@zarslaw.com](mailto:reed@zarslaw.com)>; 'Susannah Weaver ([susannah@donahuegoldberg.com](mailto:susannah@donahuegoldberg.com))' <[susannah@donahuegoldberg.com](mailto:susannah@donahuegoldberg.com)>; Susannah Weaver <[susannah@donahuegoldberg.com](mailto:susannah@donahuegoldberg.com)>; Boronow, Clare (ENRD) <[Clare.Boronow@usdoj.gov](mailto:Clare.Boronow@usdoj.gov)>; Piropatto, Marissa (ENRD) <[Marissa.Piropatto@usdoj.gov](mailto:Marissa.Piropatto@usdoj.gov)>  
**Cc:** '[austin.nimocks@oag.texas.gov](mailto:austin.nimocks@oag.texas.gov)' <[austin.nimocks@oag.texas.gov](mailto:austin.nimocks@oag.texas.gov)>; '[andrew.leonie@oag.texas.gov](mailto:andrew.leonie@oag.texas.gov)' <[andrew.leonie@oag.texas.gov](mailto:andrew.leonie@oag.texas.gov)>; '[sebyp@gtlaw.com](mailto:sebyp@gtlaw.com)' ([sebyp@gtlaw.com](mailto:sebyp@gtlaw.com))' <[sebyp@gtlaw.com](mailto:sebyp@gtlaw.com)>; 'Erik Petersen' <[erik.petersen@wyo.gov](mailto:erik.petersen@wyo.gov)>; Eric P. Waeckerlin <[EPWaeckerlin@hollandhart.com](mailto:EPWaeckerlin@hollandhart.com)>; 'Elizabeth Morrissette' <[elizabeth.morrissette@wyo.gov](mailto:elizabeth.morrissette@wyo.gov)>; Schlichting, Melissa <[mschlichting@mt.gov](mailto:mschlichting@mt.gov)>; 'Brandon L. Jensen ([brandon@buddfalen.com](mailto:brandon@buddfalen.com))' <[brandon@buddfalen.com](mailto:brandon@buddfalen.com)>  
**Subject:** BLM Venting & Flaring Litigation - Update on Briefing Issues  
**Importance:** High

Counsel,

As you know, Western Energy Alliance and IPAA are required to file a status report tomorrow (Friday, May 5) in the venting and flaring litigation that updates the court on the status of any motion to complete and/or supplement the administrative record, proposes a briefing schedule, and informs the court of the parties' positions on the briefing schedule.

We want to inform you that the Industry Petitioners do not plan to file a motion to complete and/or supplement the administrative record. Because this decision may affect your clients'

perspectives on a briefing schedule, we want to make sure you have sufficient time to consider this decision and confer with your clients.

We are still in the process of developing a proposed briefing schedule. Later today, we plan to circulate a proposed schedule and to seek your respective clients' positions on it.

Thanks very much,

Katie

**KATHLEEN C. SCHRODER** ▪ Partner

P: 303.892.7354 ▪ F: 303.893.1379 ▪ [vcard](#)

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**A LexMundi Member**

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**Christopher M. Rhymes** | Attorney-Advisor, Division of Mineral Resources

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[christopher.martin@usdoj.gov](mailto:christopher.martin@usdoj.gov)

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF WYOMING**

STATE OF WYOMING and STATE OF	)	
MONTANA,	)	
	)	No. 16 cv 00285 SWS
	)	
Petitioners,	)	[Consolidated with 16 cv 00280 SWS]
	)	
and	)	<b>FEDERAL RESPONDENTS’</b>
	)	<b>RESPONSE TO INDUSTRY</b>
STATE OF NORTH DAKOTA and STATE OF	)	<b>PETITIONERS’ STATUS REPORT</b>
TEXAS,	)	<b>(ECF NO. 123)</b>
	)	
Petitioner Intervenors,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF THE	)	
INTERIOR, <i>et al.</i> ,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
WYOMING OUTDOOR COUNCIL, <i>et al.</i>	)	
	)	
Respondent Intervenors.	)	

On May 5, 2017, Industry Petitioners filed a status report in response to this Court's April 6, 2017 Minute Order instructing them to file a "status report" "informing the Court whether they plan to move to complete and/or supplement the administrative record" and "of the parties' respective positions on proposed deadlines for filing opening briefs." ECF Nos. 118, 123. Industry Petitioners indicated that they do not intend to challenge the administrative record and proposed an expedited briefing schedule that has opening briefs due on June 9, response briefs due on June 30, and reply briefs due on July 10.<sup>1</sup>

Federal Respondents oppose the schedule put forth by Industry Petitioners because the schedule is untenable in light of counsel's prior commitments and the need for Federal Respondents to respond to three lengthy merits briefs. As noted in Federal Respondents' position in the status report, Ms. Piropato expects to be out on maternity leave as of mid June. Ms. Boronow has previously scheduled depositions during the entirety of the weeks of June 19, June 26, and July 10 in rural locations with limited internet access. Given these staffing constraints, and the fact that Federal Respondents will likely be responding to over 100 pages of briefing, Federal Respondents need additional time to prepare a response brief.

Federal Respondents do not believe that an expedited briefing schedule is necessary in these cases. While Federal Respondents appreciate that Industry Petitioners and the States of North Dakota and Texas will need to prepare for the portions of the Waste Prevention Rule that go into effect in January 2018, they also note that there are multiple processes underway that may render Petitioners' claims moot. First, the Senate may vote this week on whether to repeal

---

<sup>1</sup> Because Industry Petitioners substantially and substantively altered their status report after Federal Respondents provided their position, and then sought the parties' response to their new report within 30 minutes, Federal Respondents find it necessary to file this response in order to fully articulate their position.

(b) (5)

the Rule pursuant to the Congressional Review Act.<sup>2</sup> Second, President Trump issued an Executive Order on March 28, 2017 requiring the Secretary of the Interior to “review” the Rule and “if appropriate, . . . as soon as practicable, suspend, revise or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding” the Rule. Exec. Order No. 13,783, 82 Fed. Reg. 16,093, § 7(b) (Mar. 28, 2017). On March 29, 2017, the Secretary of the Interior issued Secretary’s Order 3349 requiring the Director of the Bureau of Land Management within 21 days to “review” the Rule and “report to the Assistant Secretary Land and Minerals Management on whether the Rule is fully consistent with the policy set forth in” the Executive Order. Dep’t of the Interior, Sec. Order 3349 (Mar. 29, 2017).<sup>3</sup> Pursuant to this direction, the Department of the Interior is currently and expeditiously considering whether to suspend, revise or rescind the Rule. Because of these ongoing developments, proceeding with an expedited briefing schedule is an inefficient use of all of the parties’ resources.<sup>4</sup>

Finally, Federal Respondents object to Industry Petitioners’ suggestion that the government delayed the briefing of this case. Any delay is of Industry Petitioners’ own making. Industry Petitioners requested that merits briefing be postponed in order to resolve record issues, ECF Nos. 97, 110, and rejected Federal Respondents’ proposal that resolution of record disputes occur concurrently with merits briefing. Counsel for Federal Respondents informed the parties of Ms. Piropato’s upcoming maternity leave and the fact that review of the 88 privileged documents identified by Industry Petitioners would take longer than usual because of the involvement of

(b) (5)

<sup>2</sup> See <https://www.bna.com/week-ahead-methane-b73014450561/>.

<sup>3</sup> Available at <https://www.doi.gov/sites/doi.gov/.../so-3349-american-energy-independence.pdf>.

<sup>4</sup> Industry Petitioners agreed in their most recent motion for an extension of time that commencing briefing while BLM is reviewing the Rule pursuant the President’s Executive Order “ignores the practical realities of these administrative circumstances, risking further waste of the parties’ and the Court’s resources as a result.” ECF No. 113 at 5.

multiple federal agencies not party to this lawsuit in the development of those documents. *See*

Ex. A. For these reasons, counsel for Federal Respondents proposed proceeding with merits briefing concurrently with discussions regarding supplementation of the record. *Id.* This schedule would have allowed completion of merits briefing prior to Ms. Piropatto's departure on maternity leave and assuaged North Dakota and Texas' concerns about delay. However, Industry Petitioners insisted that the parties resolve all record issues before proceeding with merits briefing, a position not shared by North Dakota and Texas. Ex. B; ECF Nos. 97, 110. There is no indication that any of these 88 documents are necessary for Petitioners to present their case. Indeed, North Dakota and Texas have stated that "[m]any of the deficiencies with the Venting and Flaring Rule are purely legal in nature and can be briefed without reference to the administrative record," and acknowledged that the documents sought by Industry Petitioners are not necessary for their claims. ECF No. 112 ¶ 6, ¶ 7 ("The existing record provides ample material to show that the Venting and Flaring Rule is arbitrary, capricious, and not in accordance with law."). After precipitating a several month delay, Plaintiffs' proposal for a schedule that is unworkable for Federal Respondents because of timing concerns is not credible.

In an effort to provide the Court with an alternative briefing schedule, Federal Respondents conferred with the States of Wyoming and Montana. Federal Respondents, Wyoming, and Montana propose the following schedule:

- Opening briefs due July 3
- Response briefs due August 11
- Reply briefs due August 25

This schedule provides time for the agency to complete its review of the Rule pursuant to the Secretarial Order, which may render merits briefing in these cases unnecessary. It also provides sufficient time for Federal Respondents to prepare their response brief in light of their prior

(b) (5)

**Commented [KSH6]:** Was it several months?

**Commented [RCM7]:** They gave us the list of requested documents on March 1, and we finished our review and released the last documents on May 3. So it really only took about two months.

commitments. And it ensures that briefing is complete in late August, four months before the Rule's first requirements go into effect. Federal Respondents respectfully request that this Court enter the proposed schedule above. Should there be any developments concerning the effectiveness of the Rule, Federal Respondents will promptly notify the parties and the Court.

Respectfully submitted this 8th day of May, 2017.

JEFFREY H. WOOD  
Acting Assistant Attorney General  
Environment and Natural Resources Division

*/s/ Clare Boronow* \_\_\_\_\_

MARISSA PIROPATO  
CLARE BORONOW

*/s/ C. Levi Martin* \_\_\_\_\_

C. Levi Martin  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2017 14:08:00, a copy of the foregoing was served by filing a copy of that document with the Court's CM/ECF system, which will send notice of electronic filing to counsel of record.

/s/ Clare Boronow  
Clare Boronow





**To:** Lukas, William[wlukas@usgs.gov]  
**From:** Cameron, Scott  
**Sent:** 2017-05-03T10:51:05-04:00  
**Importance:** Normal  
**Subject:** Fwd: thanks for meeting / LANDSAT  
**Received:** 2017-05-03T10:51:44-04:00  
Interior SmartReg\_032017.pdf

FYI

Thanks,

Scott

Scott J. Cameron

Special Assistant

Office of the Secretary of the Interior

Desk 202 208 0969

Cell 202 706 9031

----- Forwarded message -----

**From:** **Mennel, John (US - Arlington)** <jmennel@deloitte.com>  
**Date:** Tue, May 2, 2017 at 9:37 PM  
**Subject:** thanks for meeting / LANDSAT  
**To:** "Cameron, Scott" <scott\_cameron@ios.doi.gov>  
**Cc:** "Korol, Jon (US - Arlington)" <jkorol@deloitte.com>

Dear Scott:

Thanks very much for the meeting on April 20. We enjoyed the conversation, and I have followed up with Amy Holley and Maureen Foster as you suggested. Thanks for those suggestions.

Since the meeting, I have spoken to a few of my colleagues about the LANDSAT program, and we have made a quick review of the relevant studies e.g. NGAC, NAS. As you go through your process, we think there could be value in providing you and your team with objective, expert advice in the form of a “study of studies” and cost-benefit analysis for two reasons. First, I imagine most of the voices in the Interagency and in the Department are strong supporters of the current planned path forward for the program; an objective framing of other options could be helpful. Second, a review of options would support the response to Executive Order 13781 on a Comprehensive Plan for Reorganizing the Executive Branch, which calls for an examination of how programs can be delivered differently and how partners outside of the Federal Government can contribute.

In particular, some of the questions I think would be helpful to look at are:

- What is the value of the program to USG, general public and business community? Is there value not currently being considered e.g. national security, intel?
- How will the improved thermal imaging capabilities in LANDSAT 10 change the value equation including to industry users?
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- Are there new technical options (e.g. small sats) and private sector partnerships that should be considered?
- Do new analytical methods (machine learning, computer vision) change the value proposition for LANDSAT?
- Given increased capabilities in the private sector and in the EU, how has the value prop for LANDSAT changed?

Let us know if it would be of interest to discuss this topic further. We have a good combination of both “eggheads” and “bean counters” people with deep experience in remote sensing and geospatial technologies who work closely with budget/financial/investment analysts (as well as aerospace industry consultants working with the private sector players) on our team and would like to be of help even if just as a sounding board to talk through options.

I am also attaching the slides on Reg Reform specific to DOI that I flipped through at the meeting. I know this is outside of your immediate purview, but the data seemed of interest to you.

Thanks,

John

**John Mennel**

Managing Director | Strategy

Deloitte Consulting LLP

1919 North Lynn St, Arlington, Virginia 22209

Tel/Direct: +1 571 814 6054 | Mobile: +1 214 208 7208

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Department  
of the  
**Interior**  
Reg Reform

Smart Regulation  
March 14, 2017

## Why Deloitte Smart Regulation?



**The White House is imposing new requirements on agencies to streamline regulation. President Trump has signed two Executive Orders that outline the Administration's regulatory agenda:**

### **#1 Regulatory Requirements**

For every new significant regulation an agency must:

- Eliminate **two** existing regulations and,
- Ensure a **net zero** increase in costs to businesses across the year

### **#2 Regulation Agenda Enforcement**

Each Agency to implement Regulation Reform Task Force to:

- Evaluate existing regulations to identify outdated and inconsistent regulations
- Integrate regulatory progress indicators into annual agency performance plans



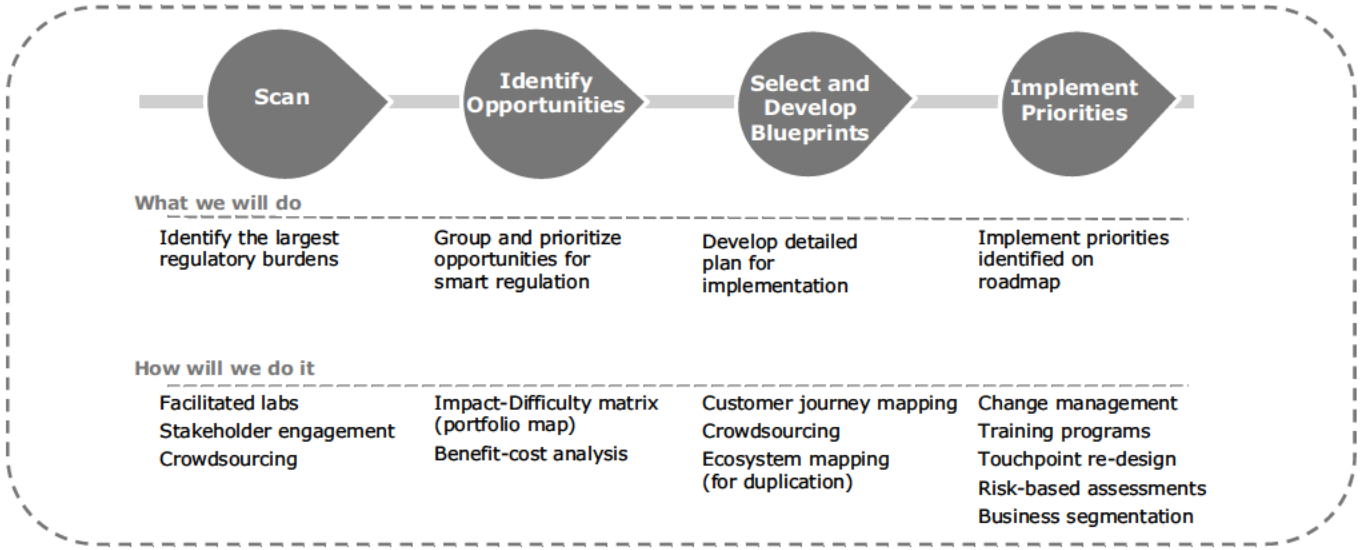
**\*Designate Regulatory Reform Officer within 60 days, and report on progress within 90 days**

**Deloitte's Perspective: Deloitte believes agencies can *maintain protections while reducing regulatory burden***



# What is Deloitte Smart Regulation?

**Our four step process allows us to rapidly identify cost savings and maintain protections so agencies remain compliant with the Executive Order.**



**Smart Regulation Solutions focus on maintaining protections, while reducing burdens.**



**Simply** and **digitize** forms so they are easier to fill out



Use **predictive analytics** to **focus** enforcement resources on **high risk organizations**



Improve regulatory **guidance** so that it is **clearer** to business on how to comply



Make it easier for businesses to **submit the same information** to **multiple enforcers**

## Which agencies were the largest regulators under the Bush Administration?

Number of regulations with annualized compliance costs to businesses and consumers over \$100M



Interior was the 2<sup>nd</sup> largest "major" regulator during the Bush Administration

*The Department of the Interior accounted for 56 of 490 high-cost regulations*

The Trump Executive Order does not just apply to high-cost regulations but all significant regulations - there were ~2,000 of those under President Bush. If the Trump Executive Order had been in place during the Bush era, agencies would have had to find ~4,000 regulations to simplify, and also take out more than \$30 billion in annual compliance costs.

Copyright

\*Preliminary estimates based on GAO data

## Which agencies were the largest regulators under the Obama Administration?

Number of regulations with annualized compliance costs to businesses and consumers over \$100M



Interior was the 2<sup>nd</sup> largest "major" regulator during the Obama Administration

*The Department of the Interior accounted for 51 of 670 high-cost regulations*

The Trump Executive Order does not just apply to high-cost regulations but all significant regulations - there were ~1,600 of those under President Obama. If the Trump Executive Order had been in place during the Obama era, agencies would have had to find ~3,200 regulations to simplify, and also take out more than \$45 billion in annual compliance costs.

Copyright

\*Preliminary estimates based on GAO data



# Department of the Interior Regulation Scorecard

Interior has broad regulatory authority, overseeing the development of onshore and offshore energy, managing migratory animals and endangered species, running National Parks and American Indian trust lands, and managing natural resource damage assessment

## Regulatory Footprint

Impacted by Regulation Executive Order?



### FY 2017 Regulatory Priorities

- Promote environmentally responsible, safe, and balanced development of renewable and conventional energy on public lands
- Promote partnerships with states, tribes, local governments, other groups, and individuals to achieve common goals

### In the News:

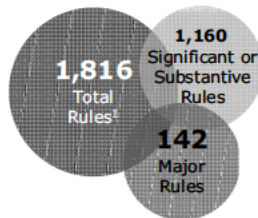
- [Trump signs bill undoing Obama coal mining rule](#)
- [Trump to roll back Obama's climate, water rules through executive action](#)

Source:

- GAO Regulation Database: <http://gao.gov/legal/congressional-review-act/overview>
- American Action Forum Regulation Database: <https://regordeo.com/>

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### Current State

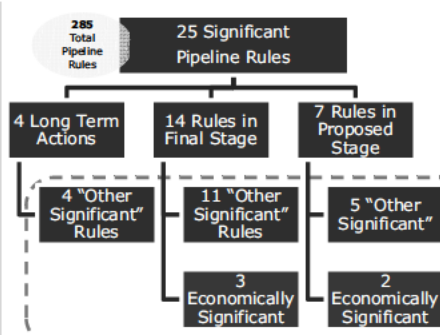


~\$7.4B  
Total costs resulting from 142 final rules since 2005 (ex ante, private sector and intergovernmental cost)<sup>2</sup>

Congress recently used the **Congressional Review Act** to eliminate the Obama-Era, Interior "Stream Protection Rule". This rule would have had **\$81M** in annualized cost

### Regulatory Pipeline

The **Regulatory Pipeline** refers to Interior proposed rules that will be impacted by the Executive Order. OMB Interim Guidance directs that the Executive Order applies to **significant rules**. Interior has ~25 rules in the pipeline



Interior will need to decide the way forward for at least **25** planned **significant** rules

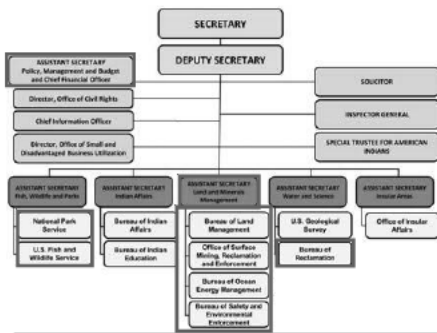
Identify **50** rules to eliminate

Offset ~\$500M in annual spending

Strategize and account for New Administration's regulatory priorities

# Pipeline Regulations Bureau and Office Impacts

Certain Interior Bureaus and Offices have greater regulatory responsibilities and more rules currently in development. The identified bureaus and offices will likely be impacted by the Executive Order



### 3 Economically Significant Rules Include:

- Arctic Regulations (Bureau of Ocean Energy Management)
  - Recently completed, (effective: September 13, 2016)
  - ~\$2.05B in compliance costs for industry over 10 years
- Waste Prevention, Production Subject to Royalties, and Resource Conservation (Bureau of Land Management)
  - ~\$110-275M in annualized cost; \$50-204M in annualized benefits
- Migratory Bird Hunting; 2016-2017 Migratory Game Bird Hunting Regulations (United States Fish and Wildlife Service)
  - Interior is required to issue a new regulation on migratory bird hunting each FY, does not estimate costs

Economically Significant Rules have an annual cost effect on the economy of \$100 million or more

<b>Assistant Secretary for Policy, Mgmt., and Budget</b> Pipeline Rules: 6 • Significant: 1 • Econ. Significant: 0	<b>Bureau of Land Management</b> Pipeline Rules: 13 • Significant: 4 • Econ. Significant: 1	<b>Bureau of Ocean Energy Management</b> Pipeline Rules: 10 • Significant: 2 • Econ. Significant: 1	<b>Bureau of Safety and Environ. Enforcement</b> Pipeline Rules: 18 • Significant: 5 • Econ. Significant: 0
<b>National Park Service</b> Pipeline Rules: 21 • Significant: 1 • Econ. Significant: 0	<b>Office of Natural Resources Revenue</b> Pipeline Rules: 6 • Significant: 1 • Econ. Significant: 0	<b>Office of Surface Mining Reclamation and Enforcement</b> Pipeline Rules: 7 • Significant: 1 • Econ. Significant: 0	<b>United States Fish and Wildlife Service</b> Pipeline Rules: 182 • Significant: 10 • Econ. Significant: 3

## Interior Regulatory Plans

*Interior's Fall 2016 Statement of Regulatory Priorities<sup>1</sup> outlined an ambitious plan for regulation development and revision. Regulatory plans propose rulemaking activities to update out-of-date rules, and rules to address previous GAO recommendations*

Sample of priority regulatory areas:

Bureau/Office	Regulatory Agenda for upcoming FY (FY 2017)
<b>Indian Affairs</b>	<ul style="list-style-type: none"> <li>• Develop regulatory changes necessary for improved Indian education</li> <li>• Solicit comment on potential regulatory changes to Indian trader regulations (Current regulations from 1957 and have not been comprehensively updated since 1965)</li> </ul>
<b>Bureau of Land Management</b>	<ul style="list-style-type: none"> <li>• Updating and improving the current versions of Onshore Oil and Gas Orders for Site Security, Oil Measurement, and Gas Measurement (Orders were last updated in 1989)</li> <li>• Continue "Waste Prevention, Production Subject to Royalties, and Resource Conservation" rulemaking in response to GAO recommendations</li> </ul>
<b>Bureau of Ocean Energy Management</b>	<ul style="list-style-type: none"> <li>• Enhancing the regulatory efficiency of the offshore renewables program (finalizing 2 rules)</li> <li>• Updating BOEM's Air Quality Program (original air quality rules date largely from 1980)</li> </ul>
<b>Bureau of Safety and Environmental Enforcement</b>	<ul style="list-style-type: none"> <li>• Improving Oil Spill Response Plans and Procedures (based on Deepwater Horizon lessons learned)</li> <li>• Updating Cost Reporting and Cost Recovery Rules for decommissioning pipelines</li> </ul>
<b>Office of Natural Resources Revenue</b>	<ul style="list-style-type: none"> <li>• Proposing new rules to implement the provisions of the Energy Policy Act of 2005 (EPAct) governing the payment of advance royalty on coal resources produced from Federal leases</li> </ul>
<b>Office of Surface Mining Reclamation and Enforcement</b>	<ul style="list-style-type: none"> <li>• Finalize stream protection rule, establish Federal standards for the beneficial use of coal combustion residues</li> <li>• Revise existing permit fees and impose new fees to recover costs for permit administration and enforcement services provided to the coal industry.</li> </ul>
<b>U.S. Fish and Wildlife Service</b>	<ul style="list-style-type: none"> <li>• Issue rules under the Endangered Species Act, issue annual migratory bird hunting regulations (under the Migratory Bird Treaty Act)</li> </ul>
<b>National Park Service</b>	<ul style="list-style-type: none"> <li>• Issue rules to manage off-road vehicle use and regulate non-federal oil and gas activity on NPS lands</li> </ul>

Source:

1. Statement of Regulatory Priorities: [https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201610/Statement\\_1000.html](https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201610/Statement_1000.html)

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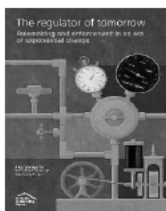
Deloitte is at the forefront of this issue

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... And authored publications that reimagine the world of regulation

*"You can achieve significant reductions in regulatory costs **without removing protections.**"*  
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Influencing behaviors to  
achieve public outcomes



**Re-thinking Red Tape**  
*Influencing behaviors to achieve public outcomes*



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*Improving the government to business experience*

# **Appendix**

## Regulatory Process Information

## Presidential Executive Order on Regulation: Overview

### Understanding the Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs

<b>How does it work?</b>	<ul style="list-style-type: none"><li>• In FY17, net new regulation costs = \$0.</li><li>• For \$1 of additional cost imposed on businesses, a \$1 reduction must be made.</li><li>• "One In, Two Out" - agencies must eliminate two regulations for each new one proposed.</li><li>• In FY18, the White House will issue a cap on allowable incremental costs.</li></ul>
<b>What counts as a "cost"?</b>	<ul style="list-style-type: none"><li>• "Costs" are defined as the opportunity costs of compliance.</li></ul>
<b>Where can savings be found?</b>	<ul style="list-style-type: none"><li>• Modification or elimination of regulations.</li><li>• "Trading" savings internally, and, in some cases, with other agencies.</li></ul>
<b>Are there exemptions?</b>	<ul style="list-style-type: none"><li>• Yes. Regulations required by law or those pertaining to national security functions or agency operations are exempt.</li><li>• Independent agencies are exempt, yet encouraged to comply with the spirit of the EO.</li></ul>
<b>Who will manage this?</b>	<ul style="list-style-type: none"><li>• The OMB Director, likely via the Office of Information and Regulatory Affairs (OIRA), will lead implementation and issue-related guidance.</li></ul>

## Regulation Distinctions

There are several rule distinctions that indicate the anticipated impact to the agency, U.S. population, or U.S. economy in a noteworthy way

Distinction	Background & Authorities	Criteria	Agency Impact
<b>Significant</b>	Under <b>Executive Order 12866</b> , OIRA is responsible for determining which agency regulatory actions are "significant" and, in turn, subject to interagency review	<ul style="list-style-type: none"> <li>❑ Have an annual <b>effect on the economy of \$100 million or more</b> or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;</li> <li>❑ Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;</li> <li>❑ Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or</li> <li>❑ Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order</li> </ul>	<ul style="list-style-type: none"> <li>➤ Executive Order 12866 requires that significant regulatory actions be reviewed by OIRA before they are published in the Federal Register or otherwise issued to the public. The Executive Order also requires agencies to provide an explanation of the need for the regulatory action and an assessment of potential costs and benefits</li> </ul>
<b>Econ. Significant</b>	<b>Executive Order 12866</b>	<ul style="list-style-type: none"> <li>❑ Subset of those designated by OIRA as significant. A regulatory action is determined to be "economically significant" if OIRA determines that it is likely to have an annual effect on the economy of <b>\$100 million</b> or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Executive Order 12866 directs agencies to provide (among other things) a more detailed assessment of the likely benefits and costs of the regulatory action, including a quantification of those effects, as well as a similar analysis of potentially effective and reasonably feasible alternatives.</li> </ul>

## Regulation Distinctions

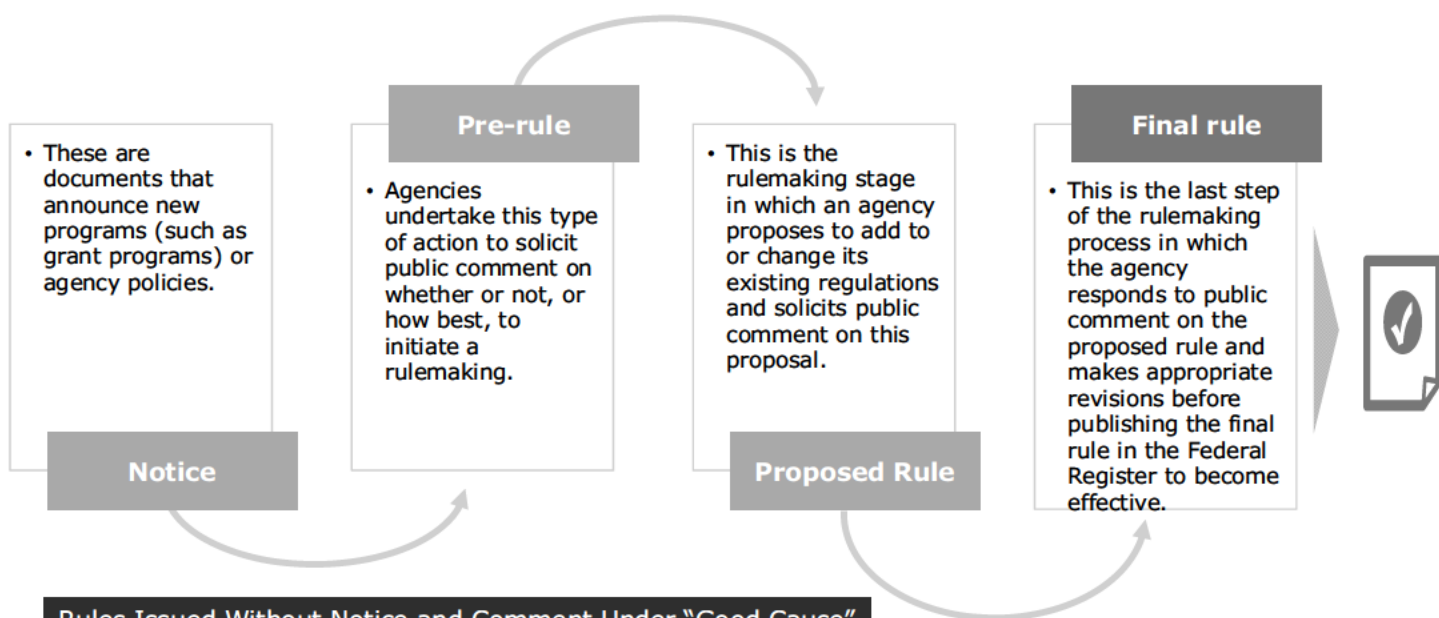
There are several rule distinctions that indicate the anticipated impact to the agency, U.S. population, or U.S. economy in a noteworthy way

Distinction	Background & Authorities	Criteria	Agency Impact
<b>Major</b>	<b>The Congressional Review Act</b> (CRA), enacted in 1996	<ul style="list-style-type: none"> <li>❑ An <b>annual effect on the economy of \$100,000,000</b> or more;</li> <li>❑ A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or</li> <li>❑ significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets</li> </ul>	<ul style="list-style-type: none"> <li>➤ The CRA contains two requirements for major rules. First, <b>agencies are generally required to delay the effective dates of "major" rules until 60 days after the rule is submitted to Congress or published in the Federal Register</b>, whichever is later. Second, the Comptroller General must provide a report on each major rule to the appropriate congressional committees of jurisdiction within 15 days of when a rule is submitted or published</li> </ul>



# Significant Regulatory Actions during OIRA Review

## STANDARD OIRA REVIEW PROCESS



### Rules Issued Without Notice and Comment Under "Good Cause"

**Interim Final Rule** - These interim rules are typically issued in conformity with statutory provisions allowing agencies to publish a final rule that becomes effective soon after publication, without going through the proposed rule stage. The "good cause" exception in the Administrative Procedure Act allows agencies to bypass public notice and comment on a rule when it would be impracticable, unnecessary, or contrary to the public interest. This process typically allows for public comment after the rule is published so that the agency still has an opportunity to consider public input and revise the rule accordingly.

**Direct Final Rule** - These rules are similar to interim final rules, except that there is no comment period after publication, on the ground that they are uncontroversial. Such rules are categorized simply as "final rules" for display purposes on the OIRA dashboard.

**To:** Cameron, Scott[scott\_cameron@ios.doi.gov]  
**Cc:** Korol, Jon (US - Arlington)[jkorol@deloitte.com]  
**From:** Mennel, John (US - Arlington)  
**Sent:** 2017-05-02T21:37:39-04:00  
**Importance:** Normal  
**Subject:** thanks for meeting / LANDSAT  
**Received:** 2017-05-02T21:38:13-04:00  
[Interior SmartReg 032017.pdf](#)

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- Do new analytical methods (machine learning, computer vision) change the value proposition for LANDSAT?
- Given increased capabilities in the private sector and in the EU, how has the value prop for LANDSAT changed?

Let us know if it would be of interest to discuss this topic further. We have a good combination of both "eggheads" and "bean counters" people with deep experience in remote sensing and geospatial technologies who work closely with budget/financial/investment analysts (as well as aerospace industry consultants working with the private sector players) on our team and would like to be of help even if just as a sounding board to talk through options.

I am also attaching the slides on Reg Reform specific to DOI that I flipped through at the meeting. I know this is outside of your immediate purview, but the data seemed of interest to you.

Thanks,  
John

**John Mennel**

Managing Director | Strategy

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**Deloitte.**



Department  
of the  
**Interior**  
Reg Reform

Smart Regulation  
March 14, 2017

## Why Deloitte Smart Regulation?



**The White House is imposing new requirements on agencies to streamline regulation. President Trump has signed two Executive Orders that outline the Administration's regulatory agenda:**

### **#1 Regulatory Requirements**

For every new significant regulation an agency must:

- Eliminate **two** existing regulations and,
- Ensure a **net zero** increase in costs to businesses across the year

### **#2 Regulation Agenda Enforcement**

Each Agency to implement Regulation Reform Task Force to:

- Evaluate existing regulations to identify outdated and inconsistent regulations
- Integrate regulatory progress indicators into annual agency performance plans



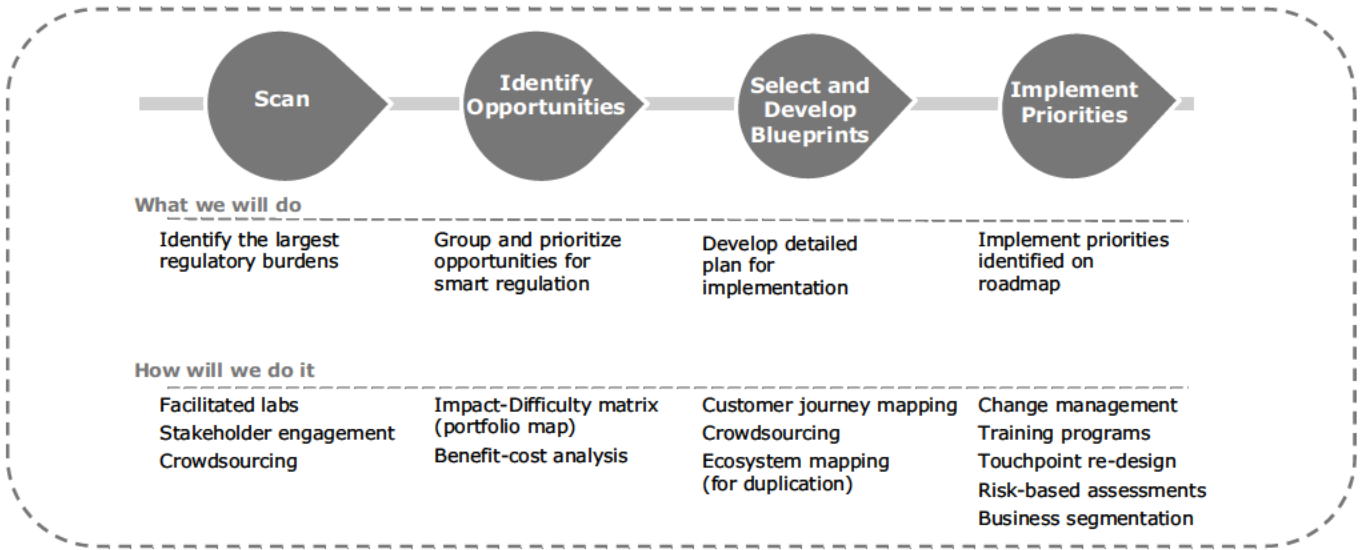
**\*Designate Regulatory Reform Officer within 60 days, and report on progress within 90 days**

**Deloitte's Perspective: Deloitte believes agencies can *maintain protections while reducing regulatory burden***



# What is Deloitte Smart Regulation?

**Our four step process allows us to rapidly identify cost savings and maintain protections so agencies remain compliant with the Executive Order.**



**Smart Regulation Solutions focus on maintaining protections, while reducing burdens.**



**Simply** and **digitize** forms so they are easier to fill out



Use **predictive analytics** to **focus** enforcement resources on **high risk organizations**



Improve regulatory **guidance** so that it is **clearer** to business on how to comply



Make it easier for businesses to **submit the same information** to **multiple enforcers**

## Which agencies were the largest regulators under the Bush Administration?

Number of regulations with annualized compliance costs to businesses and consumers over \$100M



Interior was the 2<sup>nd</sup> largest "major" regulator during the Bush Administration

*The Department of the Interior accounted for 56 of 490 high-cost regulations*

The Trump Executive Order does not just apply to high-cost regulations but all significant regulations - there were ~2,000 of those under President Bush. If the Trump Executive Order had been in place during the Bush era, agencies would have had to find ~4,000 regulations to simplify, and also take out more than \$30 billion in annual compliance costs.

Copyright

\*Preliminary estimates based on GAO data

## Which agencies were the largest regulators under the Obama Administration?

Number of regulations with annualized compliance costs to businesses and consumers over \$100M



Interior was the 2<sup>nd</sup> largest "major" regulator during the Obama Administration

*The Department of the Interior accounted for 51 of 670 high-cost regulations*

The Trump Executive Order does not just apply to high-cost regulations but all significant regulations - there were ~1,600 of those under President Obama. If the Trump Executive Order had been in place during the Obama era, agencies would have had to find ~3,200 regulations to simplify, and also take out more than \$45 billion in annual compliance costs.

Copyright

\*Preliminary estimates based on GAO data



# Department of the Interior Regulation Scorecard

Interior has broad regulatory authority, overseeing the development of onshore and offshore energy, managing migratory animals and endangered species, running National Parks and American Indian trust lands, and managing natural resource damage assessment

## Regulatory Footprint

### Impacted by Regulation Executive Order?



### FY 2017 Regulatory Priorities

- Promote environmentally responsible, safe, and balanced development of renewable and conventional energy on public lands
- Promote partnerships with states, tribes, local governments, other groups, and individuals to achieve common goals

### In the News:

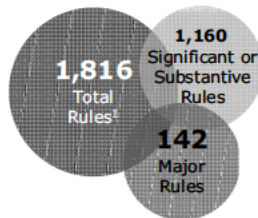
- [Trump signs bill undoing Obama coal mining rule](#)
- [Trump to roll back Obama's climate, water rules through executive action](#)

Source:

- GAO Regulation Database: <http://gao.gov/legal/congressional-review-act/overview>
- American Action Forum Regulation Database: <https://regordeo.com/>

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### Current State

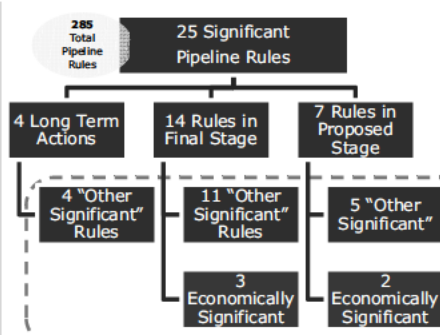


~\$7.4B  
Total costs resulting from 142 final rules since 2005 (ex ante, private sector and intergovernmental cost)<sup>2</sup>

Congress recently used the **Congressional Review Act** to eliminate the Obama-Era, Interior "Stream Protection Rule". This rule would have had **\$81M** in annualized cost

### Regulatory Pipeline

The **Regulatory Pipeline** refers to Interior proposed rules that will be impacted by the Executive Order. OMB Interim Guidance directs that the Executive Order applies to **significant rules**. Interior has ~25 rules in the pipeline



Interior will need to decide the way forward for at least **25** planned **significant** rules

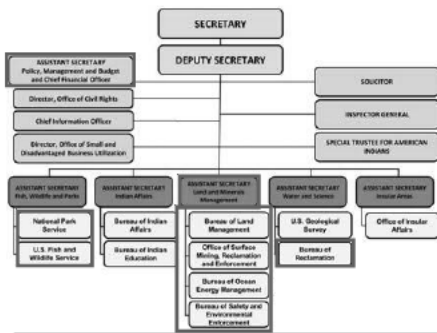
Identify **50** rules to eliminate

Offset ~\$500M in annual spending

Strategize and account for New Administration's regulatory priorities

# Pipeline Regulations Bureau and Office Impacts

Certain Interior Bureaus and Offices have greater regulatory responsibilities and more rules currently in development. The identified bureaus and offices will likely be impacted by the Executive Order



### 3 Economically Significant Rules Include:

- Arctic Regulations (Bureau of Ocean Energy Management)
  - Recently completed, (effective: September 13, 2016)
  - ~\$2.05B in compliance costs for industry over 10 years
- Waste Prevention, Production Subject to Royalties, and Resource Conservation (Bureau of Land Management)
  - ~\$110-275M in annualized cost; \$50-204M in annualized benefits
- Migratory Bird Hunting; 2016-2017 Migratory Game Bird Hunting Regulations (United States Fish and Wildlife Service)
  - Interior is required to issue a new regulation on migratory bird hunting each FY, does not estimate costs

Economically Significant Rules have an annual cost effect on the economy of \$100 million or more

<b>Assistant Secretary for Policy, Mgmt., and Budget</b> Pipeline Rules: 6 • Significant: 1 • Econ. Significant: 0	<b>Bureau of Land Management</b> Pipeline Rules: 13 • Significant: 4 • Econ. Significant: 1	<b>Bureau of Ocean Energy Management</b> Pipeline Rules: 10 • Significant: 2 • Econ. Significant: 1	<b>Bureau of Safety and Environ. Enforcement</b> Pipeline Rules: 18 • Significant: 5 • Econ. Significant: 0
<b>National Park Service</b> Pipeline Rules: 21 • Significant: 1 • Econ. Significant: 0	<b>Office of Natural Resources Revenue</b> Pipeline Rules: 6 • Significant: 1 • Econ. Significant: 0	<b>Office of Surface Mining Reclamation and Enforcement</b> Pipeline Rules: 7 • Significant: 1 • Econ. Significant: 0	<b>United States Fish and Wildlife Service</b> Pipeline Rules: 182 • Significant: 10 • Econ. Significant: 3

## Interior Regulatory Plans

*Interior's Fall 2016 Statement of Regulatory Priorities<sup>1</sup> outlined an ambitious plan for regulation development and revision. Regulatory plans propose rulemaking activities to update out-of-date rules, and rules to address previous GAO recommendations*

Sample of priority regulatory areas:

Bureau/Office	Regulatory Agenda for upcoming FY (FY 2017)
<b>Indian Affairs</b>	<ul style="list-style-type: none"> <li>• Develop regulatory changes necessary for improved Indian education</li> <li>• Solicit comment on potential regulatory changes to Indian trader regulations (Current regulations from 1957 and have not been comprehensively updated since 1965)</li> </ul>
<b>Bureau of Land Management</b>	<ul style="list-style-type: none"> <li>• Updating and improving the current versions of Onshore Oil and Gas Orders for Site Security, Oil Measurement, and Gas Measurement (Orders were last updated in 1989)</li> <li>• Continue "Waste Prevention, Production Subject to Royalties, and Resource Conservation" rulemaking in response to GAO recommendations</li> </ul>
<b>Bureau of Ocean Energy Management</b>	<ul style="list-style-type: none"> <li>• Enhancing the regulatory efficiency of the offshore renewables program (finalizing 2 rules)</li> <li>• Updating BOEM's Air Quality Program (original air quality rules date largely from 1980)</li> </ul>
<b>Bureau of Safety and Environmental Enforcement</b>	<ul style="list-style-type: none"> <li>• Improving Oil Spill Response Plans and Procedures (based on Deepwater Horizon lessons learned)</li> <li>• Updating Cost Reporting and Cost Recovery Rules for decommissioning pipelines</li> </ul>
<b>Office of Natural Resources Revenue</b>	<ul style="list-style-type: none"> <li>• Proposing new rules to implement the provisions of the Energy Policy Act of 2005 (EPAct) governing the payment of advance royalty on coal resources produced from Federal leases</li> </ul>
<b>Office of Surface Mining Reclamation and Enforcement</b>	<ul style="list-style-type: none"> <li>• Finalize stream protection rule, establish Federal standards for the beneficial use of coal combustion residues</li> <li>• Revise existing permit fees and impose new fees to recover costs for permit administration and enforcement services provided to the coal industry.</li> </ul>
<b>U.S. Fish and Wildlife Service</b>	<ul style="list-style-type: none"> <li>• Issue rules under the Endangered Species Act, issue annual migratory bird hunting regulations (under the Migratory Bird Treaty Act)</li> </ul>
<b>National Park Service</b>	<ul style="list-style-type: none"> <li>• Issue rules to manage off-road vehicle use and regulate non-federal oil and gas activity on NPS lands</li> </ul>

Source:

1. Statement of Regulatory Priorities: [https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201610/Statement\\_1000.html](https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201610/Statement_1000.html)

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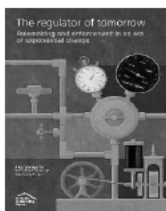
Deloitte is at the forefront of this issue

*Deloitte's experts are trusted authorities in the world of regulation reform*

Deloitte has built momentum in the media...

... And authored publications that reimagine the world of regulation

*"You can achieve significant reductions in regulatory costs **without removing protections.**"*  
- Jitinder Kohli



**The Regulator of Tomorrow**  
*Re thinking and enforcement in an era of exponential change*

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Re-thinking red tape:  
Influencing behaviors to  
achieve public outcomes



**Re-thinking Red Tape**  
*Influencing behaviors to achieve public outcomes*



**Compliance without Tears:**  
*Improving the government to business experience*

# **Appendix**

## Regulatory Process Information

## Presidential Executive Order on Regulation: Overview

### Understanding the Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs

<b>How does it work?</b>	<ul style="list-style-type: none"><li>• In FY17, net new regulation costs = \$0.</li><li>• For \$1 of additional cost imposed on businesses, a \$1 reduction must be made.</li><li>• "One In, Two Out" - agencies must eliminate two regulations for each new one proposed.</li><li>• In FY18, the White House will issue a cap on allowable incremental costs.</li></ul>
<b>What counts as a "cost"?</b>	<ul style="list-style-type: none"><li>• "Costs" are defined as the opportunity costs of compliance.</li></ul>
<b>Where can savings be found?</b>	<ul style="list-style-type: none"><li>• Modification or elimination of regulations.</li><li>• "Trading" savings internally, and, in some cases, with other agencies.</li></ul>
<b>Are there exemptions?</b>	<ul style="list-style-type: none"><li>• Yes. Regulations required by law or those pertaining to national security functions or agency operations are exempt.</li><li>• Independent agencies are exempt, yet encouraged to comply with the spirit of the EO.</li></ul>
<b>Who will manage this?</b>	<ul style="list-style-type: none"><li>• The OMB Director, likely via the Office of Information and Regulatory Affairs (OIRA), will lead implementation and issue-related guidance.</li></ul>

## Regulation Distinctions

There are several rule distinctions that indicate the anticipated impact to the agency, U.S. population, or U.S. economy in a noteworthy way

Distinction	Background & Authorities	Criteria	Agency Impact
<b>Significant</b>	Under <b>Executive Order 12866</b> , OIRA is responsible for determining which agency regulatory actions are "significant" and, in turn, subject to interagency review	<ul style="list-style-type: none"> <li>❑ Have an annual <b>effect on the economy of \$100 million or more</b> or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;</li> <li>❑ Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;</li> <li>❑ Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or</li> <li>❑ Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order</li> </ul>	<ul style="list-style-type: none"> <li>➤ Executive Order 12866 requires that significant regulatory actions be reviewed by OIRA before they are published in the Federal Register or otherwise issued to the public. The Executive Order also requires agencies to provide an explanation of the need for the regulatory action and an assessment of potential costs and benefits</li> </ul>
<b>Econ. Significant</b>	<b>Executive Order 12866</b>	<ul style="list-style-type: none"> <li>❑ Subset of those designated by OIRA as significant. A regulatory action is determined to be "economically significant" if OIRA determines that it is likely to have an annual effect on the economy of <b>\$100 million</b> or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Executive Order 12866 directs agencies to provide (among other things) a more detailed assessment of the likely benefits and costs of the regulatory action, including a quantification of those effects, as well as a similar analysis of potentially effective and reasonably feasible alternatives.</li> </ul>

## Regulation Distinctions

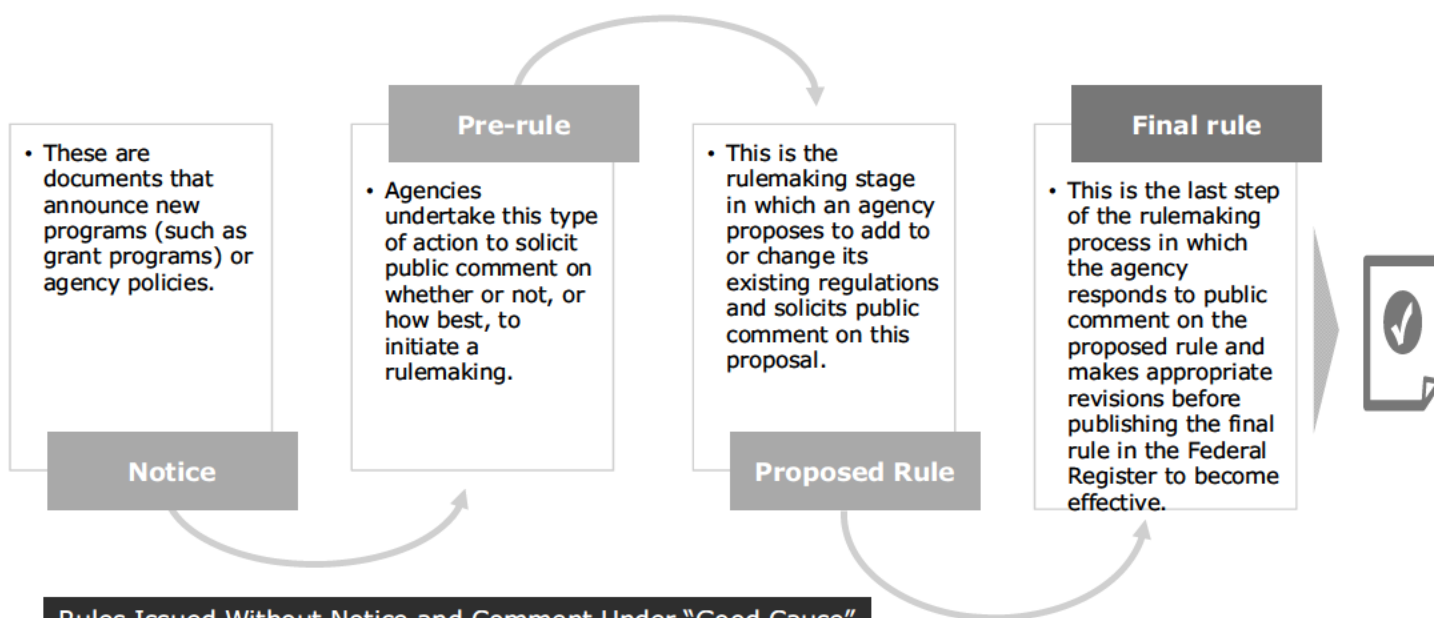
There are several rule distinctions that indicate the anticipated impact to the agency, U.S. population, or U.S. economy in a noteworthy way

Distinction	Background & Authorities	Criteria	Agency Impact
<b>Major</b>	<b>The Congressional Review Act</b> (CRA), enacted in 1996	<ul style="list-style-type: none"> <li>❑ An <b>annual effect on the economy of \$100,000,000</b> or more;</li> <li>❑ A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or</li> <li>❑ significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets</li> </ul>	<ul style="list-style-type: none"> <li>➤ The CRA contains two requirements for major rules. First, <b>agencies are generally required to delay the effective dates of "major" rules until 60 days after the rule is submitted to Congress or published in the Federal Register</b>, whichever is later. Second, the Comptroller General must provide a report on each major rule to the appropriate congressional committees of jurisdiction within 15 days of when a rule is submitted or published</li> </ul>



# Significant Regulatory Actions during OIRA Review

## STANDARD OIRA REVIEW PROCESS



### Rules Issued Without Notice and Comment Under "Good Cause"

**Interim Final Rule** - These interim rules are typically issued in conformity with statutory provisions allowing agencies to publish a final rule that becomes effective soon after publication, without going through the proposed rule stage. The "good cause" exception in the Administrative Procedure Act allows agencies to bypass public notice and comment on a rule when it would be impracticable, unnecessary, or contrary to the public interest. This process typically allows for public comment after the rule is published so that the agency still has an opportunity to consider public input and revise the rule accordingly.

**Direct Final Rule** - These rules are similar to interim final rules, except that there is no comment period after publication, on the ground that they are uncontroversial. Such rules are categorized simply as "final rules" for display purposes on the OIRA dashboard.

**To:** James Cason[james\_cason@ios.doi.gov]; Douglas Domenech[douglas\_domenech@ios.doi.gov]  
**Cc:** Gareth Rees[gareth\_rees@ios.doi.gov]  
**From:** Gulac, Catherine  
**Sent:** 2017-04-28T17:10:15-04:00  
**Importance:** Normal  
**Subject:** Weekly Report  
**Received:** 2017-04-28T17:12:22-04:00  
[WeeklyReporttotheSecretary04-27-17 \(1\).docx](#)

Pls see attached.  
Didn't get anything from BLM.

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**Cc:** Gareth Rees[gareth\_rees@ios.doi.gov]  
**From:** Gulac, Catherine  
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**Importance:** Normal  
**Subject:** Weekly Report  
**Received:** 2017-04-28T17:10:24-04:00  
[WeeklyReporttotheSecretary04-27-17 \(1\).docx](#)

Pls see attached.  
Didn't get anything from BLM.

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WEEKLY REPORT TO THE SECRETARY  
**DEPARTMENT OF THE INTERIOR**

**April 27, 2017**

**OFFICE OF THE SOLICITOR**

**Week Ahead Schedule of Meetings, Congressional Hearings, and Travel**

Nothing to report.

**Week Ahead Announcements and Actions**

**SIGNIFICANT LITIGATION DEADLINES FOR NEXT TWO WEEKS SEPARATELY REPORTED**

**NEW CASES:**

***Bd. of City. Comm'rs of Pitkin Cnty. v. BLM (D. Colo.) - Thompson Divide oil and gas lease suspensions***

On April 19, petitioners Pitkin County, Colorado and Wilderness Workshop filed a complaint challenging suspensions of operations and production requirements for 25 federal oil and gas leases in Colorado's Thompson Divide area. The BLM granted suspension requests in 2013 and 2014 while it completed an environmental impact statement (EIS) that analyzed lease issuance. After completion of the EIS, the Department cancelled the subject leases. In this case, petitioners argue the BLM's decision violated the Administrative Procedure Act (APA), Mineral Leasing Act (MLA), and National Environmental Policy Act (NEPA).

***Alaska v. United States (D. Alaska) - Knik River Navigability***

On April 19, the State of Alaska filed a complaint to quiet title to the submerged lands underlying the upper reaches of the Knik River, which is a glacier fed river located just north of Anchorage. The complaint alleges that the river is navigable and that the State therefore has title to the submerged lands. The answer is due June 23.

***Center for Biological Diversity v. Zinke - Challenge to Congressional Review Act (CRA)***

Complaint filed April 20 in U.S. District Court Alaska alleging nullification of Fish and Wildlife Service (FWS) and National Park Service (NPS) hunting regulations in Alaska under the CRA violates the separation of power under U.S. Constitution.

***American Bird Conservancy, v. Lisa S. Disbrow (D.D.C)***

Two bird advocacy groups filed a Complaint for Declaratory and Injunctive Relief on March 27, 2017, against the U.S. Air Force, the Ohio Air National Guard, the Department of the Interior

and the FWS, claiming a single wind turbine the Air Force wants to build at the Camp Perry facility, along the shores of Lake Erie violates the Endangered Species Act (ESA), the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), and NEPA. Plaintiffs allege, among other things, that the Biological Opinion, is flawed.

## **SIGNIFICANT DECISIONS:**

### ***Alliance for the Wild Rockies v. Ashe (9th Cir. 2017) - Young Dodge***

On April 20, the Ninth Circuit affirmed the Montana District Court decision in favor of the United States. In an unpublished decision the court held that the FWS and the US Forest Service satisfied their obligations under ESA Section 7 for the Young Dodge vegetation management project. Specifically the court held that the agencies considered non-road effects to grizzly bears such as helicopter use.

### ***Lewis v. Clarke (S. Ct.)***

The Court considered whether tribal sovereign immunity barred a state court individual capacity claim against a tribal employee who committed a tort while exercising official duties off-reservation. On April 25, the Court held that because the employee was the real party in interest of the suit in his individual capacity, and not the tribe in its sovereign capacity, the employee was not immune from suit. The Court also held that a tribe's employee indemnification statute could not, as a matter of law, extend tribal sovereign immunity to an employee who would not otherwise be protected by that immunity. Finally, the Court declined to consider whether the employee was entitled to official immunity, as that issue had been raised for the first time on appeal.

### ***State of New Mexico v Zinke (10th Cir)***

On April 21, the Tenth Circuit Court of Appeals issued a decision holding that the district court correctly concluded that the Secretary lacked authority to promulgate the regulations found at 25 C.F.R. § 291 regarding the process Indian tribes and States negotiate gaming compacts.

### ***William S. Fletcher, et al. v. United States, et al. (10th Cir.) - “Fletcher III”***

In a published opinion, the Tenth Circuit affirmed a March 11, 2016, order of the Northern District of Oklahoma that directed Interior to provide the plaintiff class with an accounting of the Osage headright distributions pursuant to the Osage Act of 1906, 25 U.S.C. § 4011, and 25 U.S.C. § 162a. Plaintiffs had appealed the accounting order seeking an alternative accounting of far greater magnitude and temporal scope (e.g., back to 1906 instead of to 2002) than what the lower court ordered. The Tenth Circuit held the district court did not abuse its considerable discretion in fashioning the scope of the accounting and found that the accounting was wholly within the Circuit's guidance from its 2013 *Fletcher II* opinion (*Gorsuch, J.*). Interior is on pace to complete the accounting within the 18 months from the order [September 11, 2017] as prescribed by the district court

***Wild Fish Conservancy, et al. v. National Park Service, Fish and Wildlife Service, and NOAA Fisheries Services (9<sup>th</sup> Cir.)***

On April 18, the Ninth Circuit Court of Appeals upheld the District Court's decision, which partially vacated National Marine Fisheries Service's (NMFS') decision not to consider an alternative of reduced hatchery releases in an Environmental Assessment, but otherwise entered judgment against plaintiff on its numerous other claims under NEPA and the ESA. The court found lawful the NPS' and Bureau of Indian Affairs' (BIA's) funding of NMFS-approved tribal and state hatchery programs repopulating the Elwha River with fish after dam removal.

**OTHER LITIGATION MATTERS:**

**Gateway West Transmission Project (Idaho)**

On April 18, the Interior Board of Land Appeals (IBLA) granted the Bureau of Land Management's (BLM's) motion to remand the decision approving a right-of-way grant for Segments 8 and 9 of the Gateway West Transmission project in Idaho. Four appeals of the January 19, 2017, Gateway West decision were filed in February (two appeals by different environmental groups, one by Owyhee County, Idaho, and one by the State of Idaho). The purpose of the remand is to reconsider the decision based in part on requests from the proponent and the Governor of Idaho. On remand, BLM will consider whether to approve a different alternative relying substantially on the previous environmental analyses and documentation.

***Continental Resources, Inc. v. North Dakota Board of University & School Lands (D.N.D.) - Interpleader case to compel the U.S. and the State of North Dakota to litigate competing claims to certain submerged lands under Lake Sakakawea***

Continental, which holds oil and gas leases from both the United States and North Dakota for submerged lands under Lake Sakakawea, sought to compel the United States and the state to litigate competing claims to the lands. The United States recognizes that North Dakota owns the submerged lands that lie within the historic (pre-lake) Missouri River riverbed (outside of the Fort Berthold and Standing Rock Reservations), but asserts that the United States and private landowners own the submerged lands outside the historic riverbed. On April 21, 2017, the Governor of North Dakota signed S.B. 2134, which disclaims any state title to submerged lands above the historic ordinary high water mark (OHWM) of the Missouri River outside the Fort Berthold and Standing Rock Reservations. This state law may resolve this litigation. S.B. 2134 provides that title to submerged lands within the Fort Berthold and Standing Rock Reservations "is controlled by other law."

***Beaver County, Utah v. U.S. Dep't of the Interior, et al. (D. Utah)***

On February 7, Beaver County filed a complaint and motion for preliminary injunction regarding a gather of wild horses within the Sulphur Herd Management Area (HMA) in southwestern Utah. BLM completed the gather on January 31, 2017, which resulted in the removal of 433 horses and the treatment and release back into the HMA of 192 horses, of which 112 were stallions and 80 were mares treated with PZP, a fertility control vaccine. Plaintiff withdrew its

motion for preliminary injunction after the treated horses were released. The complaint is not moot, however, because it alleges that BLM should have removed more horses than it did.

***U.S. v. South Florida Water Management District (S.D. Fla.) - Everglades Water Quality Consent Decree***

As previously reported, the South Florida Water Management District (SFWMD) has informed the Department of Justice (DOJ) that it wishes to vacate the 25 year-old consent decree in this case, which governs water quality/pollution control efforts that affect Everglades National Park and A.R.M. Loxahatchee National Wildlife Refuge. SFWMD has shared a draft motion to vacate, and DOJ has responded that the matter is under ongoing review, due to the transition of administrations. DOI's technical experts, working with the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers, have prepared an analysis of facts relevant to SFWMD's arguments, and we are currently reviewing a draft. The federal agencies expect to brief decision-makers in the upcoming weeks.

***NRDC v. NPS (M.D. Fla.) - Big Cypress National Preserve exploration***

On April 24, 2017, the court issued an order denying plaintiffs motion for preliminary injunction and finding for the NPS and FWS on all claims. Plaintiffs challenged the NPS's approval of Burnett Oil Co.'s (Burnett) Plan of Operations (Plan) to conduct seismic geophysical surveys within the Big Cypress National Preserve. Plaintiffs had alleged the environmental review was inadequate and sought declaratory and injunctive relief for violation of the APA, NEPA, ESA, and Park Service regulations governing oil and gas activities

***The Delaware Tribe of Indians, and The Delaware Trust Board v. United States (Fed. Cl.) - Solicitor's Office Settlement Recommendation***

The parties have reached tentative agreement to settle the tribal trust claims for \$2,435,000. Review and revision to the draft settlement recommendation is ongoing.

***Pechanga Band of Luiseno Mission Indians v. Jewell, et al. (D.D.C.) – Solicitor's Office Settlement Recommendation***

The parties have reached agreement in principle to settle the tribal trust claims for \$125,000. Review and revision to the draft settlement recommendation is ongoing.

***Kane County v. Zinke (D. Utah) - Challenge to Secretarial Order No. 3338, which imposed the coal leasing moratorium.***

This case is now moot, because Secretarial Order No. 3348 lifted the coal leasing moratorium and brought the PEIS review to an end. On Monday, April 24, Plaintiffs filed, on behalf of the parties, a joint stipulation of dismissal under rule 41(a)(1)(A)(ii), which does not require a court order.

**NON-LITIGATION MATTERS:**

Nothing to report.

**30-60 Day Look-Ahead**

Significant Litigation Deadlines reported separately in 100-day report.



## **POLICY, MANAGEMENT AND BUDGET**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

- Who: Office of Environmental Policy and Compliance (OEPC) Boston Regional Environmental Officer (REO)
- What: U.S.-Canada Transboundary Waters Semi-Annual Meeting
- When: May 4-5, 2017
- Where: Canada/Teleconference
- Press: Closed
- Topic: Agenda topics range from updates on the International Joint Commission International Watershed initiatives to hydropower licensing actions on transboundary waters.

### **Week Ahead Announcements and Actions**

**House Interior Appropriations.** On May 4, 2017 Secretary Zinke will participate in an informal meeting with the House Interior Appropriations Subcommittee to discuss the President's Budget Blueprint and administration priorities.

**DATA Act Compliance.** DOI will submit the first official DATA Act files to Treasury with FY 2017 Q2 data by the required deadline of April 30th. DOI will develop a process to handle any questions related to DOI's implementation of the DATA Act. The next required DATA Act submission will be for FY 2017 Q3 data. Treasury has not yet issued a deadline for this submission, but it is anticipated to be in July.

**Year 2017 Small Business Accomplishments to Date.** As of April 19, 2017, the Department has awarded 52.73% of its contract award dollars to small businesses. The Department-wide small business goal, which was negotiated with the Small Business Administration, is 53.5%. The Department awarded 21.95% of its contract award dollars to small disadvantaged businesses and 14.87% of its contract award dollars to women-owned small businesses, exceeding the statutory goal of 5% for each. The Department awarded 2.92% of its contract award dollars to historically underutilized business zone small businesses and 3.20% of its contract award dollars to service-disabled veteran-owned small businesses. The statutory goal is 3% for each of these categories.

### **30-60 Day Look-Ahead**

**FY 2018 Budget.** The Office of Management and Budget (OMB) has indicated there is no firm date for the release of the FY 2018 Budget to Congress, however, it may occur the week of May 22.

**Annual Performance Plan & Report (APP&R).** OMB has requested drafts of Annual Performance Plans and Reports for review in preparation for release with the detailed FY 2018 Budget in May. Reporting of the existing Agency Priority Goals has been suspended, and APP&R's are to provide more summary-level discussions accompanying the usual performance measure and funding tables.

**National Preparedness Report.** In late spring, the DOI National Preparedness Report (NPR) will be shared with the President. The Office of Emergency Management (OEM) has received the final NPR from the White House National Security Council's Domestic Resilience Group Policy Coordination Committee and responded "Concur without Comment" to the same.

**Southwest Border Security and Environmental Protection Meeting, Phoenix, AZ, May 23-25, 2017.** Borderlands Coordinator Jon Andrew is working with U.S. Customs and Border Protection (CBP) to convene the meeting at the BLM National Training Center. Preliminary planning for possible border security work will be the main focus of the meeting. Senior officials at DOI, CBP, U.S. Border Patrol and USDA Forest Service are expected to attend.

**FY 2018 Appropriations Hearing, May 24, 2017.** The House Interior Appropriations Subcommittee has announced a hearing at 10:30am on May 24 to review tribal programs identified in the Government Accountability Office (GAO) 2017 High Risk Report. GAO will be the witness and the Subcommittee has invited leadership from the Assistant Secretary for Indian Affairs, the Bureau of Indian Affairs, and the Bureau of Indian Education to attend as well as leadership from the Indian Health Service. Topics will include Indian education, energy, and health care programs.

**National Association of State Foresters Wildland Fire Subcommittee Meeting, St. Louis, MO, May 30-June 1, 2017.** Office of Wildland Fire (OWF) Director Bryan Rice will attend and provide an update on fire season readiness, discuss leader's intent, and talk about cohesive strategy implementation.

**Federal Mining Dialogue (FMD) Steering Committee Meeting, May 17, 2017.** Office of Environmental Policy and Compliance (OEPC) will host the FMD Steering Committee meeting at the Department of the Interior. The committee will be reviewing the progress of the FMD and determine if the group needs to work on any other issues concerning abandoned mine lands.

**UCLA Indian Data Governance Workshop, Los Angeles, CA, May 18-19, 2017.** The Office of Policy Analysis (PPA) is working with UCLA and others to develop an agenda and invitation list for a workshop to address Indian data issues.

**National Tribal Resource Damage Assessment and Restoration (NRDAR) Conference, Tulsa, OK, May 23-25, 2017.** The Cherokee Nation will host the conference (sponsored by the Department's Office of Restoration and Damage Assessment) which will provide a forum for Federal, State and Tribal NRDAR practitioners to share information for best practices with a focus on the tribal restoration context. The agenda includes long-term stewardship and trusteeship, restoration planning, unique aspects of Tribal NRDAR restoration, and developing successful partnerships.

**World Oceans Day and Capitol Hill Ocean Week (CHOW), June 13-15, 2017.** Capitol Hill Ocean Week, hosted by the National Marine Sanctuaries Foundation, will be held at the Reagan International Building. World Oceans Day is on June 8, 2017 and June has also historically been proclaimed as National Oceans Month. Office of Policy Analysis (PPA) and the DOI Senior Ocean Policy Team are coordinating DOI's participation in CHOW.

**New Government Accountability Office (GAO) Audits**

### **Office of Navajo and Hopi Indian Relocation (ONHIR) (Job Code 101923).**

Per request made by Chairman John Hoeven and Vice Chairman Tom Udall of the Senate Committee on Indian Affairs, Chairman Rob Bishop of the House Committee on Natural Resources, and Senator John McCain and Representative Lamar Smith, GAO will review: (1) the extent to which ONHIR completed its statutory relocation responsibilities; (2) ONHIR's response to administrative appeals over time, including the extent to which any changes in eligibility have been made and communicated to Hopi and Navajo families; (3) steps ONHIR has taken to close out its functions, and to what extent these functions could be transitioned to other Federal or tribal entities; (4) the status of ONHIR's efforts for engaging with homebuilding contractors and the extent of coordination with other Federal agencies implementing grazing regulations and rangeland management assistance, and competing infrastructure projects; and (5) the financial condition of the Navajo Rehabilitation Trust Fund and the status of revenues and expenses experienced by the Fund. The entrance conference with the Office of Inspector General and Bureau of Indian Affairs has not been scheduled.

### **GAO Entrance Conferences**

**Compacts of Free Association Grants and Trust Funds (Job Code 101901) - April 17, 2017, with the Office of Insular Affairs.** Per request by the Chair of the Senate Committee on Energy and Natural Resources, GAO will review: (1) role compact grants and Federal programs play in the budgets of the Federated States of Micronesia (FSM) and the Republic of Marshall Islands (RMI); (2) income that the trust funds provide under various scenarios after 2023, and how that income compares with the funding provided through compact grants; and (3) FSM and RMI governments' planning for the cessation of compact grants and the transition to trust fund income.

**Form W-2 Filing Requirements (Job Code 101936) - April 19, 2017, with the Interior Business Center.** Per request made by the Chairman and Ranking Member of the Senate Committee on Finance, GAO will review: (1) how and when the four Federal payroll processing centers send Form W-2 data to the Social Security Administration (SSA) and to state tax authorities; (2) whether the processing centers provide the W-2 data accurately and in a timely manner and if not, how the centers could improve; (3) how SSA sends Form W-2 data to the Internal Revenue Service and evaluates whether the data is sent accurately and in a timely manner; and (4) incremental tax revenue the Federal government might gain if either the payroll processing centers or SSA improved the timeliness and accuracy of W-2 data.

### **GAO Exit Conference/Pending Reports**

**Efforts to Reduce the Collection and Use of SSN (Job Code 100830) - April 17, 2017 with the Office of the Chief Information Officer.** Per requests from the Chair of the House Committee on Oversight and Government Reform and the Chair of the Subcommittee on Social Security from the House Committee on Ways and Means, GAO reviewed: (1) government-wide initiatives undertaken to assist agencies in eliminating their unnecessary use of Social Security Numbers (SSN); and (2) the extent to which agencies have developed and executed plans to eliminate the unnecessary use and display of SSNs and challenges associated with those efforts.

## **Recent Draft GAO Reports (Per GAO, distribution is highly restricted)**

**INDIAN AFFAIRS: Actions Needed to Better Manage Indian School Construction Projects (GAO-17-447).** Per request from the Chair and Ranking Member of the House Committee on Appropriations Subcommittee on Interior, Environment, and Related Agencies, GAO examined the extent to which Indian Affairs has a comprehensive plan to maintain, repair, or replace schools and ensure the efficient use of funds and accountability throughout the school construction process. GAO issued the draft report April 12, 2017, with recommendations that Indian Affairs: (1) develop a capital asset plan for school facility construction and repair; (2) develop and implement guidance on accountability measures; and (3) improve oversight of projects. The Department's comments are due to GAO on May 2, 2017.

**Improper Payments: Additional Guidance Could Provide More Consistent Compliance Determinations and Reporting by Inspectors General (GAO-17-484).** This report updates the June 2016, GAO report on improper payments. It includes summary data the 24 Chief Financial Officers Act of 1990 agency Inspectors General reported about compliance with Improper Payments Elimination and Recovery Act of 2010 (IPERA) for fiscal years 2011 through 2015. GAO issued the draft report April 17, 2017, with recommendations to OMB and the Council of the Inspectors General on Integrity and Efficiency to help ensure consistent reporting of government-wide compliance under IPERA. The Department's comments are due to GAO on May 2, 2017.

**Office of Navajo and Hopi Indian Relocation (Job Code 101923).** In response to a request made by Chairman Hoeven and Vice Chairman Udall of the Senate Committee on Indian Affairs, Chairman Bishop of the House Committee on Natural Resources, Senator McCain and Representative Smith, GAO will review (1) The extent to which the Office of Navajo and Hopi Indian Relocation (ONHIR) completed its statutory relocation responsibilities; (2) How ONHIR has responded to administrative appeals over time, (3) the steps ONHIR has taken to close out its functions and the extent those functions be transitioned to other federal or tribal entities; (4) the status of ONHIR's efforts to engage with homebuilding contractors and coordinate with other federal agencies, implement grazing regulations and rangeland management assistance, and complete infrastructure projects; and (5) the financial condition of the Navajo Rehabilitation Trust Fund. An entrance conference has not been scheduled.

## **Rules and Regulations for Publication in 2017**

**(New) AA21: Federal Oil & Gas and Federal & Indian Coal Valuation Advance Notice of Proposed Rulemaking, Notice of Extension.** The Office of Natural Resources Revenue (ONRR) published an advance notice of proposed rulemaking in the Federal Register on April 4, 2017, and invited the public to submit written comments by May 4, 2017. Currently, ONRR is processing a Federal Register Notice that would grant a 60 day extension to the comment period in response to stakeholder requests. The extension notice is currently undergoing internal clearance before going to the Department for publication approval. ONRR is working with the Department to develop a press release.

## **OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

May 1-9: Acting Special Trustee, Deb DuMontier will be in Washington, D.C.

### **Week Ahead Announcements and Actions**

Nothing to report

### **30-60 Day Look-Ahead**

May 8-11: Great Plains Tribal Community and Economic Development Summit, Rapid City, SD (Deputy Special Trustee-Field Operations, Jim James will be attending)

May 11-12: OST Senior Strategic Planning Meeting, Albuquerque, NM (Acting Special Trustee, Deb DuMontier)

May 15-26: Deputy Special Trustee-Trust Services, Douglas Lords will be in Washington, D.C. while Acting Special Trustee is on travel/leave

May 15-17: Acting Special Trustee, Deb DuMontier will be in Albuquerque, NM

May 18-29: Acting Special Trustee, Deb DuMontier Telework/Annual Leave

## **A0SSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

Virginia Johnson, Deputy Assistant Secretary Aurelia Skipwith, and Acting FWS Director Jim Kurth will be in the office all week. On May 5, Acting NPS Director Mike Reynolds will be at the Chesapeake and Ohio Canal National Historical Park in Williamsport, Maryland, and Acting Assistant Secretary Maureen Foster will be on leave.

### **Week Ahead Announcements and Actions**

On April 6, lightning started a fire at the West Mims Fire at Okefenokee NWR in southern Georgia. The fire has currently exceeded 59,318 acres with only about 8 percent contained. The fire is being managed by a Type 2 Incident Management Team (IMT) with significant aviation, ground and overhead resources. Community meetings are being held to keep citizens of Clinch and Charlton Counties informed on the latest developments with the fire. More than 330 personnel are assigned to the fire, and several areas are closed. The current cost of the fire is estimated at \$5.9 million; the cost is expected to exceed \$10 million early next week. Media interest is increasing.

FWS has recently been contacted by Dakota Access personnel about finalizing mitigation measures to offset pipeline construction impacts to Dakota skippers, a threatened species under ESA. The company did not finalize its proposed mitigation offsets in 2016 when it was uncertain the project would be completed in the short term. Based on recent phone calls, the company appears ready to move forward with Dakota skipper habitat mitigation efforts. No dates are set, but we anticipate an initial meeting may be in May 2017.

FWS has completed a Draft Environmental Impact Statement (DEIS) for the R-Project Transmission Line, a 225-mile long transmission line that runs through the Nebraska Sandhills. The R-Project will be constructed and operated by Nebraska Public Power District (NPPD). NPPD is applying for an incidental take permit for the American burying beetle and developing the associated habitat conservation plan. Currently, the Notice of Availability (NOA) is undergoing review in the DOI as part of the clearance process for publication in the *Federal Register*. The desired publication date is no later than expected by May 3. NPPD has contacted both FWS Headquarters and DOI and requested expedited clearance of the NOA and publication.

On May 1, Denali National Park opens the application period for its popular four-day fall road lottery. This allows up to 400 cars per day to be on the western portion of the park road (which is usually closed to most private vehicles). More than 12,600 lottery applications were received in 2016 and funds generated from road lottery application/permit fees are retained by the park.

### **30-60 Day Look Ahead**

On May 16, the National Capital Memorial Advisory Commission (NCMAC) will hold a public meeting to consider potential sites for Desert Storm/Desert Shield Memorial within Area 1 of the National Mall, as defined by the Commemorative Works Act. The agenda also includes status updates on memorials in progress and pending memorial legislation.

## **U.S. Fish and Wildlife Service**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

Acting FWS Director Jim Kurth will be in the office all week.

### **Hot Topics**

This week, FWS plans to send to the *Federal Register* a final rule removing gray wolves in Wyoming from the Federal List of Endangered and Threatened Wildlife. Pursuant to the favorable decision by the D.C. Circuit Court of Appeals reversing a prior judgment vacating FWS' September 10, 2012 final delisting rule, FWS will need to publish a final rule again to remove the gray wolf in Wyoming from the List. Outreach is planned.

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In May, FWS will announce \$1.1 billion in revenues generated by the Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration acts to states, territories and District of Columbia. The funding, which supports critical state wildlife conservation and recreation projects throughout the nation, is generated by excise taxes on firearms, ammunition, fishing equipment and motorboat fuels paid by the hunting, shooting, boating and angling industries. Department-level outreach is planned.

In early May, FWS plans to announce nearly \$15 million in grants to 40 states for projects to support recreational boating through the Boating Infrastructure Grant (BIG) program. More than \$9 million of this will go to six states (California, Maine, Michigan, South Carolina, Texas and Washington) for competitive grants, and the remaining \$5 million will go to 39 states, commonwealths, territories and the District of Columbia for a smaller, non-competitive grant program. Funding is generated through the Sport Fish Restoration and Boating Trust Fund by excise taxes on sport fishing and boating equipment and tackle, motorboat fuels and import duties on fishing tackle, yachts and pleasure craft. Grants, which are matched by funding from project partners, support construction or renovation of tie-ups, utilities, fuel stations, pump-out and dump stations, restrooms and additional sanitary amenities such as laundry and showers for recreational boaters. Outreach is planned.

In May, FWS will announce that livestock producers can submit applications to the Mexican Wolf/Livestock Council to receive payments for wolf presence under the Mexican Wolf/Livestock Plan. The deadline for application submissions is June 1, 2017. The program recognizes the indirect costs to livestock producers from Mexican wolves, including stress-related weight loss in livestock and other management costs. Funding for the plan comes from the Federal Livestock Demonstration Program. The application is prepared in coordination with the Mexican Wolf/Livestock Council and Arizona Game and Fish Department. Outreach is planned.

On May 17, at the American Boating Congress gathering in Washington, DC, FWS will announce \$15.4 million in grants to 20 states for projects to support clean water and recreational boating through the Service's Clean Vessel Act Grant (CVA) program. The CVA program provides grant funds to the states, the District of Columbia and insular areas for the construction, renovation, operation, and maintenance of pumpout stations and waste reception facilities for recreational boaters and also for educational programs that inform boaters of the importance of proper disposal of their sewage. Outreach is planned.

### **Asian Carp**

In June, FWS plans to send the 2016 Water Resources Reform and Development Act (WRRDA) report to Congress. WRRDA includes direction from Congress to FWS to lead a multiagency effort to slow the spread of Asian carp in the Upper Mississippi River and Ohio River basins, in coordination with the U.S. Army Corps of Engineers, the National Park Service and the U.S. Geological Survey. Specifically, WRRDA calls for FWS to develop and deliver a report to Congress summarizing all activities and expenditures (both federal and non-federal) related to Asian carp prevention efforts in the two watersheds, as well as describing any observed changes in the range of Asian carp in Upper Mississippi River and Ohio River basins. Notable changes from the 2015 report include updates on a slight range expansion of silver carp, the movement of juvenile Asian carps in the sub-basins and additional information on the status of black carp. As in previous years, the 2016 report will be made available to the public on AsianCarp.us. The report also outlines research that could improve the ability to control the spread of Asian carp, and quantitative measures proposed for use in documenting progress in controlling the spread of Asian carp. Potentially controversial due to the slight range expansion of silver carp. No public outreach is planned; outreach to Congress will be conducted.



## **Endangered Species Act Recovery Actions**

FWS plans to send to the *Federal Register* a notice initiating a NEPA evaluation of potential revisions to the existing nonessential experimental population designation of red wolves in North Carolina. This notice announces FWS' intention to revise the experimental population rule and the initiation of a public scoping process to identify issues and concerns, potential impacts, and possible alternatives to the proposed action. Pending clearance by the Department. Outreach is planned as this is controversial.

On June 7, FWS plans to formally recognize Fort Hood as the recipient of FWS's Military Conservation Partner Award. FWS presents the Military Conservation Partner Award annually to a military installation whose efforts represent significant conservation accomplishments achieved in partnership with FWS and other conservation agencies. The U.S. Army Garrison Fort Hood Military Installation encompasses 218,824 acres in Bell and Coryell Counties in Texas. Fort Hood is one of the Army's premier installations, encompassing the largest area of any installation in the continental U.S. It conducts the full range of mission-related training activities and also manages the largest known populations of the endangered golden-cheeked warbler and black-capped vireo. Outreach is planned. The ceremony is open to media.

On June 12 and 13, FWS will host four public scoping meetings in Central Oregon to gather information to prepare a draft Environmental Impact Statement related to the Deschutes Basin Habitat Conservation Plan. The Deschutes Basin Board of Control and the City of Prineville are the permit applicants for the incidental take of three listed species - Oregon spotted frog, bull trout, and steelhead. Media are expected. Controversial.

## **Endangered Species Act Listing/Delisting Actions**

In May, FWS plans to reopen the comment period on proposed rules to list and designate critical habitat for the Guadalupe fescue, downlist the Tobusch fishhook cactus from endangered to threatened, downlist the Kuenzler hedgehog cactus from endangered to threatened, and delist gypsum wild-buckwheat. In order to meet the statutory deadline for the Guadalupe fescue rules, the target date for the *Federal Register* is early May. Stakeholder outreach is planned.

On April 17, FWS initiated five-year status reviews under the Endangered Species Act for eight Midwest animal species listed as endangered: Iowa Pleistocene snail, Karner blue butterfly, Kirtland's warbler, Ozark hellbender, rayed bean mussel, sheepnose mussel, snuffbox mussel and spectaclecase mussel. FWS requested information on the status of the species, with a deadline of June 16. However, FWS will continue to accept new information about any listed species at any time.

In early May, FWS plans to send to the *Federal Register* a 12-month finding on a petition to list the San Felipe gambusia, a Texas fish. Outreach is planned.

In early May, FWS plans to send to the *Federal Register* a revised 90-day finding on a petition to delist the Bone Cave harvestman (a cave invertebrate) found in Texas. FWS is required by a settlement agreement and a court order to submit the 90-day finding for the Bone Cave harvestman to the *Federal Register* by May 1. Outreach is planned.

In mid-May, FWS plans to send to the *Federal Register* a final listing determination for the i'iwi, a Hawaiian bird. FWS is required by settlement agreement to submit the finding for the i'iwi to the *Federal Register* by September 20. Outreach is planned.

In late May, FWS plans to send to the *Federal Register* a final determination on the agency's March 11, 2016, proposal to identify the Greater Yellowstone Ecosystem (GYE) grizzly bear population of Montana, Idaho, and Wyoming as a distinct population segment (DPS) and revise the List of Endangered and Threatened Wildlife by removing grizzly bears within the GYE DPS due to recovery. Outreach is planned.

In early June, FWS plans to send to the *Federal Register* a final rule to remove the Hualapai Mexican vole, located in Arizona, from the list of endangered and threatened species due to the fact that the original taxonomic classification is no longer appropriate.

In late June, FWS plans to send to the *Federal Register* a 12-month finding and proposed delisting determination on the Deseret milkvetch, found in of Utah.

### **National Wildlife Refuge Actions**

In May, FWS anticipates making a draft Environmental Assessment for the Valle de Oro NWR in Albuquerque, New Mexico, available for public comment. The nearby Kirtland Air Force Base (KAFB) has concerns about potential bird strikes on aircraft whose flight paths cross over the refuge. Of primary concern are proposed habitat restoration plans for seasonal wetlands. KAFB believes restored habitat may attract more large birds (geese, cranes and ducks) and increase collision risks. FWS is meeting with KAFB and intends to continue coordinating with the Federal Aviation Administration and KAFB throughout this process to minimize these concerns. This issue is of interest to Senator Heinrich (D-NM) and Representative Michelle Lujan-Grisham (D-NM-1) and potentially to Senator Udall (D-NM).

On May 12, FWS will host an event at Great Meadows NWR in Sudbury, Massachusetts, to mark the completion of a handicapped-accessible trail, boardwalk, and observation platform. The project was accomplished with funding from the Nyanza Superfund Natural Resource Damage Assessment program, and help from refuge volunteers, and Massachusetts Audubon. Local outreach is planned.

On May 12, FWS and partners will host a community event to celebrate a project to improve recreation and safety at Sachuest Point NWR in Middletown, Rhode Island, by burying 7,000 feet of above-ground power and communication lines along Sachuest Point Road. The new underground utility lines will stand up better during future storms, improving safety for the public. The \$1.1 million project is funded by the Disaster Relief Appropriations Act following Hurricane Sandy. Local outreach is planned.

In May, FWS will host an event with partners to announce the completion of a \$3.3 million water management project at Great Dismal Swamp NWR in the Hampton Roads area of Virginia. The project, supported by federal funding for Hurricane Sandy recovery, will make the refuge more resilient to the effects of increased storms, wildfires and drought. Partners include the U.S. Geological Survey, Army Corps of Engineers, The Nature Conservancy and towns of Suffolk and Chesapeake, Virginia. Outreach is planned.

In late May or early June, FWS will publish a proposed rule and open a 30-day public comment period on the 2017-18 Refuge-Specific Hunting and Sport Fishing Regulations. The proposed rule would open various national wildlife refuges to hunting and/or sport fishing for the first time (new hunts), and expand hunting and fishing opportunities at others. The proposal also includes modifications to existing hunting and fishing regulations for refuges and wetland management districts. Outreach planned.

### **Migratory Bird Management Actions**

Within the next 30-60 days, FWS plans to send to the *Federal Register* its annual proposal for administering tribal hunting, fishing and gathering rights for several federally-recognized tribes in the Great Lakes region under multiple treaties. The proposal has been compiled in consultation with the Great Lakes Indian Fish and Wildlife Commission, which represents 11 tribes in Minnesota, Wisconsin and Michigan. FWS has informed the Wisconsin, Minnesota and Michigan DNRs of the agency's support for these proposed regulations. A final decision will not be made until after public comments are reviewed and would not take effect until the fall 2017 hunting season. The proposal is expected to be controversial due to the inclusion of several new techniques for tribal members to take waterfowl. No outreach is planned.

In early May, FWS will announce the approval of around \$4 million in grants for 32 projects throughout the Americas as part of the Neotropical Migratory Bird Conservation Act grant program. Exact date and award amount are not yet determined. Outreach is planned.

### **Other**

FWS plans to conditionally approve Puerto Rico's Wildlife Action Plan. With conditional approval, Puerto Rico will have six months after receipt of the FWS letter of notification to resubmit a revised Plan for final approval. During that six-month period, Puerto Rico will remain eligible to receive State Wildlife Grants Program funds.

Landowners in the area of Mingo NWR in Missouri have raised concerns of declining deer and turkey populations and increasing feral hog populations in and around the refuge. The landowners expressed displeasure with current refuge management and have concerns about the impacts of feral hogs on deer and turkey populations and would like to see hunting discontinued on the refuge to address the problem. On April 18, the refuge hosted a public meeting; approximately 30 people attended, including representatives from the National Wild Turkey Federation, Missouri Department of Conservation and Congressman Jason Smith's (R-MO) office.

In May, FWS plans to send to the *Federal Register* draft population assessment reports for the Southern Beaufort Sea and Chukchi-Bering seas populations of polar bear in Alaska, and open a 90-day public comment period. Outreach is planned.

On May 13, FWS will hold an event with the National Wildlife Federation and Philadelphia Mayor Jim Kenney to announce Philadelphia as the 300th city to take the Mayor's Monarch Pledge, a commitment to create and restore habitat for monarch butterflies. This will build on the work of the John Heinz NWR in Philadelphia to create and provide access to green spaces and

outdoor recreation opportunities for residents both at the refuge and areas in and around the city. Outreach is planned.

On May 20, FWS, New York Department of Environmental Conservation and the Albany Pine Bush Preserve Commission will announce that the commission has become the first in the northeast region to exceed all of the recovery criteria for its local Karner blue butterfly metapopulation. The announcement will take place at its popular Lupine Fest in Albany, New York. Habitat management for the endangered Karner blue butterfly is benefiting at-risk species including the wood and spotted turtles and frosted elfin. Local outreach is planned.

In May, FWS will begin work on the Bradford Dam removal project, located on the border of Westerly and Hopkinton, Rhode Island. Following construction of a bypass channel, in-river work to remove the dam will start in July. The project is supported by federal funding for Hurricane Sandy recovery. The work will restore fish passage and natural river flow to 31 miles of the Pawcatuck River and protect local communities from risks of flooding and dam failure. Outreach is planned.

## **NATIONAL PARK SERVICE**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

On May 5, Acting Director Mike Reynolds will provide brief remarks at the groundbreaking ceremony for the Conocheque Aqueduct in the Chesapeake and Ohio Canal National Historical Park in Williamsport, Maryland. The event is the groundbreaking ceremony after the restoration of the aqueduct. The Secretary has also been invited to participate.

### **Week Ahead Announcements and Actions**

In early May, the NPS anticipates the announcement of the \$1.75 million in available Maritime Heritage project grant funding. These grants will be used for maritime heritage education and preservation projects related to the maritime heritage of the United States. The National Maritime Heritage Act established the National Maritime Heritage Grants Program within the Department of the Interior; the grants program is administered in partnership with the Maritime Administration (MarAd). It provides funding for education and preservation projects designed to preserve historic maritime resources and is funded through a percentage of the proceeds from the sale or scrapping of obsolete vessels of the National Defense Reserve Fleet (NDRF). All grants awarded must be matched on a 1-to-1 basis with non-Federal assets.

In early May, the NPS anticipates signing two Tribal Historic Preservation Office Memoranda of Agreement with the Wichita and Affiliated Tribes (Oklahoma), and the Oklahoma and the Burns-Paiute Tribe (Oregon). These agreements do not automatically confer federal funds, but give Tribes standing to take on certain responsibilities pursuant to 54 USC 302702 (commonly known as Section 101 of the National Historic Preservation Act). The NPS has the responsibility under 54 USC to administer the Tribal Historic Preservation Program and certify Tribal Historic Preservation Offices.

In mid-May, the NPS anticipates the announcement of the \$3,623,162 in available Battlefield Land Acquisition grant funding. Grants will be used to protect 999 acres of Revolutionary and Civil War battlefields in Virginia, Mississippi, New York, West Virginia, and Maryland. The NPS works with private landowners, battlefield friends groups, interested community groups, non-profit organizations, academic institutions, local, state, and tribal governments and Federal agencies for preservation projects and local acquisition of Revolutionary War, War of 1812, and Civil War battlefield land. The NPS is working with the Secretary's office on the communications plan and possible event.

In May, the NPS anticipates the announcement of \$15 million in Outdoor Recreation Legacy Partnership grant funding for approximately 25 projects. A total of 51 projects were submitted by states to acquire and develop outdoor recreation spaces. This competitive program supplements the annual Land and Water Conservation Fund apportionment to states by supporting projects for disadvantaged populations in urban areas.

In May, the NPS will announce the establishment and status of work of an independent review team commissioned to evaluate any impact the use of personal email by NPS staff may have had on the planning and rulemaking process for the Golden Gate National Recreation Area Dog Management Plan. In the course of the planning and rulemaking process, questions arose concerning whether NPS staff may have used personal email to assist external stakeholders in submitting comments on the plan. The evaluation is being conducted by an independent and impartial team of three non-NPS federal agency employees with expertise in environmental planning and review, the National Environmental Policy Act (NEPA) and rulemaking procedures. The review team has not yet determined any findings or conclusions, and dog management planning a long-standing controversial issue in the San Francisco area is on hold pending the results of this review.

In May, the NPS expects to release the Grand Canyon National Park Bison Draft Environmental Assessment (EA) for public comment. The draft EA considers options - including capture/removal, localized fencing of sensitive resources, and sharpshooting by skilled volunteers in conjunction with Arizona Game and Fish Department (AGFD) - for reduction in the size of the bison herd on the North Rim of the park causing damage to sensitive natural and cultural resources. The AGFD, Bureau of Land Management, U.S. Forest Service, and the Intertribal Bison Council are cooperating agencies on this effort.

In May, the NPS plans to announce the end of fiscal year (FY) 2016 deferred maintenance (DM) estimate. Based on output from the NPS' Facility Management Software System (FMSS), the NPS estimates that the deferred maintenance of the NPS is approximately \$11.3 billion. This estimate is the total (net) DM associated with all assets in the FMSS and is updated annually. The communications plan is being developed.

In May, the NPS plans to initiate public scoping to replace Grand Canyon National Park's trans-canyon pipeline. The trans-canyon pipeline serves the park's south rim supplying all water to facilities serving more than 5 million visitors and 2,500 residents annually. The cost to replace the pipeline is estimated at \$131.8 million dollars and construction is expected to begin in 2019.

During the 30-day initial public scoping, the NPS will hold public meetings at the park's south rim and in Flagstaff, Arizona, and will consult with the park's 11 associated tribes.

On May 1, National Mall and Memorial Parks (NAMA) will begin to install parking meters. Following extensive planning and public outreach, the park is moving forward with metered parking for approximately 1,200 parking spaces on streets and lots within NAMA. The tentative date for fully operational meters is June 12. The metered spaces will accommodate more visitors by turning parking spaces over more frequently, encourage the use of public transit and other transportation alternatives, and provide revenue for projects to enhance the visitor experience on the National Mall, including funding a portion of the operational costs for the National Mall DC Circulator route.

On or about May 1, as part of an ongoing effort to understand the intrinsic value that people place on national parks and to study their economic impacts, a national survey will be

administered to a nationwide sample of the general public. This Office of Management and Budget-approved study is being conducted through contract with the NPS by Industrial Economic Incorporated and the Wyoming Survey and Analysis Center at the University of Wyoming. Final analysis and reporting is expected in April 2018. The study will provide an estimate of economic value that the public places on scenic views and clear air in national parks, and will update data from previous studies conducted in 1989.

On May 1, Denali National Park opens the application period for its popular four-day fall road lottery. This allows up to 400 cars per day to be on the western portion of the park road (which is usually closed to most private vehicles). More than 12,600 lottery applications were received in 2016 and funds generated from road lottery application/permit fees are retained by the park.

On May 1, the Tunisian Minister of Defense will visit Manassas National Battlefield Park as part of a tour led by the U.S. Army Center for Military History. The NPS is coordinating with the Army on security, and will greet the group upon their arrival.

On May 4, the NPS will join members from the National Capital Planning Commission and the Commission of Fine Arts for a meeting with staff from the office of Rep. Carolyn Maloney (D-NY-12) to discuss the proposed Women's History Museum.

On May 5, Chesapeake and Ohio Canal National Historical Park will host a groundbreaking ceremony to celebrate the start of the Conococheague Aqueduct restoration in Williamsport, Maryland. The 18-month long construction phase of the project begins in early summer. Dignitaries from local, state, and federal government will attend.

On May 7, World War II Valor in the Pacific National Monument will host a delegation from Hiroshima, Japan, led by Hiroshima Governor Hidehiko Yuzaki. Governor Yuzaki will be in Honolulu to commemorate this year's 20th anniversary of a Sister State relationship between the State of Hawaii and Hiroshima Prefecture this year. The Governor's group will receive a guided tour of the monument visitor center and the USS *Arizona* Memorial.

### **30-60 Day Look Ahead**

On May 11, the Ponca Tribe of Nebraska will conclude a 12-day Remembrance Walk in Barneston, Nebraska, with a ceremony transferring a 19.5-mile segment of the Chief Standing Bear Trail from the Nebraska Trail Foundation to the Tribe. Representative Fortenberry (R-NE-1) has invited Secretary Zinke to attend. The Remembrance Walk commemorates the route of the Tribe's forced removal in the 1870s and will pass through Homestead National Monument on May 9. The park and partners are providing support to the event.

On May 13, the NPS will hold a community dedication ceremony with local partners for the recently established Freedom Riders National Monument in Anniston, Alabama. Informal invitations have been extended to the NPS leadership, and an invitation to the Secretary of the Interior is forthcoming. This event is still in the planning stage and official notification is expected soon.

On May 15, Klondike Gold Rush National Historical Park will hold a town hall meeting in Skagway, Alaska, to discuss Chilkoot Trail use fee increases planned for 2018. The proposed fee would be \$20 per adult, up from \$15; youth fees would go to \$10, up from \$7.50. The revenue from overnight fees is used to address deferred maintenance needs. The last fee increase was in 2008.

On May 15, Chattahoochee River National Recreation Area (CHAT) is hosting the CHAT Conservancy Friends Group for a River Park Symposium event. The symposium provides an opportunity to bring together communities and stakeholders to discuss plans and projects associated with the river corridor. The Conservancy Friends Group plans to invite Senator Johnny Isakson (R-FL), Congressman Rob Woodall (R-GA) and local area officials.

On May 16, the National Capital Memorial Advisory Commission (NCMAC) will hold a public meeting at 1:00 p.m. to consider potential sites for Desert Storm/Desert Shield Memorial within Area 1 of the National Mall, as defined by the Commemorative Works Act. The agenda also includes status updates on memorials in progress and pending memorial legislation.

On May 20, Glacier Bay National Park will host a totem pole raising ceremony with significant participation by Hoonah Tlingit and other clan members. The park expects about 300 people to participate, and the events are open to the public. Two poles will be placed in front of Huna Shuka Hit, a facility dedicated to anchoring the Tlingit in their homeland and interpreting Tlingit culture to the public.

On May 27, Vicksburg National Military Park along with the leaders of the Sons of Union Veterans and the Sons of Confederate Veterans of Missouri will rededicate the park's restored Missouri Monument commemorating the sacrifices of Union and Confederate Soldiers. The event will include a living history program by the 3rd US Colored Cavalry and the annual Memorial Day concert. Invitees include the Missouri congressional delegation, Senators Cochrane and Wicker, Congressman Thompson of Mississippi, Mississippi Governor Bryant, Lieutenant Governor Reeves, and Secretary of State Hoseman.

In early June, the Great Smoky Mountains National Park fire assessment review will be released. In February, a team of fire experts (federal and state) convened at Great Smoky Mountains National Park to conduct an independent review of the 2016 Chimney Tops 2 fire that started in the park on November 23. The purpose of the review team is to assess the facts leading up to and during the Chimney Tops 2 fire within the boundaries of Great Smoky Mountains National Park, as well as make recommendations on any planning, operational, or managerial issues which can be addressed locally, regionally, and/or nationally to reduce the chances of a similar incident in the future. The NPS has received tort claims related to this incident and expects additional lawsuits in the near future.

In June, Mojave National Preserve will begin a 60-day public comment period on the Water Resources Plan and draft Environmental Impact Statement (WRP/DEIS). The plan will manage both developed (diverted springs and wildlife guzzlers) and undeveloped water resources in the park. The process is being closely watched by local hunting groups interested in the management of wildlife guzzlers (large basins which catch rainwater and provide a watering source for



wildlife and cattle), which are viewed as necessary to maintaining a healthy bighorn sheep population for hunting.

On June 2-4, the NPS will co-host a commemoration of the 75<sup>th</sup> anniversary of the bombing of Dutch Harbor by Japan in World War II. The event will be held in Unalaska/Dutch Harbor, where the NPS has the Aleutian World War II National Historic Site, an affiliated area. The event will honor and acknowledge surviving veterans and Aleut evacuees, and remember those who have passed. An invitation to the Secretary of the Interior is forthcoming; other invitees include the Alaska Congressional Delegation, Governor Walker, Native corporation and tribal officials, and military leadership.

# **INDIAN AFFAIRS AND THE BUREAUS OF INDIAN AFFAIRS AND INDIAN EDUCATION**

## **Week Ahead Schedule of Meetings, Hearings, and Travel**

On April 23-27, the Self-Governance Communication and Education Consortium (SGCE) Annual Consultation Conference. The conference is convened by the Self-Governance Communication and Education Tribal Consortium, DOI's Indian Affairs, and the Department of Health and Human Services Indian Health Service and is being held at the Spokane Convention Center. Acting AS-IA Mike Black presented at the conference on Monday, April 24.

On April 27-29, BIE Director Dearman will attend the National Johnson O'Malley Associate Conference that begins in Albuquerque, NM.

On May 3-4, the Tribal-Interior Budget Council (TIBC) will meet at the Washington Plaza Hotel. TIBC is a forum for tribes and Federal officials to work together in budget formulation,

justification, and information for Indian programs at Interior. Acting AS-IA Black, BIA Director Loudermilk, and BIE Director Dearman will participate.

## **Week Ahead Announcements and Actions**

BIE Director Dearman will be meeting with Congressman Tom O'Halleran, (D-1st/AZ) at the Congressman's request to discuss the BIE and related issues in his Congressional District in Arizona (Navajo, Hopi, White Mountain Apache, San Carlos Apache, Gila River Indian Community).

BIE is addressing OMB's comments on its responses to the Senate Committee on Indian Affairs (SCIA) Questions for the Record (QFRs) from the March 24 hearing and expects to provide the final responses to SCIA this week.

All required Water Infrastructure Improvements for the Nation (WIIN) Act consultations and meetings with Tribes, water users and adjacent irrigation projects have been completed. BIA has incorporated written comments from the Tribal Consultation sessions and prepared a final draft of the report and is circulating with Indian Affairs for surname. The WIIN report was due to Congress on April 15, 2017. The report is awaiting Department and OMB clearance.

Pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012, there are now 23 tribal leasing regulations in review or pending the submission of tribal government modifications. The Osage Nation and Stillaguamish Tribe of Washington are in the surname and approval process; the Kootenai Tribe of Idaho and the Lummi Nation are in their final draft stage.

Fee to Trust Summary - The week of April 10, 2017, a total of 6 new cases were completed, bringing a total of 230.30 acres into trust. So far in 2017, 85 cases have been completed for 63,570 acres.

Reservation Proclamations are formal declarations issued by the Secretary of the Interior proclaiming that certain lands are a new reservation or an addition to an existing reservation. Currently, there are 11 pending proclamations totaling 36,046.80 acres. Solicitors are reviewing proclamations for Jicarilla Apache (31,452.38 acres), Boise Forte (1,146.17), Muckleshoot (13.71), Jamestown S'Klallam (267.29), Lac Courte Oreilles (2,012.77), Skokomish (581.96), Sault Ste. Marie (79.54), Nottawaseppi Huron (121.01) and Spokane Tribe (145.00).

### **30-60 Day Look-Ahead**

On May 10, 2017, the Senate Committee on Indian Affairs (SCIA) will hold a legislative hearing on two bills yet to be determined (according to SCIA staff, the bills may be Senator McCain's Amber Alerts in Indian Country bill and Senator Murkowski's land conveyance in Alaska bill).

On May 17, 2017, SCIA will hold an oversight hearing on the Government Accountability Office (GAO) High Risk Report regarding BIA's Indian Energy program and BIE. Tentative

DOI witnesses for this oversight hearing are Acting AS-IA Mike Black and BIE Director Tony Dearman.

On May 18-19, DCI will host a two-day meeting, Native Banks Conference, to discuss the Indian Loan Guarantee and Insurance Program and Insurance Program. Federal partners from the Office of the Comptroller of the Currency and the Federal Reserve Bank System will also be in attendance. The conference will be held at the Salt River Pima Maricopa Tribe's Courtyard by Marriott in Scottsdale, AZ.

On May 19, Haskell Indian Nations University will have its annual commencement ceremony to celebrate this year's graduates.

In late May, SCIA and Senator Tom Udall may hold a field hearing in New Mexico on either American Indian Arts and Crafts, or Part II of "The Theft, Illegal Possession, Sale, Transfer and Export of Tribal Cultural Items."

On June 12-15, the National Congress of American Indians (NCAI) 2017 Mid-Year Conference and Marketplace will take place at the Mohegan Sun.

### **Regulations Expected to Be Ready for OS Review**

Final rules pending publication:

Waiving Departmental Review of Appraisals & Valuations of Indian Property (43 CFR 100): The Indian Trust Asset Reform Act (ITARA) requires

publication of this rule by June 22, 2017 to establish a procedure whereby a Tribal or Indian property owner can waive the requirement for Departmental review of

an appraisal conducted by a third-party appraiser, as long as that third-party appraiser meets certain qualifications.

Proposed rules pending publication:

Indian Electric Power Utilities (25 CFR 175): This proposed rule would not make any substantive changes to the regulations, but would revise the regulations to be in plain language. The regulations affect only a limited number of Tribes because there are only three BIA electric power utilities: Colorado River (serving the Colorado River Indian Tribes Reservation), Mission Valley Power (serving the Salish & Kootenai Tribes, Flathead Indian Reservation), and San Carlos Irrigation Project (serving Gila River Indian Community).

Draft rules in development:

BIE Negotiated Rulemaking on Accountability (25 CFR 30): The Every Student Succeeds Act (ESSA) requires BIE to use a negotiated rulemaking process to develop regulations for implementation no later than the 2017-2018 academic year and to define the standards, assessments, and accountability system consistent with Section 1111 of the Elementary and Secondary Education Act (ESEA) for the schools funded by BIE on a national, regional, or tribal basis.

Status: [No change since last report] A Federal Register notice to establish the committee is in surname. All proposed members have been vetted for the committee.

Federal Register Notices Expected to Be Ready for OS Review

Advisory Board for Exceptional Children: Two notices are expected to be ready for OS review: a notice of an upcoming meeting of the Advisory Board, and a request for nominations of individuals to serve on the Advisory Board. The meeting is now scheduled for May 31, June 1 and June 2, 2017 and the deadline for nominations is in June, as well. As of September 2017, there will be eight slots available; members serve staggered two-year terms.

Trust Acquisitions for Cherokee Nation, Chickasaw Nation, and Wilton Rancheria: Five Federal Register notices announcing trust acquisitions that were finalized in the last Administration are pending approval for publication. The Department's regulations require publication of notice of the acquisitions in the Federal Register.

HEARTH Act Approval for Swinomish Indian Tribal Community and Osage Nation: These notices announce that BIA has approved the Swinomish Indian Tribal Community (Swinomish) leasing regulations under statutory authority specific to the Tribe and Osage Nation leasing regulations under the HEARTH Act. With this approval, these Tribes are authorized to enter into leases of Tribal trust lands without BIA approval.

- Liquor Control Ordinances: Pueblo of Santa Clara and Salt River Pima-Maricopa Indian Community: These notices announce that BIA certifies that the Tribe has amended its liquor control ordinance.
  
- List of Programs Eligible for Inclusion in Funding Agreements Negotiated with Self-Governance Tribes by Interior Bureaus Other than the Bureau of Indian Affairs and Fiscal Year 2017 Programmatic Targets.
  
- Draft Programmatic EIS for the 2015 Integrated Resource Management Plan for the Colville Indian Reservation, Nespelem, Washington: This notice announces the availability of the draft programmatic environmental impact statement for public review and comment.
  
- Proclaiming Certain Lands as Reservation for the Confederated Tribes of the Chehalis Reservation of WA (156.97 acres): This notice establishes the reservation boundaries.

# **ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT**

## **Week Ahead Schedule of Meetings, Hearings, and Travel**

Acting ASLM Kate MacGregor will travel to Houston, TX on May 1 to participate in the Offshore Technology Conference, and to New Orleans, LA on May 3 for meetings with BOEM/BSEE staff and an offshore site visit.

## **Week Ahead Announcements and Actions**

In early May, OSMRE plans to publish a Notice of Availability for the Cordero Rojo Mine Mining Plan Modification Draft EA, initiating a 30-day public comment period. Cloud Peak Energy's Cordero Rojo Mine is a surface mine located in Campbell County, WY. The mine employs 383 people, and produces approximately 20 million tons of coal per year.

On May 1, OSMRE plans to award additional funding to address continuing needs for several state coal regulatory program administration and enforcement grants. OSMRE gives these grants to eligible states and tribes to enable them to protect people, property, and the environment by regulating surface coal mining. Recipients will use the money for inspection, permitting, and other regulatory and administrative actions for their respective programs. (Note: Actions greater than \$100K are subject to DOI review and clearance before award.)

On May 1 - 4, the Offshore Technology Conference (OTC) will be held in Houston, TX. Secretary Zinke will participate in a panel discussion on May 1. Acting ASLM Kate MacGregor will speak at a breakfast hosted by the National Ocean Industries Association on May 3. Acting BOEM Director Walter Cruickshank will give the luncheon speech on May 3, and Regional Director Mike Celata will participate in a panel discussion on the same day. BSEE Office of Offshore Regulatory Programs Chief Doug Morris, and Lars Herbst, BSEE's Gulf of Mexico Regional Director, will participate in panel discussions.

On May 1 - 5, BLM-AK State Director Bud Cribley plans to conduct visits with members and staff of the AK congressional delegation to discuss public land management issues, including subsistence management; land conveyance; the Donlin Gold right-of-way; Red Devil mine remediation; placer mining; Greater Mooses Tooth 2; and Legacy Wells.

On May 1 - 5, BLM-OR/WA State Director Jamie Connell plans to conduct visits with members and staff of the OR and WA congressional delegations to discuss public land management issues, including implementation of the Western Oregon RMPs, Boardman to Hemingway Project, Pacific Connector Gas Pipeline, and sage-grouse plans in eastern OR; and development of RMPs or amendments for Eastern WA, the San Juan Islands National Monument, and Southwest OR.

On May 4, BLM-NV Acting State Director Marci Todd and State Fire Management Office Paul Petersen will speak to the Nevada County Sheriffs Association quarterly meeting on the BLM's line of duty death response plan, which is under development, as well as partnerships with local law enforcement.

On May 4, BLM-WY will host a meeting with the Jonah Interagency Office and the Pinedale Anticline Project Office Boards of Directors. As a result of heavy oil and gas development in the Jonah Field and Pinedale Anticline, these two interagency offices were created to provide oversight of on-site monitoring and off-site mitigation activities. Each board consists of managers from the WY Departments of Agriculture, Game & Fish, and Environmental Quality, and the BLM. The Boards will review proposed budgets (funds committed by industry Encana, BP, Shell and Questar) for monitoring and mitigations projects in 2017, and receive updates on several topics including wildlife monitoring, Sublette Mule Deer habitat enhancement, and Greater sage-grouse mitigation.

On May 4, BLM-CO will meet with the Western Energy Alliance, Colorado Oil and Gas Association, and West Slope Colorado Oil and Gas Association. Agenda items include ongoing projects and planning efforts, updates to Onshore Orders 3, 4 and 5; online sundry and Application for Permit to Drill (APD) filing through the BLM's Automated Fluid Minerals Support System (AFMSS 2), sage-grouse plan implementation; and the BLM's air emissions tool. BLM-CO and Washington office staff will participate, as well as representatives from SOL and the Forest Service.

On May 4, the BLM-CA Bakersfield Field Office will be recognized by the California Employer Advisory Council and the California Employment Development Department as this year's Veterans' Employer of the Year. The award is given to a business or agency that demonstrates a commitment to recruiting, hiring and training veterans.

On May 5, the BLM-NV project proposal submission period will close for Southern NV Public Land Management Act (SNPLMA) Round 17 project proposals. Local governmental entities may seek SNPLMA funds for parks, trails, and natural areas in portions of Carson City, Clark, Lincoln, and White Pine counties. Federal agencies may seek funds for capital improvements, conservation initiatives and restoration projects in eastern NV, acquisition of environmentally sensitive land statewide, and for hazardous fuels reduction in the Lake Tahoe Basin, and Carson and Spring Mountain Ranges.

On May 5, BSEE will hold its annual International Standards Workshop in Houston, TX. The workshop promotes collaboration and knowledge-sharing among BSEE, international regulators, and standards organizations and is designed to improve performance, safety, and operational efficiency worldwide.

On or about May 5, OSMRE's Western Region (WR) plans to submit a mine plan modification for Twentymile Coal Company's Foidel Creek Mine to OSMRE Headquarters for processing and approval by the ASLM. This is a mining plan modification for a surface coal mine located in Routt County, CO, which is expected to produce about 3 million tons of coal per year, and employ 320 people.

On May 6 - June 3, BLM-AK anticipates planned intermittent maintenance shutdowns to the 800-mile Trans-Alaska Pipeline System. Several short duration shutdowns throughout the summer are also expected, with an "emergency shutdown" test in September. BLM-AK's

Branch of Pipeline Monitoring will be on hand to observe the tests and repairs by pipeline manager Alyeska Pipeline Service Company.

### **30-60 Day Look-Ahead**

During the week of May 8 - 12, OSMRE anticipates publishing a Notice of Availability for the Bridger Mine Mining Plan Modification Draft EA, initiating a 30-day comment period. The Bridger Mine is an underground mining complex located in Sweetwater County, WY that employs 540 people. Estimated production per year is 6.4 million tons.

During the week of May 8 - 12, OSMRE anticipates publishing a Notice of Availability for the Dry Fork Mine Mining Plan Modification Draft EA, initiating a 30-day comment period. The Dry Fork Mine is a surface mining complex located in Campbell County, WY that employs 82 people. Estimated production per year is 6 million tons.

On May 8 - 11, Dennis Thurston and Cathy Coon of BOEM's AK Regional Office will attend the Arctic Council Ministerial meeting in Fairbanks, AK. The Council includes the U.S., Canada, Finland, Iceland, Norway, Russia, Sweden, and Denmark and six permanent participants. Discussion topics will include the Marine Protected Area (MPA) Network Toolbox, MPA Indicator Reports, and the Meaningful Engagement of Indigenous Peoples and Local Communities in Marine Activities Report.

From May 8 - 14, BLM-AK State Director Bud Cribley and North Slope Science Initiative Executive Director Sara Longan will attend portions of the Week of the Arctic 2017 in Fairbanks and Anchorage. The event will include presentations, workshops, and facilitated policy discussions to highlight key themes and accomplishments of the Arctic Council and Arctic efforts.

On May 9, BOEM and the California Energy Commission plan to hold a tribal outreach meeting in Monterey, CA pertaining to offshore renewable energy. This meeting is part of a series of tribal outreach meetings hosted by BOEM and the CEC. Additional meetings are planned on May 16 with the Rincon Band of Luiseno Indians in Valley Center and on May 18 with the Federated Indians of Graton Rancheria in Rohnert Park.

On May 9 - 11, BLM's Resources and Minerals Committee, comprised of Deputy State Directors and Washington Office Division Chiefs, will hold its annual meeting in Washington, DC to focus on streamlining bureau processes related to energy and minerals development.

On May 10, BLM-MT Eastern Montana/Dakotas District Manager Diane Friez and ND Field Office Manager Loren Wickstrom will meet with the North Dakota Petroleum Council to discuss issues affecting industry, including regulatory rule updates, staffing issues, and APD and sundry notice processing. Congressional staff attendance is anticipated.

On May 10 - 11, BOEM will meet with the Mashpee Wampanoag Tribe concerning the wind energy area offshore MA as part of government-to-government consultation with tribes in the vicinity of NY, RI, and MA. A separate meeting with the Wampanoag Tribe of Gay Head



(Aquinnah) will take place on May 15. The Bureau is working to schedule meetings with the Narragansett Indian Tribe and the Shinnecock Indian Nation during the week of June 12.

On May 11, BLM will participate in two panel discussions at the PEW Charitable Trusts' annual BLM WILD Workshop in Washington, DC. Acting Deputy Assistant Director for National Conservation Lands Nicki Moore and members of her staff will discuss agency priorities for the upcoming year.

In mid-May, BLM plans to issue the Boardman to Hemingway Record of Decision. BLM received the Biological Opinion on February 28 from the National Marine Fisheries Service. BLM-OR land use plan amendments are being handled concurrently and the decision will be issued simultaneously with the ROD for the EIS and approval to issue a right-of-way grant. The ROD will be set up for ASLM approval and will be submitted in advance for review.

During the week of May 15, BOEM plans to hold a joint RI and MA Intergovernmental Renewable Energy Task Force meeting. The primary focus of the meeting will be to discuss the status of current leases, receive lease updates on future activities, and discuss the new unsolicited lease requests offshore MA and NY. BOEM is coordinating a separate meeting with NY which is set for June 12.

On May 15 - 18, a representative of BSEE will participate in the International Oil Spill Conference in Long Beach, CA. BSEE will host a first-of-its-kind overview of oil spill response that will include self-guided tours of oil spill response technologies and best practices.

On May 15 - 19, BLM-NV State Director John Ruhs plans to conduct courtesy visits with members and staff of the NV Congressional delegation in Washington, DC to discuss public land management issues, including energy development, grazing and rangeland health issues, mining, the wild horse and burro program, fire management and special legislation implementation.

On May 18 - 20, BLM-ES will participate in the Extreme Mustang Makeover event in Jacksonville, FL. The Extreme Mustang Makeover is a competition that challenges horse trainers to take a wild horse "from wild to mild" through approximately 100 days of training. Trainers then compete for cash and other prizes at events across the country to display the trainability of America's wild horses and to promote their adoption.

On May 22 - 25, BOEM will host and chair the International Offshore Petroleum Environmental Regulators Annual General Meeting in Santa Barbara, CA.

On May 22 - 25, a BSEE representative (to be determined) will attend the American Wind Energy Association conference in Anaheim, CA.

On May 23, Jim Bennett, Program Manager for BOEM's Office of Renewable Energy Programs, is scheduled to speak during a Bloomberg government event entitled "Invest in Innovation: Building the Economy of the Future." The program will focus on clean energy and sustainable investing. Participants will include senior investors, including asset managers, institutional and private equity investors, executives from energy companies, and top government officials.

On May 24, the BLM “Making a Difference” National Volunteer Awards ceremony will be held at the Interior Department and at selected field sites via teleconference. The awards are given for outstanding volunteer service on BLM-managed lands. Volunteers provide a variety of public service including improving fish habitat, keeping campers safe, finding homes for wild horses and burros, and providing environmental education and other visitor services.

On June 6, BLM-AK will present an update on the status of the environmental cleanup at the Red Devil Mine in southwest AK to the Orutsararmiut Native Council in Bethel, AK.

On June 7, BSEE staff from the Houston and Gulf of Mexico offices will attend the Offshore Operators Committee (OOC) held at the Anadarko corporate office in Houston, TX.

On June 8, BLM-CO will hold an online oil and gas lease sale for 86 parcels totaling 73,288 acres in Jackson, Routt, Rio Blanco and Moffat Counties. BLM-CO removed 20 parcels in Grand County from its original parcel list due to low energy potential and reduced industry interest in the geographic area, as well as concern from local government and the public regarding impacts to water resources. Bidding is not expected to be robust.

On June 8, BLM-NM will hold an online oil and gas lease sale for 18 parcels totaling 4,376 acres in Roger Mills, Ellis, Canadian, and Major Counties, OK; and Live Oak, McMullen, Washington, Bureson, and Jackson Counties, TX. This sale may be controversial as BLM received 26 protests from homeowners adjacent to Lake Somerville, TX, regarding potential impacts to water quality. Bidding is not expected to be robust.

On June 12, BLM-NV will hold an online oil and gas lease sale for 106 parcels totaling 195,732 acres in Nye, Eureka, and Lander Counties. The sale is expected to be controversial based on public reaction to the lease Environmental Assessment, which included concerns regarding the proximity of the parcels to wetland areas and cultural sites. Bidding has the potential to be robust.

On June 13, BLM-MT will hold an online oil and gas lease sale for 156 parcels totaling 69,056 acres in Custer, Garfield, Fallon, Carter, Rosebud, Big Horn, and Powder River Counties. All of the parcels are in the Miles City area. The sale is not expected to be controversial, nor is the bidding expected to be particularly robust.

On June 13, BLM-UT will hold an online oil and gas lease sale for 20 parcels covering 23,733 acres in Sevier, Piute, Garfield, and Sanpete Counties. While approximately half of the parcels are within Sage-Grouse Priority Habitat Management Areas, the sale is not expected to be controversial. Robust bidding may occur on a few parcels that are located close to a producing field.

On June 14 - 15, Acting BLM-MT State Director Jon Raby plans to conduct courtesy visits with members and staff of the MT, ND and SD delegations in Washington, DC to discuss public land issues, including oil and gas activities, the status of coal projects, the Keystone XL pipeline ROW application, a preview of the summer fire season, MT’s In-Lieu lands selection, and its progress on the Lewistown and Missoula RMPs.

In mid-June BOEM, through its contractor, plans to conduct detailed geophysical and geological surveys of specific areas off several mid-Atlantic states to determine potential volumes and the extent of new sand resources. This is a continuation of work initiated for the Atlantic Sand Assessment Project, following Hurricane Sandy to identify new potential sand resources for future beach and coastal protection and restoration projects.

On June 22, BLM-Eastern States will hold an online oil and gas lease sale for 2 parcels totaling 160 acres in AR. Bidding is not expected to be robust nor is the sale controversial.

On June 22 - 25, BLM-AK will partner with Project Healing Waters Fly Fishing to host an annual fly-fishing event for wounded veterans in the Delta Wild and Scenic River corridor.

On June 23 - 24, BLM-NV will participate in the Reno Rodeo Extreme Mustang Makeover event. Over 40 teams made up of trainers and once-wild horses will compete for \$25,000 in prizes. All competing horses will be offered to the public through a competitive bid process.

On June 26 - 30, BLM-CA State Director Jerry Perez plans to conduct courtesy visits with members and staff of the CA Congressional delegation in Washington, DC to discuss public land management issues, including oil and gas development, planning efforts, wildfire, renewable energy, and recreation.

On June 28, BSEE will hold a workshop with NASA on Probabilistic Risk Assessment (PRA). NASA will introduce their guide to PRA to industry stakeholders and solicit input on its potential application to offshore oil and gas projects.

# OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

## Week Ahead Schedule of Meetings, Hearings, and Travel

### Travel:

The Acting Director will be in the office April 26-May 6, 2017.

## Week Ahead Announcements and Actions

OSMRE Western Region (WR) will mail a Mining Plan Decision Document (MPDD) for a mining plan modification at the Foidel Creek Mine in Utah to OSMRE Headquarters for processing and review by the Acting Assistant Secretary for Land and Minerals Management (ASLM) on or around May 5, 2017.

Oklahoma Federal Lands: Bull Hill #2 Mine 4293F The Mid Continent Region (MCR) submitted the draft Environmental Assessment (EA), unsigned Finding of No Significant Impact (FONSI) and briefing package to the ASLM for review. MCR is prepared to post the Draft EA and unsigned FONSI on the agency's website to initiate the start of the 30-day public comment period. An additional public notice will run in the *Latimer County News-Tribune* (Weekly) on Thursday, April 27, 2017, to supplement the website public notice.

Award of Administration and Enforcement Funding to States - On May 1, 2017, OSMRE plans to award additional funding to address continuing needs of several state coal regulatory programs through administration and enforcement grants for FY 2017. The states will use the money for inspection, permitting, and other regulatory and administrative actions for the coal mining regulatory programs within those states. The specific actions submitted for DOI review and clearance before awards are: Additional funding for Alabama (\$310,872), Arkansas (\$39,054), Indiana (\$412,603), Louisiana (\$38,245), Missouri (\$50,823), Oklahoma (\$284,338), and Texas (\$631,309).

## 30-60 Day Look-Ahead

- OSMRE WR completed a series of public scoping meetings and is now accepting written comments on the San Juan Mine Deep Lease Extension mining plan modification EIS until May 8, 2017.
- Meeting with Illinois DNR on the AML Grant and Budget Situation - The OSMRE's Mid Continent Region, will continue working with Illinois officials to set up a meeting for the Alton Field Office Director and Regional Director to discuss the impact of the Illinois current budget stalemate, and its effects on operation of the Abandoned Mine Lands (AML) Program. The meeting will also cover upcoming AML grant issues including award or non-award of the Illinois AML Grant, the performance period for which starts July 1, 2017.
- Pending Solicitor review, OSMRE's WR anticipates publishing notices of availability for the EA prepared for federal mining plan modifications at the Dry Fork Mine and Bridger Mine in Wyoming, in early May 2017. Both comment periods will last 30 days.

- The WR plans to publish a notice of availability for the Cordero Rojo Mine Mining Plan Modification Draft EA, Wyoming, in early May 2017. OSMRE will take comments on the EA for 30 days.
- The WR will mail a MPDD for a mining plan modification at the Foidel Creek Mine in Utah to OSMRE Headquarters for processing and review by the Assistant Secretary for Land and Minerals Management on or around May 5, 2017.
- OSMRE will continue working with Solicitors and the Fish and Wildlife Service regarding Endangered Species Act issues concerning the 2016 Biological Opinion and Memorandum of Understanding due to nullification of the Stream Protection Rule.
- OSMRE is also drafting an initial version of a *Federal Register* final rule in response to the nullification of the Stream Protection Rule.
- OSMRE's Program Support Directorate (PSD) is preparing solicitation documents to post on grants.gov website for the 2017 Acid Drainage Technology Initiative cooperative agreement. The grant would be for \$200,000.
- PSD continues to provide data to the Government Accounting Office regarding its audit on financial assurances for reclamation, and OSMRE's role in implementing and overseeing SMCRA activities.
- PSD is participating in the joint OSMRE/BLM team tasked with looking at the National Environmental Policy Act and leasing process for Federal coal. The team is merging the lists of areas most promising for coal development and producing companies.
- OSMRE is developing a plan to streamline coal mining permitting process along with Federal and State agencies with roles in the review and processing of surface coal mining applications.
- The MCR is finalizing dates for its All-States Meeting, which will be held in Kansas City, MO. Thus far, over 30 people from the state programs are planning to attend.
- Complaint for Declaratory and Injunctive Relief, Mining Plan Modification for the *Bull Mountains Mine No. 1, Montana*, Case No. 9:15-cv-00106-DWM Montana Elders for a Livable Tomorrow, Montana Environmental Information Center, and the Montana Chapter of the Sierra Club filed a complaint against OSMRE and DOI, alleging that OSMRE failed to comply with NEPA by not carefully addressing adverse environmental harms from coal mining before approving the mining plan modification for an expansion of the Bull Mountains Mine No. 1. On January 27, 2017, the Defendant submitted to the court its Cross Motion for Summary Judgment and Opposition to the Plaintiff's Motion for Summary Judgment, Defendant's Statement of Undisputed Facts, and Defendant's Response to Plaintiff's Statement of Undisputed Facts. Intervenor's response brief was due March 1, 2017, and Plaintiffs' reply brief was due March 15, 2017. The Government's and Intervenor's reply briefs are due March 22, 2017. OSMRE is coordinating with SOL/DOJ on the review of the Government's reply brief.
- Petition for Review, *WildEarth Guardians v. Zinke, et al., (Antelope Mine)* Case No. 2:16-cv- 00166-ABJ (D. WY) - The petition asserted that Interior's approval of a mining plan modification, under authority of the Mineral Leasing Act of 1920, violated the National Environmental Policy Act. The court issued a scheduling order on August 18, 2016, and the administrative record was submitted to the court on October 7, 2016. On April 5, 2017, the DOJ submitted Federal Respondents' Memorandum In Opposition To Petitioner's Opening Merits Briefs.

# **BUREAU OF OCEAN ENERGY MANAGEMENT**

## **Week Ahead Schedule of Meetings, Hearings, and Travel**

**Offshore Technology Conference:** On May 3, the BOEM Acting Director will be speaking at the Offshore Technology Conference (OTC) in Houston, TX. OTC is a very large conference that is designed to provide energy professionals with an opportunity to exchange ideas and opinions to advance scientific and technical knowledge for offshore resources and environmental matters.

**Public Meetings in the Gulf of Mexico:** On March 31, BOEM published the *Gulf of Mexico OCS Lease Sale: Draft Supplemental Environmental Impact Statement 2018*. The proposed oil and gas lease sales detailed in this Supplemental EIS are tentatively scheduled to be held in 2018 under the 2017-2022 Five Year Program. Public meetings are scheduled as follows: New Orleans, LA, Apr. 25; Houston, TX, Apr. 27; Pensacola, FL, May 1; Mobile, AL, May 2; and Gulfport, MS, May 3, 2017.

## **Week Ahead Announcements and Actions**

**Deepwater Wind Offshore Wind Site Assessment Plan (SAP) Decision:** On Apr. 18, Deepwater Wind provided the required supplemental financial assurance that is necessary prior to BOEM approving their SAP for the North offshore wind lease located offshore RI/MA. BOEM anticipates approving the SAP (with modifications) as soon as the week of April 24.

## **30-60 Day Look-Ahead**

**Congressional Visit to BOEM Gulf of Mexico Regional Office:** BOEM is coordinating with the U.S. Army's legislative office on a request by House of Representatives Oversight & Government Reform Committee, Subcommittee on Interior, Energy, and Environment staff members to conduct a site visit to the BOEM Gulf of Mexico Regional Office on May 8, to discuss G&G permitting and the leasing process, specifically lease sales changes in process and use of online sales.

**Eni Beaufort Sea Exploration Plan:** On Mar. 3, Eni submitted an Exploration Plan (EP) to explore leases in the Beaufort Sea, AK. BOEM sent a Request for Additional Information (RFAI) to Eni on Mar. 24. Since then, BOEM has held multiple meetings with the company to discuss the EP. A revised EP might be submitted by Eni within the next week, which would initiate a 15-day completeness review.

**Atlantic G&G Permit Applications:** BOEM is preparing a memo to reinstate the permit applications for deep-penetration air-gun surveys in the Mid & South Atlantic that were denied in early Jan. 2017. The date of this action has yet to be determined. The applicants have all appealed the denials to IBLA.

**NY, RI, and MA Offshore Wind:** BOEM worked with the states of NY, RI, and MA to schedule two offshore wind Intergovernmental Task Force meetings – a Joint RI/MA Task Force Meeting to be held on May 16 in Falmouth, MA, and a NY Task Force meeting tentatively scheduled for June 15. The primary focus of the meetings will be to discuss the status of current leases, receive lessee updates on future activities, and discuss the new unsolicited lease requests offshore MA and NY. BOEM has also scheduled government-to-government meetings with Federally-recognized tribes in this area: a meeting with the Narragansett Indian Tribe is scheduled for May 11; Wampanoag Tribe of Gay Head (Aquinnah) is scheduled for May 15; and Mashpee Wampanoag Tribe is scheduled for May 17.

**Offshore Oil and Gas Lease Sale 244, Cook Inlet, AK:** This sale is scheduled under the 2012-2017 Five Year Program, and is proposed for June 21, 2017. The Proposed Notice of Sale published in the *Federal Register* on Feb. 28. The Final Notice of Sale package for the lease sale is currently in surnaming. The Final Notice of Sale must publish in the *Federal Register* by May 22 in order to hold the sale as scheduled on June 21, 2017.

**International Offshore Petroleum Environmental Regulators (IOPER) Annual General Meeting (AGM):** On May 22-25, BOEM will be hosting and chairing the IOPER AGM in Santa Barbara, CA. The federal or provincial offshore oil and gas regulators for approximately eleven different jurisdictions are expected to participate in the meeting. IOPER is a collaborative group of national regulators whose members are focused on raising the environmental performance of the offshore petroleum exploration and production industry.

**BOEM Renewable Energy Program Shares in Award:** BOEM, along with Deepwater Wind LLC, Narragansett Electric Company (dba National Grid), U.S. Army Corps of Engineers, Rhode Island Coastal Resource Management Council, and General Electric Corporation, has been selected to receive the 2017 EBC Ira W. Leighton, Jr. Outstanding Environmental - Energy Technology Application-Achievement Award, presented by the Environmental Business Council of New England, in recognition of the design, permitting and construction of both the Block Island Wind Farm and the Sea2Shore Renewable Link Cable. The award will be presented June 8, 2017, in Boston.

## **BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

1. The Offshore Technology Conference is held annually in Houston, TX. It is attended by over 100,000 people from energy and other stakeholders from around the world. This year's conference will be **May 1-4**. BSEE staff is working with DOI Communications to assist the Secretary's attendance at OTC for **May 1**. BSEE staff will participate in panel discussions throughout the conference. BSEE is also staffing Acting Assistant Secretary Kate MacGregor during her participation in OTC.
2. BSEE is preparing an itinerary and providing staff support for Acting Assistant Secretary Kate MacGregor's trip to the Gulf of Mexico Region, **May 3-5**. She will receive briefings from BSEE and BOEM on key topics, accompany BSEE inspectors as they inspect an offshore production facility, and conduct an all-hands meeting with Q&A session with BSEE and BOEM personnel.
3. BSEE is conducting an International Standards Workshop in Houston, TX on **May 5** immediately following OTC. About 200-250 people are expected to attend; most are not with BSEE or the Department. The purpose of the workshop is to promote collaboration among BSEE, international regulators, and standards development organizations.

### **Week Ahead Announcements and Actions**

1. A Press Release highlighting BSEE petroleum engineer Mike Conner as the recipient of the Offshore Technology Conference (OTC) Heritage Award will be issued **May 1**.
2. News Brief and social media posts will be issued **May 1 through May 4** highlighting BSEE's participation at the 2017 OTC in coordination with the DOI Communications Office.
3. On-going response to WSJ inquiry re: comment by Norway safety regulator on effects of lower prices on safety. BSEE will be responding with a prepared statement, no interview.

### **30-60 Day Look-Ahead**

1. BSEE is conducting an orientation program for new employees on **16 May** at the Sterling, VA office. Arrangements will be made for individuals in BSEE regions to participate via video teleconference.
2. The House Natural Resources Committee is planning to conduct a hearing on Rigs to Reef on **May 17**. DOI is expected to receive an invitation to testify.
3. BSEE will be sending representatives to the International Oil Spill Conference in Long Beach, CA, **May 15-18** to conduct a guided tour on the ever evolving landscape of oil spill response. The facilitated and self-guided tour will involve six different stations, each



featuring state-of-the-art oil spill technology and response best practices. BSEE will be represented at five of the six stations.

4. The American Wind Energy Association conference is scheduled for **May 22-25** in Anaheim, CA. BSEE plans to participate.
5. The Offshore Operators Committee general meeting is scheduled for **June 7** at the Anadarko corporate office in Houston, TX. One or more BSEE representatives from the Gulf of Mexico Region or Headquarters may attend.

## **ASSISTANT SECRETARY FOR WATER & SCIENCE**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

Acting PDAS/WS Kerry Rae and Special Assistant Scott Cameron will be in Washington, DC, participating in routine internal briefings and meetings with external stakeholders. In addition, Scott will participate in federal interagency meetings regarding NGS and invasive mussels. On May 4, Scott will participate in a congressional briefing on brackish groundwater resources on Capitol Hill.

### **Week Ahead Announcements and Actions**

On May 4, USGS will hold a congressional briefing about brackish water resources. In April, USGS released a new national-scale assessment of the distribution, occurrence, and character of brackish groundwater resources since 1965. Brackish groundwater can serve as a potential resource to help water-stressed regions stretch their limited freshwater supplies. Speakers from the USGS, Reclamation, Nebraska Department of Environmental Quality and National Ground Water Association, along with Scott Cameron, lead political in the DOI Water & Science hallway, will discuss the viability of using this substantial resource for drinking water, irrigation, and mining, among many other uses. The briefing will be held at 3pm in room 2325 Rayburn House Office Building.

In the coming weeks, the Department will release a new USGS report on critical minerals for the United States. This publication presents resource and geologic information for 23 mineral commodities currently viewed as important to our national economy and national security, many of which are sourced entirely outside of the United States. The report provides an in-depth look at each commodity's use, distribution of deposit types, and current status of production, resources, and reserves. The individual commodity chapters serve as an update to the 1973 commodity chapters of USGS Professional Paper 820, United States Mineral Resources. A DOI news release is planned.

### **30-60 Day Look-Ahead**

On May 9, Reclamation will host a Water Infrastructure and Alternative Financing Forum at the Denver Federal Center in Lakewood, Colorado. Parties interested in Public/Private Partnerships (P3) will attend.

On May 10, Scott Cameron will testify before the Senate Water and Power Subcommittee on multiple Reclamation-related bills, including S440, Dickinson Reservoir; S685, Dry-Redwater/Musselshell Judith; and S677, Water Supply Permitting Coordination Act. Two additional bills may be added, including a bill on the Klamath Project, and a New Mexico drought preparedness bill. However, these two additional bills are yet to be introduced.

In early May, Reclamation will launch two prize competitions. These competitions invite problem solvers to develop new or improved methods and applications. During this round, one competition will look at corrosion of infrastructure in the field and the other is for development

of a data app for the consistent collection of information in the field. Videos describing the competitions are prepared and will be used in the launch.

In the coming weeks, Reclamation will announce the FY17 selections for Title XVI authorized projects, research studies, feasibility studies and funding opportunities. Each were selected using a competitive process.

On May 16, W&S and USGS will meet with New York city and state government officials, local community leaders and USDA and EPA officials for the first Harlem River Urban Waters Federal Partnership meeting to identify 2-3 priority river and land restoration and recreation projects for the Harlem River watershed.

On May 24, Scott Cameron will testify before the House Energy and Water Development Appropriations Committee, in a joint hearing with the Army Corps of Engineers, on the Bureau of Reclamation's fiscal year 2018 budget. Acting Commissioner David Murillo is also a scheduled witness for Interior.

In the coming weeks, Reclamation will announce the selected funding for Cooperative Watershed Management Program and Drought Contingency Planning. The CWMP provides funding to watershed groups to encourage diverse stakeholders to form local solutions to address their water management needs. Through drought contingency planning, Reclamation provides financial assistance on a competitive basis for applicants to develop a drought contingency plan or to update an existing plan.

In the coming weeks, USGS will announce a new update report on Pacific walrus demographics. USGS walrus research has focused on demographics, habitat use, sea ice projections, and energetics, and this update will add to this body of knowledge by providing the results of a population dynamics model that synthesizes population size, age structure, reproductive rates, and harvest for the period 1974-2015. The research, conducted in collaboration with the Alaska Department of Fish and Game and the USFWS, shows that the walrus population has halved in that amount of time. However, the population decline lessened over time, and the odds that the population is still decreasing are roughly equal to the odds that it is stationary or possibly increasing. By September 30, USFWS is required to make a listing decision on the Pacific walrus. The USGS role is to provide objective science to help inform the decision. The findings will be published in *Marine Mammal Science* and a news release is planned.

In the coming weeks, a USGS-authored paper will be released about the potential release of mercury into the environment from thawing permafrost. The embargoed paper will be published in the journal *Nature*, and a news release is planned. *Nature* may also issue a news release.

In the coming weeks, USGS will announce a new assessment of undiscovered potash resources of the Pripyat Basin of Belarus and the Dnieper-Donets Basin of Ukraine. The study was undertaken because potash is a critical mineral resource for agricultural production, and these deposits are in a geopolitically sensitive area of interest. A technical announcement is planned.

In May, USGS will release the updated strategic plan on the Advanced National Seismic System (ANSS). The report has been produced at the request of the ANSS National Steering Committee with cooperation from ANSS partners. The current plan was published in 2000. ANSS is a cooperative effort to collect and analyze seismic and geodetic data on earthquakes, issue timely and reliable notifications of their occurrence and impacts, and provide data for earthquake research and the hazard and risk assessments that are the foundation for creating an earthquake-resilient nation. This updated strategic plan charts a course for USGS efforts over the next decade and outlines the requirements necessary to fully realize the ANSS vision. A technical announcement is planned.

On June 28, Scott Cameron will testify before the Senate Energy and Water Development Appropriations Committee, in a joint hearing with the Army Corps of Engineers, on the Bureau of Reclamation's fiscal year 2018 budget. Acting Commissioner David Murillo is also a scheduled witness for Interior.

In June, Congressman Jim Costa is planning to visit the Bureau of Reclamation's Shasta Dam, Red Bluff Fish Passage Improvement Project, the sites reservoir location and the state of California's Oroville Dam. More information to come.

In June, FEMA will release a report on estimated annual losses from earthquakes in the United States. USGS science on earthquake hazards was a critical component to this analysis. The report concludes that earthquakes are estimated to cost the nation \$6.1 billion annually in building stock losses. The last report was published in 2008, and the new estimate incorporates the most recent USGS earthquake hazard maps. USGS will work with FEMA on coordinated outreach on the report.

June 26-28, Reclamation will participate in a meeting sponsored by the National Invasive Species Council (NISC). The meeting will be held concurrent with the June 26-28 Western Governors' Association Meeting in Whitefish, MT. Several DOI agencies and the DOI Office of Policy Analysis will also participate. The meeting aims to integrate policy among federal and state (and possibly tribal) partners that will improve the prevention, eradication, and containment of aquatic invasive species in the Pacific Northwest. In addition, the group will study ways to reduce the risk of zebra/quagga mussel introduction into the Columbia River Basin.

In the coming weeks, a workshop on quagga mussel detection, enforcement, research and the latest efforts to contain this invasive species will be held in Reclamation's Pacific Northwest Region; date and location TBD.

## **U.S. GEOLOGICAL SURVEY**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

On May 1-7, USGS Acting Director Bill Werkheiser will be in Reston, Va. and/or Washington, D.C. On May 2-4, Bill Werkheiser will lead the Annual Spring Science Planning Meeting with USGS Associate and Regional Directors in Reston, Va.

### **Week Ahead Announcements and Actions**

On May 1, USGS will announce a recently published paper that found similarities between a novel strain of H7N8 avian influenza identified during a 2016 outbreak in commercial turkeys in Indiana and avian influenza viruses carried by wild North American ducks. To understand the origins and possible role of wild birds in the outbreak, the USGS and collaborators examined over 400 wild bird viruses from across North America collected between 2007 and 2016. The findings are published in the Journal of Virology and a news release is planned.

On May 2, USGS will announce a synthesis paper that describes the timelines and mechanisms of injury and recovery following the 1989 Exxon Valdez oil spill across a suite of marine birds and mammals. This information may have important implications when responding to other oil spills, when conducting damage assessment studies after spills and when considering the environmental risks associated with extracting and shipping oil. The paper has been published in Deep Sea Research II and a news release is planned.

On May 4, USGS will hold a congressional briefing about brackish water resources. In April, USGS released a new national-scale assessment of the distribution, occurrence, and character of brackish groundwater resources since 1965. Brackish groundwater can serve as a potential resource to help water-stressed regions stretch their limited freshwater supplies. Speakers from the USGS, Reclamation, Nebraska Department of Environmental Quality and National Ground Water Association, along with Scott Cameron, lead political in the DOI Water & Science hallway, will discuss the viability of using this substantial resource for drinking water, irrigation, and mining, among many other uses. The briefing will be held at 3pm in room 2325 Rayburn House Office Building.

As soon as this week, USGS will announce a new filtration system that has been perfected to remove phosphorus from water. The system, developed by USGS engineer Philip Sibrell, is comparatively cheap, and also addresses issues with mine drainage, using abandoned mine “waste” as a sorption media for filtering phosphorus from water. The system has been in development for many years and has evolved into its current form which is capable of filtering over 100,000 gallons of water per day. The design has placed in the top five for the George Barley Water Prize a contest designed to find the most effective means for removing phosphorus from fresh water. A news release is planned.

As early as this week, Northern Arizona University and the USGS will announce a new paper finding that the effects of climate combined with overlapping high-intensity land uses are likely to create conditions detrimental to the recreation economy, wildlife habitat, water availability

and other resources in drylands in the future. The study examined four scenarios to estimate how climate change and overlapping land uses may influence ecosystem functions and landscape attributes. Although outcomes varied by scenario and characteristic, the recreation economy had the highest impacts for all scenarios; followed by vegetation and wildlife habitat and cultural and spiritual values; water availability; soil productivity; and cropland productivity. The paper will be published in the Ecosphere and NAU is leading the press effort and a joint news release is planned.

In the coming weeks, the Department will release a new USGS report on critical minerals for the United States. This publication presents resource and geologic information for 23 mineral commodities currently viewed as important to our national economy and national security, many of which are sourced entirely outside of the United States. The report provides an in-depth look at each commodity's use, distribution of deposit types, and current status of production, resources, and reserves. The individual commodity chapters serve as an update to the 1973 commodity chapters of USGS Professional Paper 820, United States Mineral Resources. A DOI news release is planned.

### **30-60 Day Look-Ahead**

In early May, USGS will release a glacier margin time series for several glaciers in Glacier National Park, Montana. The data release consists of a time series of digitized glacier margin shapefiles and associated glacier area summary table for the 37 named glaciers of Glacier National Park and two glaciers on USFS Flathead National Forest land. The GIS polygons represent the main body portion of each glacier as analyzed from aerial imagery from the years 1966, 1998, 2005 and 2015. The dataset was created to develop a time series and history of glacier recession in Glacier National Park. Establishing rates of glacier retreat, using the decreasing area of glacier ice, is key to understanding the Glacier National Park ecosystem and future state of resources. The data will be available at the USGS ScienceBase and a news release is planned.

In early May, Northern Arizona University (NAU) and the USGS will announce a new paper that examines long-term trends in restoration using vegetation treatments on BLM lands across the southwestern U.S. The results document shifts in treatment practices on public lands over 70 years (1940-2010) and suggest that treatments are increasingly large, expensive, and related to wildfire and invasive species control. USGS data are associated with this study. The paper will be published in Restoration Ecology and NAU is leading the local press effort.

In May, USGS will release the updated strategic plan on the Advanced National Seismic System (ANSS). The report has been produced at the request of the ANSS National Steering Committee with cooperation from ANSS partners. The current plan was published in 2000. ANSS is a cooperative effort to collect and analyze seismic and geodetic data on earthquakes, issue timely and reliable notifications of their occurrence and impacts, and provide data for earthquake research and the hazard and risk assessments that are the foundation for creating an earthquake-resilient nation. This updated strategic plan charts a course for USGS efforts over the next

decade and outlines the requirements necessary to fully realize the ANSS vision. A technical announcement is planned.

In the coming weeks, USGS will announce a new paper that confirms the detection of the causative agent of snake fungal disease (SFD) in wild snakes in Europe for the first time. SFD is an emerging disease of conservation concern in eastern North America. Although *Ophidiomyces ophiodiicola*, the causative agent of SFD, has been isolated from captive snakes outside North America, the pathogen has not been reported from wild snakes elsewhere, until now. The USGS National Wildlife Health Center confirmed the presence of this fungus and the Zoological Society of London will lead the news release. The findings will be reported in *Nature - Scientific Reports*.

In the coming weeks, USGS will publish and announce a new report prepared in cooperation with the Connecticut Department of Public Health, that highlights elevated levels of naturally occurring arsenic and uranium found in private wells across Connecticut. Seven percent of the 674 private well samples tested were found to have levels higher than Maximum Contaminant Levels, which are regulated in public water supplies and newly constructed private wells under Connecticut law. A local news release is planned.

In the coming weeks, USGS will announce a new paper about the potential release of mercury into the environment from thawing permafrost. The embargoed paper will be published in the journal *Nature*, and a news release is planned. *Nature* may also issue a news release about the paper.

In the coming weeks, USGS will announce a new update report on Pacific walrus demographics. USGS walrus research has focused on demographics, habitat use, sea ice projections, and energetics, and this update will add to this body of knowledge by providing the results of a population dynamics model that synthesizes population size, age structure, reproductive rates, and harvest for the period 1974-2015. The research, conducted in collaboration with the Alaska

Department of Fish and Game and the USFWS, shows that the walrus population has halved in that amount of time. However, the population decline lessened over time, and the odds that the population is still decreasing are roughly equal to the odds that it is stationary or possibly increasing. By September 30, USFWS is required to make a listing decision on the Pacific walrus. The USGS role is to provide objective science to help inform the decision. The findings will be published in *Marine Mammal Science* and a news release is planned.

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In June, FEMA will release a report on estimated annual losses from earthquakes in the United States. USGS science on earthquake hazards was a critical component to this analysis. The report concludes that earthquakes are estimated to cost the nation \$6.1 billion annually in building stock losses. The last report was published in 2008, and the new estimate incorporates the most recent

USGS earthquake hazard maps. USGS will work with FEMA on coordinated outreach on the report.

In June, USGS will announce a new paper that finds the true total global freshwater fish harvest from inland lakes likely exceeds what's been reported to the United Nations. This finding is important because underreporting can diminish the perceived importance of inland fisheries and perpetuate decisions that adversely affect these fisheries and millions of people. The paper will be published in *Frontiers in Ecology and the Environment* and a news release is planned.

In the coming weeks, USGS will announce a new paper that discusses how species may adapt to climate change by changing behavior. The paper also discusses how conservation practitioners and resource managers might incorporate an improved understanding of behavioral flexibility into conservation, policy, and resource management. The paper will be published in *Frontiers in Ecology and the Environment* and a news release is planned.



## **BUREAU OF RECLAMATION**

### **WEEK AHEAD SCHEDULE OF MEETINGS, HEARINGS, AND TRAVEL**

From May 1 through 7, Acting Commissioner David Murillo will be in DC at headquarters.

### **WEEK AHEAD ANNOUNCEMENTS AND ACTIONS**

Tuesday, May 2 - Tour of Shasta Dam for Western Area Power Association Managers (CA): Reclamation will host a tour of Shasta Dam for a group of environmental resource managers from the Western Area Power Association who work on fish habitat restoration. The group oversees environmental interests while focusing on the main objective of delivering power. The tour will provide an overview of Shasta Dam's operations, specifically how Reclamation fulfills its objectives of water and power deliveries while meeting environmental considerations.

Thursday, May 4 - Navajo-Gallup Water Supply Project Tour (NM): On May 4, Reclamation's Four Corners Construction Office will provide a tour to the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service of the proposed location for the San Juan Lateral Intake and Water Treatment Plant.

Friday, May 5 - Essential Fish Habitat Announcement (CA/OR): On May 5, Reclamation will attend a National Oceanic and Administration (NOAA) meeting in Klamath, California. NOAA will present Reclamation's analysis of Klamath Project impacts to Essential Fish Habitat of commercially important fish species in the Klamath River to the Yurok, Hoopa Valley, and the Karuk tribes. Reclamation's analysis document on impacts to habitat of Klamath River coho and Chinook salmon initiates formal consultation under the Magnuson-Stevens Fisheries and Conservation Management Act. Media interest is not expected.

Reclamation Brief Idaho Congressional and Governor's Office Staffs (ID): On May 5, Reclamation will provide a status briefing for the Idaho congressional delegation and governor's office staff on the 2017 water outlook and operations, ongoing feasibility studies and environmental compliance activities.

Saturday, May 6 - C.A.S.T. for Kids at Lake Berryessa (CA): On May 6, Reclamation, in partnership with the C.A.S.T. for Kids Foundation, will host a C.A.S.T. for Kids fishing event for disabled and disadvantaged children. The event will be held from 8 a.m. to 2 p.m. at Lake Berryessa's Oak Shores Day Use Area.

Meet a Park Ranger at Monticello Dam (CA): Beginning in May through Labor Day, park rangers will be at the Monticello Dam Overlook on Saturdays and Sundays from 12-2 p.m. to answer questions about Lake Berryessa.

Sunday, May 7 - New Melones Lake Kayaking Excursion (CA): On May 7, Reclamation park rangers will lead guests on a paddling tour around New Melones Lake, where park rangers will

discuss the flora, fauna, geological formations and cultural history of the area. The tour will begin at the Mark Twain Recreation Area and then proceed up the Stanislaus River Canyon toward Parrotts Ferry.

### **30-60 DAY LOOK AHEAD**

May 9: On May 9, Reclamation will host a Water Infrastructure and Alternative Financing Forum in Denver, Colorado. Parties interested in Public-Private Partnerships (P3) will attend.

May 14: On May 14, Reclamation's Pacific Northwest Region will close the comment period for the Draft Environmental Assessment (EA). Three alternatives were presented on a proposed project that will overhaul 18 generators in the Left and Right powerhouses. A Final EA submittal is anticipated in June.

May 19: Annual Spring Wings Bird Festival in Fallon (NV): On May 19, Reclamation will participate in the Annual Spring Wings Bird Festival in Fallon, Nevada, with a Newlands Project information booth. The festival will have family events, educational workshops and outdoors activities. For more information: <http://www.springwings.org>

Early May: Reclamation to Launch Two New Prize Competitions: In early May, Reclamation will launch two prize competitions. These competitions invite problem solvers to develop new or improved methods and application. During this round, one competition will look at corrosion of infrastructure in the field and the other is for development of a data app for the consistent collection of information in the field. Videos describing the competitions are prepared and will be used in the launch.

Early May: Title XVI Funding Announced for FY 2017: In the coming weeks, Reclamation will announce the selections for Title XVI authorized projects, research studies and feasibility studies and funding opportunities. Each were selected using a competitive process.

May - In the coming weeks, Reclamation will announce the selected funding for Cooperative Watershed Management Program and Drought Contingency Planning. The CWMP provides funding to watershed groups to encourage diverse stakeholders to form local solutions to address their water management needs. Through drought contingency planning, Reclamation provides financial assistance on a competitive basis for applicants to develop a drought contingency plan or to update an existing plan.

June 3: On June 3, Reclamation will host an interpretive table at the bi-annual Link River Festival in Klamath Falls, Oregon. The theme of Reclamation's table display will be the history of the Link River Dam. There is potential for media interest.

June 26-28: Reclamation will participate in a meeting sponsored by the National Invasive Species Council (NISC). The meeting will be held concurrent with the June 26-28 Western Governors' Association Meeting in Whitefish, MT. Several DOI agencies and the DOI Office of Policy Analysis will also participate. The meeting aims to integrate policy among federal and state (and possibly tribal) partners that will improve the prevention, eradication, and containment

of aquatic invasive species in the Pacific Northwest. In addition, the group will study ways to reduce the risk of zebra/quagga mussel introduction into the Columbia River Basin.

June: In June, Congressman Jim Costa is planning to visit Shasta Dam, Red Bluff Fish Passage Improvement Project, the Sites Reservoir location and the State of California's Oroville Dam.

## **OFFICE OF INSULAR AFFAIRS**

### **Week Ahead Schedule of Meetings, Hearings, and Travel**

Nothing to report.

### **Week Ahead Announcements and Actions**

Nothing to report.

### **30 – 60 Day Look Ahead**

#### **May 8, 2017**

Acting AS-IN Pula will discuss territorial and insular issues as guest speaker at the Defense Intelligence Agency.

#### **May 17, 2017**

Acting AS-IN Pula will address participants in the national leadership training program conducted by the Federal Asian Pacific American Council.



**WEEKLY REPORT TO THE SOLICITOR  
DEPARTMENT OF THE INTERIOR**

**April 26, 2017**

**Office of the Solicitor**

**Week Ahead Schedule of Meetings, Congressional Hearings, and Travel**

An attorney from the Knoxville Field Office will meet with NPS Regional Office and Great Smokey Mountains NP officials the week of May 1, 2017, to review, gather and discuss evidence in connection with defending against tort claims attributable to the November 2016 fire that originated within the boundaries of the Park. The fire is alleged to have caused the death of 14 people living in the Gatlinburg, TN area and a reported \$1 billion in property damage.

**Appeal Regarding the Nomination of the Trestles Historic District for Listing on the National Register**

The National Parks Branch is advising the Office of the Keeper of the National Register of Historic Places in responding to an 36 C.F.R. § 60.12 appeal regarding the Department of the Navy's failure to nominate the Trestles Historic District, partially located within Camp Pendleton, for listing in the National Register. The Keeper's office requested the Navy's position regarding the appeal and granted the Navy a 30-day extension of their time to respond. The Navy's response is now due May 19. The ASFWP and NPS will meet with the Navy Federal Preservation Officer on April 27 to discuss the Navy's response. The Keeper's decision regarding the appeal is due May 31. (Sara Porsia, 202-208-6161)

**Meeting with Alabama Attorney General's Office and Counsel**

Representatives of the parties in *Alabama v. NMFS* met on Monday, April 24 to allow the plaintiffs to express their viewpoints on the challenged regulations 2016 regulations outlining the process for designating critical habitat and defining the term "destruction or adverse modification." (Ben Jesup, Joan Goldfarb, and Shawn Finley, 202-208-6172).

**Week Ahead Announcements and Actions**

**SIGNIFICANT LITIGATION DEADLINES FOR NEXT TWO WEEKS SEPARATELY REPORTED**

**NEW CASES:**

***Bd. of City. Comm'rs of Pitkin Cnty. v. BLM (D. Colo.) - Thompson Divide oil and gas lease suspensions***

On April 19, petitioners Pitkin County, Colorado and Wilderness Workshop filed a complaint challenging suspensions of operations and production requirements for 25 federal oil and gas

leases in Colorado's Thompson Divide area. The BLM granted suspension requests in 2013 and 2014 while it completed an environmental impact statement (EIS) that analyzed lease issuance. After completion of the EIS, the Department cancelled the subject leases. Twice, the Interior Board of Land Appeals (IBLA) dismissed administrative appeals from petitioners for lack of standing. In this case, petitioners argue the BLM and IBLA's decisions violated the Administrative Procedure Act, Mineral Leasing Act, and National Environmental Policy Act. The cancellation of 18 leases is challenged in *SG Interests I, Ltd. v. Zinke*, No. 1:17-cv-00376-REB (D. Colo.). (Art Kleven, 303-445-0619)

***Alaska v. United States (D. Alaska) - Knik River Navigability***

On April 19, the State of Alaska filed a complaint to quiet title to the submerged lands underlying the upper reaches of the Knik River, which is a glacier fed river located just north of Anchorage. The complaint alleges that the river is navigable and that the State therefore has title to the submerged lands. The answer is due June 23. [Kenneth M. Lord, 907-271-4184]

***Center for Biological Diversity v. Zinke - Challenge to Congressional Review Act***

Complaint filed April 20 in U.S. District Court Alaska alleging nullification of Fish and Wildlife Service and National Park Service hunting regulations in Alaska under the CRA violates the separation of power under U.S. Constitution. (Joseph Darnell, 907-271-4118)

***A.D. v. Washburn (9th Cir.)***

On April 24, the Goldwater Institute filed a notice of appeal of an Arizona district court decision that the Plaintiffs lacked standing to bring a class action challenge to the Indian Child Welfare Act (ICWA) and the Department's 2015 ICWA Guidelines. (Rebekah Krispinsky, 202-281-6764; Dan Lewerenz, 202-208-2913; Femila Ervin, 202-208-4350)

***Center for Biological Diversity et al v. Zinke, et al. (D. Minn.)***

On March 28, Plaintiffs filed a complaint seeking declaratory and injunctive relief alleging that various federal agencies failed to comply with the ESA and the APA in conjunction with the Forest Service's (FS) approval of the Proposed NorthMet Mine and Land Exchange on Superior National Forest in Minnesota land exchange, and on the U.S. Fish and Wildlife Service's (FWS) issuance of a Biological Opinion on the effects of the exchange. Specifically, Plaintiffs allege that the FS failed to adequately consult with FWS on the environmental effects of the proposed action on Canada lynx, the gray wolf and the northern long-eared bat and critical habitat. Plaintiffs seek to enjoin the NorthMet Mine open-pit mine project pending completion of further environmental assessments. Absent a motion for a motion for preliminary injunction, an Answer is due May 28, 2017. (Sharon Pudwill, 612-713-7108)

***American Bird Conservancy, v. Lisa S. Disbrow (D.D.C)***

Two bird advocacy groups filed a Complaint for Declaratory and Injunctive Relief on March 27, 2017, against the U.S. Air Force, the Ohio Air National Guard, the Department of the Interior

and the U.S. Fish and Wildlife Service (FWS), claiming a single wind turbine the Air Force wants to build at the Camp Perry facility, along the shores of Lake Erie violates the Endangered Species Act (ESA), the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act and NEPA. Plaintiffs allege, among other things, that the Biological Opinion, is flawed. (Kelly Bakayza, 412-937-4006, Peg Romanik, 202-208-5578).

## **SIGNIFICANT DECISIONS:**

### ***Alliance for the Wild Rockies v. Ashe (9th Cir. 2017) - Young Dodge***

On April 20, the Ninth Circuit affirmed the Montana District Court decision in favor of the United States. In an unpublished decision the court held that the FWS and the USFS satisfied their obligations under ESA Section 7 for the Young Dodge vegetation management project. Specifically the court held that the agencies considered non-road effects to grizzly bears such as helicopter use. (Kate Williams-Shuck, 303-445-0597)

### ***Lewis v. Clarke (S. Ct.)***

The Court considered whether tribal sovereign immunity barred a state court individual capacity claim against a tribal employee who committed a tort while exercising official duties off-reservation. On April 25, the Court held that because the employee was the real party in interest of the suit in his individual capacity, and not the tribe in its sovereign capacity, the employee was not immune from suit. The Court also held that a tribe's employee indemnification statute could not, as a matter of law, extend tribal sovereign immunity to an employee who would not otherwise be protected by that immunity. Finally, the Court declined to consider whether the employee was entitled to official immunity, as that issue had been raised for the first time on appeal. (Rebekah Krispinsky, 202-281-6764; Sam Ennis, 202-208-3306; Barbara Coen, 202-208-6060)

### ***Mishewal Wappo Tribe of Alexander Valley v. Zinke (9th Cir.)***

On April 24, the Ninth Circuit Court of Appeals issued an unpublished decision holding that the district court correctly concluded that all of Mishewal Wappo's claims turned on the 1961 termination of the Alexander Valley Rancheria and are therefore time-barred. Mishewal Wappo will have until June 8 to seek rehearing and until July 24 to petition the Supreme Court for certiorari. (Rebekah Krispinsky, 202-281-6764; Jim Porter, 202-208-5349)

### ***State of New Mexico v Zinke (10th Cir)***

On April 21, the Tenth Circuit Court of Appeals issued a decision holding that the district court correctly concluded that the Secretary lacked authority to promulgate the regulations found at 25 C.F.R. § 291 regarding the process Indian tribes and States negotiate gaming compacts. (John Hay, 202-208-4553, Andy Caulum 202-208-7024)

### ***William S. Fletcher, et al. v. United States, et al. (10th Cir.) - "Fletcher III"***



In a published opinion, the Tenth Circuit affirmed a March 11, 2016, order of the Northern District of Oklahoma that directed Interior to provide the plaintiff class with an accounting of the Osage headright distributions pursuant to the Osage Act of 1906, 25 USC § 4011, and 25 USC § 162a. Plaintiffs had appealed the accounting order seeking an alternative accounting of far greater magnitude and temporal scope (e.g., back to 1906 instead of to 2002) than what the lower court ordered. The Tenth Circuit held the district court did not abuse its considerable discretion in fashioning the scope of the accounting and found that the accounting was wholly within the Circuit's guidance from its 2013 *Fletcher II* opinion (*Gorsuch, J.*). Interior is on pace to complete the accounting within the 18 months from the order [September 11, 2017] as prescribed by the district court. (Dondrae Maiden, 202-208-6996; Ericka Howard, 202-208-4240; Kristen Kokinos, 202-208-6732)

***Wild Fish Conservancy, et al. v. National Park Service, Fish and Wildlife Service, and NOAA Fisheries Services (9<sup>th</sup> Cir.)***

On April 18, the Ninth Circuit Court of Appeals upheld the District Court's decision, which partially vacated National Marine Fisheries Service's (NMFS') decision not to consider an alternative of reduced hatchery releases in an Environmental Assessment, but otherwise entered judgment against plaintiff on its numerous other claims under the National Environmental Policy Act and Endangered Species Act. The court found lawful the National Park Service's and Bureau of Indian Affairs' funding of NMFS-approved tribal and state hatchery programs repopulating the Elwha River with fish after dam removal. (Kelly Powell, 503-231-2138)

***ONDA et al. v. BLM (D. Or) - BLM wind energy right of way***

On May 26, 2016, the Ninth Circuit Court of Appeals found that BLM improperly assessed baseline environmental conditions relating to impacts to the Greater Sage-Grouse in authorizing a transmission line to facilitate the Echanis wind project on private lands near Steens Mountain in Harney County, Oregon. The environmental impact statement concluded that the Echanis project site did not contain sage-grouse winter habitat. The Ninth Circuit held that BLM erred because, out of several winter surveys at a nearby ridge used as a proxy for the project site, four sage grouse were found in a February survey. On April 18, 2017, the District Court vacated the Record of Decision. Interior argued that vacatur was unnecessary because planned winter surveys at the actual project site would likely confirm absence of sage-grouse, but the Court held that further National Environmental Policy Act analysis is required to address the baseline issue. (Brad Grenham, 503-231-6826; Veronica Larvie 801-524-5677 ext. 238)

***Tuttle v. Jewell, et al., No. 16-5095 (D.C. Cir.)***

Plaintiff, as trustee for the William C. Tuttle and Carol M. Tuttle Family Trust, filed this suit challenging a BIA decision to cancel her deceased husband's lease issued pursuant to the Indian Long-Term Leasing Act of 1955 and implementing regulations at 25 C.F.R. Part 162 for failure to comply with its terms. The district court affirmed BIA's decision and Plaintiff appealed. On April 18, 2017, the D.C. Circuit affirmed in favor of BIA. Appellant may petition for rehearing or rehearing *en banc* on or before June 2, 2017. (Constance Genter, 602-364-7890.)

***Mishewal Wappo Tribe of Alexander Valley v. Zinke (9th Cir.)***

On April 24, the Ninth Circuit Court of Appeals issued an unpublished decision holding that the district court correctly concluded that all of Mishewal Wappo's claims turned on the 1961 termination of the Alexander Valley Rancheria and are therefore time-barred. Mishewal Wappo will have until June 8 to seek rehearing and until July 24 to petition the Supreme Court for certiorari. (Rebekah Krispinsky, 202-281-6764; Jim Porter, 202-208-5349)

***State of New Mexico v Zinke (10th Cir)***

On April 21, the Tenth Circuit Court of Appeals issued a decision holding that the district court correctly concluded that the Secretary lacked authority to promulgate the regulations found at 25 C.F.R. § 291 regarding the process Indian tribes and States negotiate gaming compacts. (John Hay, 202-208-4553, Andy Caulum 202-208-7024).

**OTHER LITIGATION MATTERS:**

**Gateway West Transmission Project (Idaho)**

On April 18, the Interior Board of Land Appeals granted BLM's motion to remand the decision approving a right-of-way grant for Segments 8 and 9 of the Gateway West Transmission project in Idaho. Four appeals of the January 19, 2017, Gateway West decision were filed in February (two appeals by different environmental groups, one by Owyhee County, Idaho, and one by the State of Idaho). The purpose of the remand is to reconsider the decision based in part on requests from the proponent and the Governor of Idaho. On remand, BLM will consider whether to approve a different alternative relying substantially on the previous environmental analyses and documentation. (Scott Hulbert, 208-334-1908; Mike Smith, 202-513-0580)

***Eco Tours Adventures, Inc. v. Ryan Zinke (D.D.C.)***

Parties must submit briefing schedule to the court. In 2013, Eco Tours Adventures, Inc. (Eco Tours) brought suit in the Court of Federal Claims challenging the National Park Service's (NPS) decision to award two cross-country skiing concession contracts to incumbent preferred offerors. The Court of Federal Claims (CFC) ruled against the NPS and awarded Eco Tours its bid preparation costs but found that it did not have the authority to issue the equitable relief sought by Eco Tours (i.e., ordering the NPS to award the contracts to Eco Tours). NPS subsequently paid Eco Tours its bid preparation costs and awarded the contracts to the incumbent preferred offerors. In December 2014, Eco Tours filed suit in Federal District Court under the APA, seeking from the District Court the equitable relief the CFC denied. On April 18, 2017, the District Court denied DOI's Motion for Summary Judgment and granted in part Eco Tours' Motion for Summary Judgment. The Court ruled that Eco Tours is entitled to equitable relief, but ordered the parties to brief the following two issues: 1) whether the incumbent concessioners should be joined as parties, under Federal Rule of Civil Procedure 19; and 2) the appropriate form of injunctive relief, along with detailed proposed orders. (R.J. Chance, 303-445-0605; Colleen Burnidge, 303-445-0603; Jeremy Simon, 202-252-2528)

**In the Matter of the Adjudication of the Existing and Reserved Rights to the Use of Water, Both Surface and Underground, of the Blackfeet Tribe of the Blackfeet Reservation within the State of Montana, Civ. No. WC-91-1, Montana Water Court**

On April 20, the Blackfeet Tribe ratified the Blackfeet Tribe - Montana Compact and the Blackfeet Indian Water Rights Settlement Act. The settling parties now have until October 17, 2017, to file a motion with the Montana Water Court for entry of a Preliminary Decree of the Tribal Water Right. (John Chaffin, 406-247-7058)

***American Exploration & Mining Association v. DOI (D.D.C.) - Challenge to Rocky Mountain and Great Basin Region Sage Grouse plans***

On April 21, the court ordered the parties to file a joint status report with recommendations for further proceedings by May 5. The recommendations shall include (1) a deadline for motions concerning the scope of the Administrative Record, and (2) briefing by potential intervenors. We are also seeking an extension until May 11 to file a response to motions to intervene in the case. (Sarah Shattuck, 202-208-3748)

***Harney Soil and Water Conservation District v. DOI (D.D.C.) - Challenge to Oregon Sage Grouse plan***

On April 21, the court ordered the parties to file a joint status report with recommendations for further proceedings, including briefing by potential intervenors, by May 5. The court also ordered that this case would not be consolidated with *AEMA v. Jewell* at this time. We are also seeking an extension until May 15 to respond to motions to intervene in the case. (Sarah Shattuck, 202-208-3748)

***Western Energy Alliance v. DOI (D.D.C.) - Challenge to Rocky Mountain and Great Basin Region Sage Grouse plans***

On April 21, the court ordered the parties to file a joint status report with recommendations for further proceedings, including briefing by potential intervenors, by May 5. We are also seeking an extension until May 11 to file a response to motions to intervene in the case. (Sarah Shattuck, 202-208-3748)

***Continental Resources, Inc. v. North Dakota Board of University & School Lands (D.N.D.) - Interpleader case to compel the U.S. and the State of North Dakota to litigate allegedly competing claims to certain submerged lands under Lake Sakakawea***

Continental, which holds oil and gas leases from both the United States and North Dakota for submerged lands under Lake Sakakawea, sought to compel the United States and the state to litigate competing claims to the lands. The United States recognizes that North Dakota owns the submerged lands that lie within the historic (pre-lake) Missouri River riverbed (outside of the Fort Berthold and Standing Rock Reservations), but asserts that the United States and private landowners own the submerged lands outside the historic riverbed. On April 21, 2017, the Governor of North Dakota signed S.B. 2134, which disclaims any state title to submerged lands

above the historic ordinary high water mark (OHWM) of the Missouri River outside the Fort Berthold and Standing Rock Reservations. This state law may resolve this litigation. S.B. 2134 provides that title to submerged lands within the Fort Berthold and Standing Rock Reservations "is controlled by other law." (Haninah Levine 202 208-4321; Karan Dunnigan 406 247-7059)

***Morales, et al. v. United States (9th Cir.)***

Plaintiffs, Steven Morales and Nicole Perry, Co-Personal Representatives of the Estate of Raymond Perry, and Chopper II, LLC, filed this wrongful death and property damage action under Federal Tort Claims Act (FTCA) alleging that the United States Geological Survey's failure to mark its cable across a canyon caused Mr. Perry, a helicopter pilot, to strike the cable, resulting in the death of Mr. Perry and three passengers, and damage to the helicopter. On January 6, 2017, the district court granted the United States' motion to dismiss for lack of subject-matter jurisdiction pursuant to the discretionary function exception of the FTCA and denied Plaintiffs' motion for partial summary judgment. Plaintiffs filed a notice of appeal on February 6. A mediation assessment conference scheduled for April 26. (Constance Genter, 602-364-7890.)

***In re the General Adjudication to Use Water in the Gila River System and Source – Contested Case: In re Redfield Canyon Wilderness Area (Ariz. Super. Ct.)***

BLM claims federal reserved water rights for the Redfield Canyon Wilderness Area, which was established in 1988. Pursuant to Freeport Minerals Corporation's motion for summary judgment, the court dismissed BLM's claims related to certain point sources (springs), after which the Salt River Project (SRP) filed a motion for reconsideration, arguing that the point sources should be handled under a *de minimis* process separately being established in another contested case. BLM filed a response in support of SRP's motion on March 31. Freeport has until April 25 to respond, and oral argument will be held on April 27. However, based on an adverse ruling granting an unrelated motion in *limine* filed by the Arizona State Land Department and comments by the court recently, along with several other factors, BLM may be asking SOL/DOJ to take action in the near future to withdraw the claims. (John Gaudio, 602-364-7892)

***Routson v. Zinke (D. Ariz.)***

Plaintiffs, Donald and Rebecca Routson, seek judicial review of an IBLA decision affirming the BLM's denial of Plaintiffs' petition for a corrective patent. The United States' cross-motion for summary judgment was filed on February 20, 2017, Plaintiffs' filed their response on March 20, and the United States' filed a reply on April 11. Plaintiffs subsequently moved to strike the United States' reply, and the United States' response to the motion to strike is due April 27. (Wonsook Sprague, 602-364-7891)

***Northern Improvement Company, et al. v. United States (D. Ariz.)***

Plaintiffs, Northern Improvement Company and Alfred and Tamma Schritter, seek ownership under the Quiet Title Act of sand and gravel under land administered by the BLM Kingman Field

Office in Arizona. A joint status report on settlement efforts is due April 28. (Wonsook Sprague, 602-364-7891)

***Wickenheisser, et al. v. United States (D. Utah)***

Plaintiffs, husband and wife, seek damages of \$500,000 under the Federal Tort Claims Act (FTCA) arising when the wife slipped while walking at night across a small irrigation ditch to a bathroom in a campground located in Zion National Park. On February 17 the United States filed a motion to dismiss on the basis of the discretionary function exception under the FTCA. The United States' Reply Brief is due on Friday, April 28. (Kevin Jones, 801-239-0546.)

***St. Paul Fire & Marine Ins. Co. v. United States (D. Ariz.)***

Plaintiff filed a subrogation action under the FTCA seeking reimbursement of \$70,972.78 paid under a workers' compensation policy to an employee of the Gila River Indian Community who sustained injuries after being struck by a bus. The bus was driven by another Gila River Indian Community employee working under a 638 contract. The United States' answer is due May 1. (Chris Evanoff, 602-364-7996)

***Beaver County, Utah v. U.S. Dep't of the Interior, et al., No. 2:17-cv-00088 (D. Utah)***

On February 7, Beaver County filed a complaint and motion for preliminary injunction regarding a gather of wild horses within the Sulphur Herd Management Area (HMA) in southwestern Utah. BLM completed the gather on January 31, 2017, which resulted in the removal of 433 horses and the treatment and release back into the HMA of 192 horses, of which 112 were stallions and 80 were mares treated with PZP, a fertility control vaccine. Plaintiff withdrew its motion for preliminary injunction after the treated horses were released. The complaint is not moot, however, because it alleges that BLM should have removed more horses than it did. The USAO (Utah) plans to file a motion to dismiss on standing and sovereign immunity grounds on May 10. (Leah Peterson, 801-239-0540.)

***Garfield County, Utah, et al. v. United States (Utah S. Ct.)***

Pending in Utah federal district court are 27 QTA lawsuits in which the State of Utah and certain counties claim ownership of over 12,000 R.S. 2477 rights-of-ways. In April 2015, the district court certified to the Utah Supreme Court the question, "Are Utah Code Ann. § 78B-2-201(1) and its predecessor statutes of limitations or statutes of repose?" The federal district court opined that, if § 78B-2-201 is a statute of repose, the R.S. 2477 claims in the cases pending before it would be untimely filed. In April 2016, following briefing by the parties, the Utah Supreme Court held oral argument and took the matter under advisement. On March 23, 2017, the court issued an order requesting "the parties to submit supplemental briefs on the following related question: 'Is the United States a "person" for purposes of section 201 and its predecessors?'" The United States' filed its brief on April 13 arguing that the United States is a "person" under the statute. Oral argument is scheduled for May 10. (Jim Karkut, 801-239-0544)

***TTI Waste Reduction Technologies, Inc. v. Pacific Regional Director IBIA:***

Notice of Appeal filed April 13, 2017, seeks review of a March 10, 2017, decision by the Pacific Regional Director (Decision) terminating a Lease between Cabazon Band of Mission Indians (Band) and Appellant. The Decision determined Appellant failed to cure several defaults identified in a September 9, 2016, Notice of Violation and failed to pay rent and late charges totaling \$341,600. On April 17, 2017, the Board issued a “Pre-Docketing Notice, Order to Show Cause Why Appellant should Not be Ordered to Remit Rent or Post Appeal Bond, and Order for Administrative Record,” citing leasing regulations at 25 CFR 162.470(b) and 162.472, requiring an appellant to continue making lease payments during an appeal challenging lease cancellation or, alternatively, requiring posting of an appeal bond, and noting procedural regulations at 43 CFR 4.332(d) also provide for requiring an appeal bond. (Karen Koch, 916-978-5687)

***U.S. v. South Florida Water Management District (S.D. Fla.) - Everglades Water Quality Consent Decree***

As previously reported, the South Florida Water Management District (SFWMD) has informed the Department of Justice that it wishes to vacate the 25 year-old consent decree in this case, which governs water quality/pollution control efforts that affect Everglades National Park and A.R.M. Loxahatchee National Wildlife Refuge. SFWMD has shared a draft motion to vacate, and DOJ has responded that the matter is under ongoing review, due to the transition of administrations. DOI's technical experts, working with EPA and the U.S. Army Corps of Engineers, have prepared an analysis of facts relevant to SFWMD's arguments, and we are currently reviewing a draft. The federal agencies expect to brief decision-makers in the upcoming weeks. (Jason Waanders, 215-597-5134)

***Fremont County Coroner's Office v. DOI – (Office of Hearings and Appeals NAGPRA 2017-01) NAGPRA Civil Penalty***

Pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3007 and 43 C.F.R. 10.12, the Secretary of the Interior may assess a civil penalty against any museum, including state and local entities that receive federal funds, that fails to comply with the requirements of the Act. The Director of the Arapaho Tribe of the Wind River Reservation alleged that the Fremont County Coroner's Office transferred the human remains of 10 Native American individuals contrary to the provisions of the Act. On Dec. 9, 2016, the ASFWP determined that Fremont County had failed to comply with NAGPRA for transferring 2 Native American human remains without completing the NAGPRA inventory requirements. On Jan. 23, 2017, Fremont County contested the failure to comply and filed a request for hearing with OHA. **Update:** The parties have settled; Fremont County will concede that they are subject to NAGPRA and will revise their guidance and policy documents to ensure NAGPRA procedures are followed. The settlement agreement, signed by the ASFWP, and a joint motion to dismiss the case have been filed with OHA. (Carla Mattix 505-988-6720)

***NRDC v. NPS (M.D. Fla.) - Big Cypress National Preserve exploration***

On April 24, 2017, the court issued an order denying plaintiffs motion for preliminary injunction and finding for the National Park Service (NPS) and Fish and Wildlife Service (FWS) on all claims. Plaintiffs challenged the NPS's approval of defendant-intervenor Burnett Oil Co., Inc.'s (Burnett) Plan of Operations (Plan) to conduct seismic geophysical surveys within the Big Cypress National Preserve. Plaintiffs alleged the environmental review was inadequate and sought declaratory and injunctive relief for violation of the APA, NEPA, and Park Service regulations governing oil and gas activities. They also alleged that the agencies violated the ESA and APA during their consultations regarding Burnett's Plan in various ways; failed to reinstate consultation under the ESA regarding changes to Burnett's Plan; and failed to reinstate consultation under the ESA regarding the three general management plans. With respect to the ESA claims challenging consultation on the Plan, the court found the agencies did not unlawfully narrow the action area, considered the direct and indirect effects and were not required to consider the cumulative effects, and utilized the best available science. The court deferred to the agency's expert determinations as to the appropriateness of the mitigation measures. The court held that reinstatement was not required because changes were done in response to plaintiffs' concerns and altered the Plan in such a way to minimize the environmental impact. The court found plaintiffs lacked standing to bring the claims for failure to reinstate consultation under the ESA on the three management plans, yet went on to say that, even if plaintiffs had standing, there was no obligation to reinstate consultation. The court relied on *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1158 (10th Cir. 2007), for the position that management plans do not constitute agency "action" for the purposes of section 7 consultation and there is no pending agency action related to the management plans that would trigger a duty to reinstate. Plaintiffs are likely to appeal. (Vicki Mott, NPS NEPA Claims: (404) 331-4447, ext. 233; John Doney and Jason Waanders, NPS ESA Claims; (404) 331-5612 and (215) 597-5134, respectively; and Helen Speights, FWS ESA Claims: (404) 331-4447, ext. 224).

### ***Gayle, et al. v. United States (Fed. Cl.) – Solicitor's Office Settlement Recommendation***

Five individual Indians brought suit in the CFC to recover damages alleging that the BIA wrongly denied their applications for eligibility for the Western Shoshone Judgment Award per capita roll. The plaintiffs had previously brought suit in the district court in Nevada who, on joint stipulation, remanded the matter to the agency to place the individuals on the judgment roll. However, the judgment award had already been fully distributed prior to plaintiffs' placement on the roll. In December 2016, the CFC issued an order stating the case and referring it to ADR. In a telephone status conference on 3/29, the court expressed a clear intent to find the Government liable for the omission. Subsequently, the parties reached an agreement to settle the matter for \$175,000 which represents the expected per capita share for each plaintiff. No fees or costs. (Ericka Howard, 202-208-4240)

***The Delaware Tribe of Indians, and The Delaware Trust Board v. United States (Fed. Cl.) - Solicitor's Office Settlement Recommendation***

In January 2017, the parties reached agreement to settle the tribal trust claims for \$2,435,000. Review and revision to the draft settlement recommendation is ongoing. (Joshua Edelstein, 602-364-7883).

***Pechanga Band of Luiseno Mission Indians v. Jewell, et al. (D.D.C.) – Solicitor's Office Settlement Recommendation***

In December 2016, the parties reached agreement in principle to settle the tribal trust claims for \$125,000. Review and revision to the draft settlement recommendation is ongoing. (Joshua Edelstein, 602-364-7883).

***Curtis Temple v. Great Plains Regional Director, BIA, IBIA No. 16-061, 16-099***

In this continuing trespass case before the Interior Board of Indian Appeals, the appellant filed a reply brief this week along with a Motion for Additional Time and a Motion to Hold Case in Abeyance. Our sur-reply and responses to the new motions are due May 5. (Carrie Prokop, Caitlin Lock Coomes, Hannah Bolt 612-713-7100).

***Center for Biological Diversity et al. v. Jim Kurth (USFWS) (D.D.C.)***

On April 14, Plaintiffs filed their motion for summary judgement challenging the threatened listing and final 4(d) rule for the northern long-eared bat. The interim 4(d) rule, NEPA, Polar Bear Memo and the SPR Policy are also at issue. US response to Plaintiffs' Motion and Cross-Motion for SJ are due by July 7, 2017. (Stuart Radde, 612-713-7100)

***Peabody Energy Corporation (Peabody) (Bankr. E.D. Mo.)***

The Department and its State and Tribal co-trustees are in the process of allocating recoveries from two sums of money for their natural resource damage claims against Peabody and one of its subsidiaries, Gold Fields Mining, LLC (GFs). One sum of money is derived from recoveries from environmental claim insurance policies held by Blue Tee Corporation, another potentially responsible party whose liabilities are indemnified by GFs, while the other sum derives from Federal governmental rights of set-off against an anticipated income tax refund due Peabody. The natural resource damages trustees previously agreed to settle their claims against Peabody and GFs, and to withdraw their objections to the confirmation of Peabody's Chapter 11 Reorganization Plan, in exchange for shares of these two sums of money. (Steve Barclay, 412-937-4007)

***Amber Taylor v. Jewell, et al. (E.D. Va.) - Manassas eagles***

Voluntary dismissal was filed by Plaintiff following issuance of permit by FWS on 3/13/17 for ongoing business activities at the site. Complaint had alleged that FWS violated BGEPA and APA by issuing a "no take" letter. (Amanda Bossie, 617-527-2590)



***Martin and Florence Mack v. United States (E.D. Pa.)***

Settlement conference schedule for 5/2/17 before Magistrate. The USAO requested settlement authority up to \$45,000. Plaintiffs seek \$2,000,000 for personal injuries as a result of alleged NPS negligence for a slip and fall at Independence NHP. (Amanda Bossie, 617-527-2590)

***Territory of Am. Samoa v. Nat'l Marine Fisheries Serv. (D. Haw. Mar. 20, 2017) – Ruling that the Defendants violated the Magnuson-Stevens Fishery Conservation and Management Act by failing to ensure that a rule reducing the size of the Large Vessel Prohibited Area in American Samoa is consistent with the April 17, 1900, Deed of Cession Tutuila and the July 14, 1904, Deed of Cession of Manu'a***

Interior is not a party to this lawsuit, but following the adverse decision issued last month, DOJ has us to provide a written description of the legal import of the Deeds of Cession. Interior's Office of Insular Affairs has long maintained that U.S. sovereignty over American Samoa stems from the Washington Convention of 1899 signed by the United Kingdom, Germany, and the United States, rather than the Deeds of Cession, which are subsequent in time. DOJ's deadline for filing an appeal is May 9, and we have been asked to provide our input by April 27. (Maria Lurie, 202-208-7272)

***Timberline Helicopters, Inc., B-414507 (GAO)***

On April 21, we filed our agency report in response to Timberline's challenge to IBC's solicitation to procure contractor-operated exclusive use helicopter services for BLM natural resource missions, including firefighting. Timberline asserts that no helicopter meeting the solicitation's minimum requirements can comply with applicable FAA regulations regarding the transport of personnel. In response, we provided FAA's confirmation that helicopters with restricted airworthiness certificates, which included "forest and wildlife conservation," are authorized to carry firefighters. The estimated value of this contract, including the base period and all options, is over \$17 million. Timberline's response is due May 1 and GAO must issue its decision no later than July 3. (Sherry Kinland Kaswell, 202-208-3226)

***Newman v. United States (N.D. Okla.)***

On April 24, the parties agreed to settle this FTCA case for \$60,000. Ms. Newman was bitten on the face, and badly scarred, by a Cherokee Nation drug enforcement dog during a routine traffic stop and search of her vehicle. She had \$20,000 in medical bills; the original administrative claim, which was denied, sought \$10,000,000; and the district court lawsuit sought \$1,900,000. Her Bivens claim, which the United States had argued was improperly pled, will be dismissed with prejudice without recovery. (Chuck Babst, 918-669-7902)

***Rincon Band of Mission Indians v. Escondido Mutual Water Co. (S.D. Cal.)***

On April 21, 2017, the federal district court issued an order granting the parties' motion for Approval of Settlement and Dismissal of Claims. The Court's order resolves litigation that has

been pending since the 1970s and allows the parties – the United States; the Rincon, La Jolla, San Pasqual, Pala, and Pauma Bands of Mission Indians; the City of Escondido; and the Vista Irrigation District – to implement the San Luis Rey amended water rights settlement approved by Congress last year as part of the WIIN Act. Per the Court’s instructions, the parties will file an amended proposed order with a corrected caption. (Scott Bergstrom and Chris Watson, 202-208-4335)

***Tilley v. Dept. of Interior (E.E. Tenn.)***

Tort action involving a catastrophic injury suffered by a visitor to Great Smoky Mountains National Park who was paralyzed when struck by a fallen tree. The plaintiffs (the paralyzed victim, her husband and daughter) have filed a claim seeking \$20 million in damages. Mediation is scheduled for the week of April 24. The DOJ has been authorized to settle the complaint within a range that is believed to be acceptable to the plaintiffs. (John Austin 865-545-4955)

***Island Operating Co. v. Zinke (W.D. La.) - OCS Contractor Civil Enforcement***

On March 24, 2017, the court issued a final judgment holding that BSEE lacks the statutory authority under OCSLA to pursue enforcement against contractors. By letter dated April 20, the Acting Solicitor recommended to the Department of Justice that the judgment be appealed to the 5th Circuit. (Matt Ballenger, 202-208-2485)

***Wyoming v. DOI (D. Wyo.) - BLM Venting & Flaring Rule.***

Last week, EPA provided DMR with a list of deliberative process privilege documents that it will agree to release in the administrative record. EPA also identified other documents that to be withheld or redacted. Finally, EPA stated that it needs a few more days to review a handful of the documents. DMR summarized the documents EPA is willing to release and provided waiver recommendations to BLM on April 21. BLM is on track to provide to petitioners a final list of the privileged documents it will release by April 28. Petitioners must file a status report with the court by May 5 informing the court whether they will move to complete or supplement the record. (Chris Rhymes, 202-208-4307)

***Kane County v. Zinke (D. Utah) - Challenge to Secretarial Order No. 3338, which imposed the coal leasing moratorium.***

This case is now moot, because Secretarial Order No. 3348 lifted the coal leasing moratorium and brought the PEIS review to an end. On Monday, April 24, Plaintiffs filed, on behalf of the parties, a joint stipulation of dismissal under rule 41(a)(1)(A)(ii), which does not require a court order. (Lauren Bachtel, 202-208-6420).

***Defenders of Wildlife v. Zinke (E.D. Tenn.) - Two related ESA challenges to TN coal permits.***

Defenders of Wildlife, the Sierra Club, and two local environmental organizations filed two suits against the Fish and Wildlife Service (FWS) and the Office of Surface Mining Reclamation and

Enforcement (OSMRE) for alleged violations of the ESA in connection with OSMRE's reliance on the 1996 Biological Opinion at surface coal mines in Tennessee. The parties agreed to a settlement on January 19, 2016, and the only remaining issue is the amount of attorneys' fees and costs owed to Plaintiffs. DOJ has recommended a settlement offer of \$225,000 to settle this matter. Plaintiffs must file for fees by May 19, 2017, and DOJ wants to know if DOI supports this approach prior to the May 19, 2017, filing deadline. (Sue Ely, 202-208-5959)

## **NON-LITIGATION MATTERS:**

### **Yellowstone Grizzly Bear Delisting Rule**

SOL has been asked to surname the Greater Yellowstone Ecosystem (GYE) grizzly bear rule removing GYE bears from the Endangered Species Act list. The rule designates GYE bears as a distinct population segment and simultaneously delists them. The GYE grizzly bear population includes parts of Idaho, Montana and Wyoming. The U.S. Fish and Wildlife Service delisted Yellowstone grizzly bears in 2007, but the delisting rule was vacated in 2009 by a Montana district court in *Greater Yellowstone Coalition v. Servheen*, 672 F.Supp.2d 1105 (D. Mont. 2009). The vacatur was upheld by the Ninth Circuit in *Greater Yellowstone Coalition v. Servheen*, 665 F.3d 1015 (9th Cir. 2011). (Tyson Powell, 303-445-0629)

### **Reconsideration Petition filed by Moncrief Oil (lease cancellation decision)**

On March 17, 2017, Moncrief Oil filed a Petition for reconsideration seeking the Secretary's reconsideration of BLM's decision to cancel Moncrief's oil and gas lease on Forest Service lands in the Badger-Two Medicine area of northwest Montana. Moncrief filed supplemental information on April 19. Moncrief also filed a complaint for judicial review in federal court in D.C. A response to the complaint must be filed by June 9. The Secretary must determine how to respond to the petition and the lawsuit. (Karan L. Dunnigan, 406-247-7059)

### **BOEM Final Rulemaking**

BOEM has drafted a final rule to adjust a responsible party's limit of liability under the Oil Pollution Act (OPA). OPA mandates adjustment of the liability limits not less than every three years. DMR has reviewed the rulemaking and anticipates that, this week, it will be put into DTS for surnaming. (Lori Monroe, 208-3668)

### **BLM's Hydraulic Fracturing Rule Rescission**

DMR has surnamed the notice of proposed rulemaking package and forwarded it to the acting Solicitor. (Richard McNeer, 208-5793)

### **Secretarial Order 3349 - American Energy Independence.**

On April 17, DMR provided comments to BLM on its draft briefing memo for ASLM on actions to be taken under S.O. 3349, Sections 5(c)(i), (ii) and (v). Section 5(c)(i) requires that BLM propose to rescind the hydraulic fracturing rule. Section 5(c)(ii) requires BLM to review the

final rule on waste prevention (venting and flaring). Section 5(c)(v) requires that BLM provide to the Deputy Secretary, through ASLM, a report that identifies all existing BLM actions that potentially burden the development or use of energy resources. (Wendy Dorman, 202-208-5312)

### **Hardrock Mining Reform and AML Fee**

The FY 2018 Budget Passback from OMB included two mandatory legislative proposals to be included in the President's Budget: (1) institute a leasing system for gold, silver, copper, molybdenum, uranium, iron, and lead, and (2) assess a fee on hardrock mining operations to pay for abandoned mine land reclamation (similar to the coal AML fee). The proposals described in the Passback appear similar to legislative proposals that DMR helped draft in 2011 and that have been included in the Department's proposed budget each year since. DMR will assist BLM and the Budget Office in responding to the Passback. (Kendra Nitta, 202-208-4803)

### **Arctic OCS Suspensions**

ASRC, the Alaska Native regional corporation for the North Slope, acquired 21 leases in the Beaufort Sea from Shell, and has requested that the leases be unitized and suspended. Representatives from ASRC and their counsel are coming in on Wednesday April 26 to meet with ASLMM, BSEE, and DMR to discuss the requests. (Matt Ballenger, 202-208-2485)

### **Coal Working Group Report**

BLM is compiling a revised draft report. DMR expects to receive the draft on April 25 for review by COB Wednesday. By April 28, the report is scheduled to be sent to the acting directors of BLM and OSM review. The bureaus will then send letters to the states outlining the draft report and asking for suggestions within 30 days. DMR and the bureaus intend to have the report ready for higher level review by early June. (Lauren Bachtel, 202-208-6420)

### **Accomplishments at the Crab Orchard National Wildlife Refuge Superfund Site**

Many years of response actions are bearing fruit at this Site, which was placed on the National Priorities List (NPL) in 1987. Fishing restrictions required because of PCB and other contamination at the Site are being lifted for some species of fish and reduced for others. Crab Orchard Lake is the fourth largest recreational reservoir in Illinois and has nearly a million visitors annually, largely due to the lake. In addition, land use controls are also being reduced as some investigations and cleanups are being completed, opening up many acres of the Site for public recreation and FWS use. The Site includes some 22,000 acres of land that was formerly a WWII munitions manufacturing facility. The Site, together with an additional 21,000 acres, was transferred to FWS in 1947 with the mandate to use the area as a refuge, but to continue manufacturing operations by leasing WWII facilities to industry. Some tenants still occupy the Site. The Site was organized into seven areas for investigation and cleanup. Four of those areas are complete, one is in the operations and maintenance phase, one has an on-going remedy in place, and the seventh is in the remedy selection phase. We are beginning discussions with EPA regarding removing portions of the Site from the NPL. Working with EPA, DOD, Illinois EPA,

and numerous responsible parties, we have received approximately \$28.5 million in cost recoveries at the Site, plus many times that amount in costs avoided as a result of work done by responsible parties. (Lois Wye, 202 219-1657)

### **California WaterFix, Petition before the State Water Resources Control Board (SWRCB) to Add Points of Diversion to Water Rights for the Central Valley Project (CVP) and the State Water Project (SWP)**

On April 25, the rebuttal phase of the California WaterFix hearing commences following a several month break in hearing dates. The administrative hearing before the California SWRCB is for the purpose of conforming the CVP and SWP water rights to new diversion points required by the California WaterFix (twin tunnels), if built. The Department filed this joint-change petition with the California Department of Water Resources (SWP operators) in 2015, and the hearing began in July, 2016. Adding rights to divert at new diversion points does not commit the Department to participating in the CWF in any way. However, any future Board order allowing the change could include conditions on approval which impact future CVP operations. (Amy Aufdemberge, 916-978-5688)

### **Creating Drone no Fly Zone Agreements with FAA for Identified National Parks**

In accordance with regulations and National Park policy in several areas, we reviewed a agreement with the FAA to create no fly areas for several National Parks designated as National Icon Parks where further restrictions and technology development to limit private use of drones was necessary. We are working with these Parks on incident reporting systems. (Kimberly Fondren, 202-208-5372)

### **Temporary Closure drafted for 24 hour a day closure of Sidewalk and Roadway abutting South Lawn South Lawn of the White House**

Working with the White House, we drafted a temporary closure record of determination for the area abutting the White House South lawn. We are now amending closures at the First Division and Sherman Park on either side of the White House. (Kimberly Fondren and Roland Blackman-202-208-4338)

### **On-site advice the United States Park Police at Global Warming Demonstration (People's Climate March).**

This demonstration on April 29, which includes a handful of celebrity speakers, is expected to draw significant crowds. There is a possibility the USPP will need legal advice during the march. Kim Fondren will be on site. (Kimberly Fondren 202-208-5372)

### **Negotiation of Yellowstone Benefits Sharing Agreement**

The National Parks Branch is advising Yellowstone National Park on negotiations for a potential benefits sharing arrangement with Sustainable Bioproducts. Authorized by the National Parks Omnibus Management Act of 1998 (54 USC 100705) and implemented through Director's Order

77, benefits sharing occurs when the NPS receives monetary or other benefits from a discovery or invention with a commercial application resulting from research originating under an NPS Scientific Research and Collecting Permit, or other permit or authorization. The technology under development originated from a research specimen collected from Yellowstone in 2008. Our office will assist NPS in the development of a Cooperative Research and Development Agreement. (Carla Mattix, 505-988-6720)

***In re Maxus Energy Corp., et al.* (U.S. bankruptcy Court District of Delaware):**

The Court approved the Disclosure Statement for the *Amended Chapter 11 Plan of Liquidation* put forward by the Debtors and others. The Confirmation Hearing is scheduled for the end of May. The Department of Justice continues to negotiate the settlement terms on behalf of the EPA, DOI and NOAA, with the Plan Proponents. DOI, EPA and NOAA have been served discovery concerning its claims and other procedural matters in the bankruptcy. (Amy Horner Hanley, 202-208-6356; Mark Barash 617-527-2103)

***In re Peabody Energy Corp., et al.* (U.S. Bankruptcy Court Eastern District of Missouri)**

The Department of Justice developed an Environmental Settlement Agreement pursuant to the *Stipulation and Agreed Order of the Debtors and Governments to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019* further dividing the recoveries from the bankruptcy among the state, tribal, federal, and joint environmental claims. It is anticipated that the Environmental Settlement Agreement will be lodged with the bankruptcy court prior to the next Omnibus Hearing on May 17, 2017. (Amy Horner Hanley: 202-208-6356; Steve Barclay: 412 937-4007; Kelly Bakayza 412-937-4007)

**Tensas River NWR Issue**

The Regional Office continues to provide assistance and guidance to the FWS' Regional Office regarding damage to a Native American burial mound at the Tensas NWR in Arkansas that resulted from a culvert replacement project in May 2013. The damage was caused by a bulldozer operated by local contractors to dig into a mound that was identified as a prehistoric archaeological site. In disturbing the site, human remains, shells and other artifacts were revealed. (Brigitte Beaton, 404-331-5611)

**Implementation of the Pechanga Water Rights Settlement**

Under procedures developed by the Secretary's Indian Water Rights Office, DWR provides support in the implementation of this recently enacted settlement, including drafting various documents necessary for the Secretary's execution of the settlement agreement and related documents. As part of this process, the Solicitor's Office requests formal concurrence from the Department of Justice in our view that the Secretary can execute the agreement. After coordination with SIWRO, DWR will provide a draft concurrence letter to the Front Office for review and finalization by April 28. (Scott Bergstrom, 202-208-5928; Chris Watson).

**Drainage Legislation:**

The House Natural Resources Water and Power Subcommittee has tentatively scheduled a mark-up of the drainage legislation for April 26 and 27. At present the draft legislation only contains the settlement with Westlands Water District, but efforts are being made to finalize and include an agreement with one of the Northerly Districts - San Luis Water District. (Shelly Randel, 202-208-5432).

### **Development Bank of American Samoa**

We will be meeting with the Acting Assistant Secretary for Insular Areas and a Treasury Department official the week of April 24 to discuss matters relating to the Development Bank of American Samoa. The Department of Treasury is concerned about the mismanagement of grants it has made available to the bank. The Treasury official is, therefore, looking to brief the Acting Assistant Secretary about the matter. (Maria Lurie, 202-208-7272)

### ***Advice to NPS Yosemite Archives/Museum on Permission to UC Merced for Digitization of Historic Photo Collection***

University of California Merced seeks access to NPS' collections of Yosemite National Park Superintendent reports and fire tower photographs. Both collections are within the public domain. We are reviewing the digitization agreement to ensure that NPS Yosemite Museum/Archives maintains control of the collection as the host repository. UC Merced would have access to the collection by linking its web server *Calisphere* to NPS' host server. We are reviewing the digitization agreement and making appropriate edits to ensure that it conforms to policy outlined in the NPS Museum Handbook. We also will ensure that UC Merced credits the Museum as the host repository and notes that the collection is loaned NPS museum property. (Craig T. Donovan, 202-208-3012)

### **Meeting with Office of Justice Services and Department of Justice Office of Tribal Justice (OTJ)**

On Monday, OJS, including Acting Director Jason Thompson and Acting Associate Director David Littlewind, met with OTJ Director Tracy Toulou, Senior Counsel Marcia Hurd, and Senior Advisor Joshua Ederheimer. We discussed numerous issues, a principal one being the U.S. Attorney's Office, NM, seeking of the death penalty related to the murder of a Navajo law enforcement officer (LEO) that requires resolving whether tribal LEOs acting under a Self-Determination contract are federal officers even absent a Special Law Enforcement Commission (SLEC). The USAO, NM, seeks our opinion by mid-June. We also discussed the severe and increasingly well publicized maltreatment of pack horses by members of the Havasupai tribe and OJS' efforts to immediately protect and improve the animals' treatment and to strategize, with DOJ, sustainable criminal action against perpetrators. (Bryan Hudson, 202-208-6371; David Armstrong, 202-208-6930)

### **FirstNet-related FOIA Requests**

As expected, we have received FOIA requests regarding the National Public Safety Broadband Network contract awarded by IBC on behalf of the First Responder Network Authority (FirstNet). Last month, the Government obtained a favorable Court of Federal Claims decision in Rivada's protest of IBC's competitive range decision. Because "any action taken or decisions made by FirstNet" are exempt from the Administrative Procedures Act (including FOIA) review by virtue of 47 U.S.C. § 1426(d), we considered whether this applied to the FOIA requests. We have determined that the exemption does not broadly extend to IBC or DOI as the servicing contracting activity, but we are continuing to analyze the practical application of the FOIA exemption to contract documents in light of the statutory language. (Bill Blake, 202-208-6969; Jennifer Heindl, 202-208-7094)

### **CBD Files 60-Day Notice of Intent to Sue FWS, BLM and Forest Service**

CBD and others filed a 60-Day NOI with FWS, BLM and the Forest Service (FS) on January 26, 2017, over alleged failures to consult under section 7 of the ESA. The NOI alleges that the FS and BLM failed to adequately consult with the Service regarding an oil and gas lease sale on the Wayne National Forest in Ohio that is associated with a Land and Resource Management Plan (Forest Plan). The agencies consulted with the Service in 2005; however, the NOI alleges that new information including hydraulic fracturing and the presence of White Nose Syndrome triggers an obligation to reinstate consultation. Counsel for the three agencies are gathering key documents and meeting with the clients to discuss next steps. (Sharon Pudwill, 612-713-7108 and Stephen Mahoney, 412-937-4002)

### **Curtis Temple trespass debt collection**

Curtis Temple owes \$276,064.69 pursuant to two final BIA grazing trespass assessments. We are assisting the Bureau in the collection process. On Wednesday, April 21, SOL and BIA-Great Plains staff had a conference call with staff from the Interior Business Center and the AS-IA Office of the CFO regarding the process for referring debts to Treasury. We are looking into concerns about the compatibility of BIA's trust responsibility with Treasury's standard terms regarding authorization to compromise debts. We plan to meet again with the group to discuss options during the week of April 24. (Carrie Prokop, Caitlin Lock Coomes, Hannah Bolt 612-713-7100)

### **Wall Street Journal FOIA Request (BIA 2017-01036)**

A WSJ reporter requested criminal law enforcement reports involving a former Indian Health Service pediatrician for the Pine Ridge Indian Reservation who was indicted in February for multiple counts of sexual abuse of minors. BIA identified two sets of responsive documents. One set pertains to a closed 2006 investigation in which the doctor was assaulted and robbed by three juveniles at his residence in IHS housing. The second set of documents pertains to the open investigation. BIA is considering whether it could issue a "Glomar" response by which it would refuse to confirm or deny whether responsive records exist. It is unclear whether a Glomar response is appropriate when the target of the FOIA has been indicted. We are coordinating with USAO-South Dakota. (Cara Pfister 612-713-7100; Bryan Hudson 202-208-6371 and Leisa Schwab 202-208-3051)



## Upcoming ESA Listing Actions from April 24 – June 30, 2017

<u>Deadline</u>	<u>Species</u>	<u>Action</u>
ASAP	2 Stoneflies (Western Glacier and Lednian)	Proposed CH and Reopening of Comment for Listing (final due 10/4/17, Stat.)
ASAP	5 Species (Desert Tortoise, Florida Black Bear, Sturgeon Chub, Sicklefing Chub, Tricolored Bat)	Batch of 90-Day Findings (9/2002, 3/2016, 11/2016, 11/2016, 9/2016, respectively, all Stat.)
ASAP	Black Pine Snake	Reopening of Comment Period for CH (final due 3/11/16, Stat.)
April 24	Gray Wolf (WY population)	Direct Final Delisting
April 28	Island Marble Butterfly	Proposed Listing (9/30/17, WP)
April 28	4 Species Guadalupe Fescue, Tobusch Fishhook Cactus, Kuenzler Hedgehog Cactus, Gypsum Wild-Buckwheat	Reopening Comment Period for: Fescue Listing/CH (final due 9/9/17), Tobusch Downlisting (final due 12/29/17), Kuenzler Downlisting (final due 1/6/18), Buckwheat Delisting (final due 1/6/18)
April 28	Slickspot Peppergrass	Amended Revised Proposed CH
May 1	Bone Cave Harvestman	90-Day Finding on Petition to Delist (5/1/17, CO)
May 1	San Felipe Gambusia	12-Month Finding (9/30/17, WP)
May 12	I'iwi	Final Listing Determination (9/20/17, CO)
May 12	Sonoyta Mud Turtle	Proposed Critical Habitat (9/21/2016, Stat.)
May 24	Texas Hornshell (NM and TX)	Proposed Critical Habitat (8/10/2016, Stat.)
May 25	Grizzly (Greater Yellowstone population)	Final Delisting Determination (3/11/17, Stat.)
May 31	Big Island Species (3 Plants, 4 Species)	Final Critical Habitat Determination (asap, Stat.), Corrected Critical Habitat Maps

The dates in the “Deadline” column are FWS’s internal targets for delivery to the Federal Register. If there are statutory deadlines (“Stat.”), or deadlines required by court orders or court-approved settlement agreements (“CO”), or if the Service’s Workplan includes a timeline for completing the determination (“WP”), they are indicated in parentheses after the species name. (Joan Goldfarb, 202-208-6620)

### **30-60 Day Look-Ahead**

Significant Litigation Deadlines reported separately in 100-day report.

**To:** russell\_rodny@ios.doi.gov[russell\_rodny@ios.doi.gov]  
**From:** (b) (6) - Russell Roddy  
**Sent:** 2017-04-25T12:23:06-04:00  
**Importance:** Normal  
**Subject:** Fwd: POLITICO's Morning Energy, presented by ExxonMobil: Outdoor recreation industry at a crossroads — Methane CRA could resurface as soon as this week — Judges skeptical of EPA's RFS waiver authority  
**Received:** 2017-04-25T12:23:39-04:00

17th(?) Item - Zinke picks 2

-----Original Message-----

**From:** Morning Energy <morningenergy@politico.com>  
**To:** rrodny1 <(b) (6) - Russell Roddy>  
**Sent:** Tue, Apr 25, 2017 10:43 am  
**Subject:** POLITICO's Morning Energy, presented by ExxonMobil: Outdoor recreation industry at a crossroads — Methane CRA could resurface as soon as this week — Judges skeptical of EPA's RFS waiver authority

By Anthony Adragna | 04/25/2017 10:00 AM EDT  
*With help from Eric Wolff and Darius Dixon*

**GETTING OUTSIDE GETS POLITICAL:** It's a big day for the outdoor recreation industry today as its trade group, the Outdoor Industry Association, releases its [annual economic report](#) at an 8 a.m. event featuring Interior Secretary Ryan Zinke and Rep. [Mike Simpson](#) at the National Press Club. The report finds the outdoor recreation economy fuels \$887 billion in consumer spending annually and generates \$65.3 billion for the federal government and \$59.2 billion in state and local tax revenue. It also calls on lawmakers to "protect America's lands and waters, the assets that are the foundation of the outdoor recreation economy" and to invest in outdoor recreation infrastructure.

**It's an interesting time for the sector,** particularly as President Donald Trump prepares to sign an executive order Wednesday directing Interior to review prior monument designations and to float options for legislative changes or modifications to the monuments, Pro's Esther Whieldon [reports](#). The Outdoor Industry Association earlier this year [announced](#) it would pull its twice-yearly trade show out of Salt Lake City after Republicans in that state refused to reconsider their push to persuade the Trump administration to rescind the Bears Ears National Monument designated by former President Barack Obama. So ME is curious what the dynamic between Zinke and the group will look like today.

**Speaking of public lands,** one senior GOP Senate aide told ME Monday that a Congressional Review Act challenge seeking to nullify a BLM rule aimed at curbing methane emissions on public lands might be brought up as soon as this week for a vote. Senate Majority Whip [John Cornyn](#) hedged when asked about timing, saying simply the challenge was "in the queue, but maybe not this week." But advocates were one vote short before the recess and it's not clear what's changed: Sens. [Heidi Heitkamp](#) and [Cory Gardner](#) remain publicly undecided. Green groups are taking no chances, with the Environmental Defense Fund launching new ads in Tennessee, Colorado, Nevada, Arizona, Ohio and around the Beltway urging senators to reject the resolution. A couple of ad buys in other states are expected but had yet to be finalized on Monday.

**MAJORITIES BACK PARIS, EPA FUNDING:** [Polling](#) out this morning finds strong majorities of Americans oppose Trump's plan to slash EPA's budget by 31 percent and potentially withdraw from the Paris climate change agreement, your ME host [reports](#). It also finds that 51 percent of people surveyed - and 54 percent of Republicans (!) - aren't buying one of the GOP's favorite talking points: That regulations aimed at addressing climate change cost American jobs. They say the rules have no impact on U.S. jobs.

**WELCOME TO TUESDAY!** I'm your host Anthony Adragna, and the Pebble Partnership's Peter Robinson was first to identify President William Howard Taft as the first to throw out the first pitch at a baseball game. For today: What was the first U.S. city to play host to the Olympics (way back in 1904)? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](#), [@Morning\\_Energy](#) and [@POLITICOPro](#).

**JUDGES GIVE EPA THE SIDE EYE ON WAIVER AUTHORITY:** EPA got caught in a cross-fire of skepticism at the D.C. Circuit Monday over its use of general waiver authority to lower RFS volumes for

2016, Pro's Eric Wolff [reports](#). The RFS typically defies partisan allegiance, and Judges Brett Kavanaugh (appointed by George W. Bush) and Patricia Millett (appointed by Obama) both sounded doubtful over EPA's position that it had taken into account the full ethanol supply line when it said there wasn't enough "supply" of ethanol. "I don't see the statute as necessarily giving that grant of authority to EPA," said Kavanaugh. "It's a separation of powers issue - if it's screwed up, Congress can fix it."

**Could save Pruitt a choice:** EPA Administrator Scott Pruitt is even now engaged in deep meditation over where to set 2018 conventional biofuel volumes. If the judges say EPA was wrong in its use of waiver authority, he'll have little choice in the matter.

**50-50 on Point of Obligation?:** Samara Spence, the DOJ lawyer representing EPA, told judges that comments on the EPA's proposed denial of petitions to change which companies must comply with the program were "split 50-50." If that's accurate, it would blow up one of the arguments put forward by biofuel advocates and the American Petroleum Institute that most of the industry wants the status quo, and only a small minority is agitating for the change. Unfortunately, ME couldn't locate the stat in the written record (though we welcome help from sharper legal eyes!), and EPA declined to say if Spence had the right information. A DOJ spokesman also declined to comment, saying it was part of ongoing litigation.

**MAIL CALL: RFA WANTS EPA TO HIT CRUISE CONTROL ON RFS:** The Renewable Fuels Association sent Pruitt a [letter](#) Monday saying, "We respectfully ask that EPA ensures the 2018 RVO rulemaking process remains on schedule, and that the 2018 conventional renewable fuel volume requirement remains at the statutory level of 15 billion gallons."

**SHUTDOWN WATCH:** As congressional leaders and the White House seek to [stave off a government shutdown](#), four groups warned leaders in a [Monday letter](#) that allowing a funding lapse would have negative consequences for local economies dependent on public lands and the National Park system. "We also ask that a budget agreement be clean of environmentally damaging policy riders that would negatively impact our public lands and natural resources, and actually increase future management costs," the Coalition to Protect America's National Parks, Public Lands Foundation, Association of U.S. Fish and Wildlife Service Retirees and National Association of Forest Service Retirees wrote.

**PAUSED AGAIN:** In what's becoming a clear pattern, the D.C. Circuit on Monday paused a lawsuit over EPA's 2015 regulation, known as the "SSM SIP call," that required 36 states to rewrite part of their Clean Air Act implementation plans, Pro's Alex Guillén [reports](#). The agency must now file status reports every 90 days on its review of the regulation under the [court's order](#).

**\*\* Presented by ExxonMobil:** Natural gas is fueling a resurgence in American manufacturing. We're playing our part. Our new projects along the Gulf Coast are expected to create more than 45,000 jobs right here at home. These are jobs natural gas is helping make happen, all while reducing America's emissions. Learn more at: [ExxonMobil.com](#) \*\*

**MNUCHIN DODGES:** Secretary of the Treasury Steven Mnuchin wouldn't directly respond Monday when asked if he favored staying in the Paris agreement. "We're having discussions on that, and that's where I'll go on that," he said at the White House daily press briefing.

**Going straight for the aide:** That comes as a manufacturers trade group sent [a letter](#) Monday directly to George David Banks, a special assistant to the president on international energy matters, urging him to back efforts to pull out of the agreement. "We are the ones who eventually bear the costs of government imposed GHG reduction schemes. At the same time, we are often already economically disadvantaged, as compared to global competitors who are subsidized or protected by their governments," the Industrial Energy Consumers of America said. Banks has [advocated](#) for sticking with the deal, albeit with reductions in the U.S. commitment to carbon reduction.

**GAS GURUS HUDDLE ON TAXES:** Eleven chief financial officers from leading natural gas utilities meet with House and Senate lawmakers on the Hill today about corporate tax reform. They'll argue for preserving deductibility of interest, retaining property tax deductions, maintaining a low tax rate for dividends and upholding parity in the tax treatment of dividends and capital gains, extending the ability to carry forward Net Operating Loss, and defining the treatment of excess deferred taxes.

**PERRY HITS MANHATTAN:** Energy Secretary Rick Perry delivers [keynote remarks](#) today at 11:45 a.m. at Bloomberg New Energy Finance's Future of Energy Global Summit. His appearance comes after remarks to the National Rural Electric Cooperative Association legislative conference Monday afternoon.

**ZINKE PICKS TWO:** Daniel Jorjani, a former general counsel to Freedom Partners, and James Cason, former Interior associate deputy secretary from 2001 through 2009, have been selected by Zinke to lead Interior's task force charged with cutting regulations, E&E News PM [reports](#).

**JUSTICE SETTLES WITH MOX CONTRACTOR FACED WITH FRAUD:** Georgia-based Energy & Process Corp. agreed to pay \$4.6 million to resolve a federal government lawsuit charging that the firm knowingly supplied defective materials for the Energy Department's MOX nuclear facility, the Justice Department [announced](#) Monday. The original lawsuit, filed by a former DOE contractor, alleged that "E&P failed to perform most of the necessary quality assurance measures, while falsely certifying that those requirements had been met" and that "one-third of the rebar supplied by E&P and used in the construction was found to be defective."

"This settlement recovers substantial losses caused by E&P's decision to cavalierly place its own profits above its commitment to adhere to important nuclear safety and quality control requirements," U.S. Attorney John Horn for the Northern District of Georgia said in a statement. The Justice Department got [involved](#) in September under the False Claims Act, which lets private citizens bring lawsuit on behalf of the government in these types of cases and get a share in any money recovered. The ex-contractor's share of the settlement hasn't been determined yet.

**HELLER BASHES SHIMKUS DRAFT BILL:** Sen. [Dean Heller](#) strongly criticized Rep. [John Shimkus'](#) draft nuclear waste storage [legislation](#), the subject of a hearing set for Wednesday, in a Monday [letter](#) and urged the House Energy and Commerce subcommittee chairman to work with him on a different approach. "I am highly concerned that your proposed legislation would not only significantly harm the state of Nevada but would infringe upon states' rights concerning air and water permitting authority," he wrote. "Our nation cannot fully move forward with viable sustainable solutions for spent nuclear fuel and defense high-level waste until Congress moves past Yucca Mountain."

**REPORT: WATER IS BIG BUSINESS:** Economic activity associated with the oceans and Great Lakes supported 3.1 million employees and \$352 billion in GDP, according to a [NOAA report](#) released Monday. Back in 2014, sector job growth outpaced the national average with 75,000 new jobs added, according to the report.

**MIXED MESSAGES FROM DUKE FRACKING STUDY:** New [research](#) from Duke University concludes fracking has not impacted West Virginia's groundwater, but spills of wastewater from the practice may threaten the state's surface water. "The bottom-line assessment is that groundwater is so far not being impacted, but surface water is more readily contaminated because of the frequency of spills," Avner Vengosh, a Duke professor on the study, said in a statement. Results of the peer-reviewed study were published in the European journal *Geochimica et Cosmochimica Acta*.

**GAO: TVA MUST COMMUNICATE DEBT REDUCTION PLANS BETTER:** TVA's unfunded pension liabilities have steadily increased over the past 10 years, and the federal electric utility must do a better job of communicating how it intends to meet its debt reduction goals, GAO said in [a report](#) released Monday.

**COLD WATER ON COAL RECOVERY?** The Center on Global Energy Policy at Columbia University is out with [a paper](#) today arguing Trump's efforts to roll back a host of Obama-era environmental regulations won't materially alter economic conditions in coal communities. The paper argues low natural gas prices are responsible for 49 percent of the domestic coal industry's decline, lower-than-expected electricity demand accounts for 26 percent and renewable energy growth is responsible for 18 percent. It also concludes "changes in the global coal market have played a far greater role in the collapse of the U.S. coal industry than is generally understood."

**MOVERS, SHAKERS:** Kristin Rudman has joined the Edison Electric Institute as a media relations manager; she was previously a producer at Fox Business.

**Jeremy Harrell** has joined ClearPath as its policy director as businessman Jay Faison's outlet further staffs up; he comes from Heller's office where he worked on energy, environmental and other policy matters.

**Christine Wyman** is joining Bracewell's policy resolution group as senior counsel. She was previously senior counsel at the American Gas Association (h/t POLITICO Influence).

**Chloe Maxmin**, a prominent youth climate activist, has joined the board of Friends of the Earth for its 2017-2020 term.

#### QUICK HITS

- At least global warming may get Americans off the couch more. [The Associated Press](#).
- Investor pressure grows on Exxon Mobil over climate action. [Financial Times](#).
- Republican Cracks Emerge in Trump's Coal-Heavy Energy Plan. [Bloomberg](#).
- 2 men convicted on federal felony charges in Bundy standoff in Nevada; judge declares mistrial on some charges. [Los Angeles Times](#).

- Couple unswayed on pipeline as explosion anniversary nears. [Pittsburgh Tribune-Review](#).

**THAT'S ALL FOR ME!**

**\*\* Presented by ExxonMobil:** Energy is fundamental to modern life and drives economic prosperity - in small communities across America and around the world. We need a range of solutions to meet growing energy demand while reducing emissions to address the risk of climate change. Visit the Energy Factor to learn more about some of the bold ideas and next-generation technologies we're working on to meet this challenge: [EnergyFactor.com](#) \*\*

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**Subject:** Morning Energy, presented by ExxonMobil: Energy rare bright spot for Trump as 100 days near — More energy executive orders coming this week — Marches for Science draw scores  
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By Anthony Adragna | 04/24/2017 05:41 AM EDT

*With help from Esther Whieldon, Annie Snider and Alex Guillén*

**GEARING UP FOR DAY 100:** Energy and environmental issues offer perhaps the most concrete accomplishments for President Donald Trump to point to as he nears the 100-day mark of his presidency. He's signed four energy-related resolutions wiping out Obama-era rules, put in place Cabinet officials dedicated to rolling back other regulations and unleashed a steady stream of executive orders and photo ops designed to reach his promise of U.S. energy independence. But whether any of this turns into a lasting legacy for Trump largely depends on what happens from here. His Cabinet lacks the political staff to follow up on his efforts undo rules like EPA's Clean Power Plan and Waters of the U.S., and there will be years of litigation over every move undoing regulations on the books. And his actions appear to have awoken scores of citizens opposed to his environmental deregulatory agenda (see below). More to come on this front as we near the actual date later this week.

**SIREN!** Trump plans to sign several additional executive orders related to energy on Friday. As Pro's Andrew Restuccia [reports](#), he'll sign one instructing the Interior Department to conduct a review of the areas currently available for offshore drilling and begin streamlining regulations governing offshore oil and gas development. And Trump will sign another calling on the agency to review previous national monument designations under the Antiquities Act. ME is old enough to remember when Republicans blasted Obama for signing so many executive orders, but this White House proudly proclaimed Trump's forthcoming actions mark the "most executive orders signed by a President since WWII."

**SHUTDOWN FEVER:** Lest you forget, the government runs out of money on Friday and there's no bill text staving off a shutdown yet. The biggest fight looks to be over the White House demand for funding for Trump's border wall in the final package, though OMB Director Mick Mulvaney [sought to downplay](#) the odds of a shutdown on Fox News Sunday. But one under-the-radar fight to watch is how Congress addresses the expiring health benefits for thousands of coal miners. Red-state Democrats [nearly shut down](#) the government in December before securing an extension.

**METHANE CRA WATCH:** There are only a couple of weeks left for lawmakers to use the Congressional Review Act to formally revoke an Obama-era regulation aimed at curbing methane emissions on public lands. Ads are still hitting the airwaves and web, and ME is hearing rumblings about a push to schedule a Senate vote. The conservation group Center for Western Priorities is out with [an analysis](#) of the money it has tracked that is being spent in hopes of nullifying with the rule. But Republicans said before the break that they were still short one vote,

so here's looking at you Sens. [Cory Gardner](#), [Rob Portman](#) and [Heidi Heitkamp](#).

**WELCOME TO MONDAY!** I'm your host Anthony Adragna, and Enbridge's Ritu Talwar was first up with the Pittsburgh Steelers as the first NFL team to visit the White House after winning a Super Bowl. Today's trivia: Who was the first president to throw out an opening pitch? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

**SCIENCE DRAWS A CROWD:** Hundreds of thousands of people across the country (and internationally) gathered on Earth Day for the March for Science, defending the role of science in policy-making and protesting the Trump administration's inaction on climate change and proposed cuts for EPA. So many people gathered in Chicago that the police [asked others](#) to refrain from joining the crowd of some 40,000. It wasn't just in Democratic strongholds though: [Hundreds rallied](#) in Wyoming, one thousand [met up](#) in Omaha and [thousands gathered](#) in Texas (scientists even [held up](#) a supportive sign in Antarctica).

Here in D.C. people waited in [lengthy lines](#) in front of EPA HQ to take pictures, Rep. Don Beyer [posed](#) with a dinosaur in his "Keep the EPA Great" hat and Bill Nye called out lawmakers during his rallying cry to attendees. "Today we have a great many lawmakers not just here, but around the world deliberately ignoring and actively suppressing science," he said. "Their inclination is misguided, and in no one's best interest." Here's our roundup of the [21 best signs](#) spotted at the festivities.

**Trump administration reacts to Earth Day:** No direct response to the marches came from the president (though his motorcade came across attendees during a Saturday afternoon trip to Walter Reed), but Trump issued a statement on Earth Day vowing a commitment to conservation. "Rigorous science is critical to my Administration's efforts to achieve the twin goals of economic growth and environmental protection," Trump said. "We should remember that rigorous science depends not on ideology, but on a spirit of honest inquiry and robust debate." Two words not appearing anywhere in the statement: climate change.

**His secretaries weigh in too:** Interior Secretary Ryan Zinke, Energy Secretary Rick Perry and EPA Administrator Scott Pruitt took to the pages of Montana's [Missoulian](#) on Earth Day to tout their ongoing efforts to balance economic growth with environmental protection. "It's time to put to rest the story of the last eight years of political division: We want a healthy America that can take care of itself," they wrote.

**READY FOR HIS CLOSEUP:** There wasn't a whole lot of new ground broken, but Perry delivered an elevator pitch of the Trump administration's energy policy during his first national television appearance in his new role. Perry noted to [Fox News](#) he didn't "argue" against the scientific consensus regarding human activity driving climate change, pledged to continue supporting renewables "my history in Texas will speak for itself" but vowed to roll back regulations in order to help unleash job creation. "It's really not rocket science, it just takes political will," he said.

**Of note:** Perry seems to have a sense of the incredibly broad and varied portfolio of his agency, as evidenced during his discussion of why DOE has a place on the president's National Security

Council. "There's probably a lot of reasons that the Secretary of Energy needs to be sitting at that table when decisions are made," he said. "There are myriad tentacles, if you will, that go very deep and very broad out of the Department of Energy that affect the security of our country."

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**PERRY TO ADDRESS NRECA:** This afternoon Perry speaks to some 2,000 co-op leaders at the National Rural Electric Cooperative Association's annual legislative conference. Attendees are spending much of Tuesday and Wednesday on Capitol Hill and at agencies.

**TRUCKERS WANT SUIT TO KEEP ON TRUCKIN':** The industry group that represents manufacturers of truck trailers (the cargo-carrying section of tractor-trailers) is against EPA's request last week to stay its lawsuit for 90 days while it reviews the group's issue. In a Friday evening [filing](#), the Truck Trailer Manufacturers Association complained that EPA did not propose staying implementation of the provisions at issue, which require new trailers be made more aerodynamic. The standards don't take effect until 2018, but TTMA says manufacturers have to act well before then to comply in time. TTMA says it could go along with a 30-day delay so EPA has more time to review the issue, or the longer 90 days requested by EPA if the court or the agency gives a similar delay to the implementation deadlines.

**PRIEBUS: WE'RE 'BEHIND' ON FILLING VACANCIES:** White House Chief of Staff Reince Priebus acknowledged on [Meet the Press](#) on Sunday that the Trump administration is "behind" on filling out various vacancies throughout the federal government but blamed Democratic obstruction in the Senate. "We have hundreds of people in the queue," he said. ME hears similar gripes from lawmakers on the Hill frequently, but the reality is the Trump administration hasn't formally nominated people for most of the slots.

**CONTRACTOR WARNS OF POSSIBLE EPA DATA SITE CLOSURE:** A federal contractor on Sunday night said that EPA has warned it may have to shut down an agency environmental data portal on Friday if government funding falls through. Bernadette Hyland, CEO of 3 Round Stones, wrote in a [post](#) on Medium that EPA has told her company to be prepared to "turn off" the [EPA Open Data](#) service on April 28 if there is a government shutdown, because in that case the agency "won't be able to give technical direction to continue any work." According to Hyland, the open data site went up last year, contains emissions data from four million sources (ranging from power plants to doctors' offices) and "is used for climate science research, life cycle assessment, health impact analysis and environmental justice." An EPA spokesman last night refuted Hyland's account and said she had no evidence to back up her claim.

**WOTUS SHOWDOWN COMES TO THE SENATE:** As the Trump administration prepares to pull back the Obama administration's signature water rule, longtime WOTUS critic Sen. [John Barrasso](#) will preside over a hearing Wednesday aimed at detailing flaws with the regulation and the process that produced it. His Environment and Public Works Committee hearing will host a who's who of players from the battle over the contentious 2015 regulation, including Michael



Josselyn, a wetlands consultant and dissenting voice from the external EPA science panel that worked on the rule, and Ken Kopocis the Obama administration water chief who oversaw the regulation.

**This'll be interesting:** Maj. Gen. John Peabody, the retired Army Corps leader who penned internal memos to his political boss complaining that his agency was cut out of the regulatory process, will also be on hand, making his first public statements around the high-stakes political drama he was thrust into when the memos were leaked just before the rule was finalized. But his testimony won't necessarily be a slam-dunk for critics of the Obama EPA rule: the disagreement at the heart of the memos was related to limits the Obama rule would have placed on jurisdiction, and the Corps' contention that any such limits required a detailed environmental review. A similar dynamic could come to pass with a new Trump administration rule, since Scott Pruitt's EPA is also in the driver's seat for the crafting of a new regulation, and is expected to push for far more dramatic limitations on federal jurisdiction.

**If you go:** The hearing is Wednesday, April 26 at 10 a.m. in 406 Dirksen.

**LET'S GET ALONG?** While in Texas on Friday for a speaking engagement, Pruitt held what appears to be his first meetings with environmental groups when he huddled with The Nature Conservancy and the Audubon Society. "We intend to do just that protect the environment through sensible regulations that allow for economic growth," he told the groups at Earth Day Texas.

**HOLD UP:** After courts stepped in and granted a bunch of initial requests from the Trump administration to pause litigation over Obama-era regulations, observers expect the D.C. Circuit will continue to give EPA a wide berth to halt these suits and move toward repeal or revision. Pro's Alex Guillén has more in Energy Regulation Watch here.

**ZINKE'S WEEK STUFFED WITH OUTDOOR INDUSTRY, NRA EVENTS:** Zinke is slated to spend parts of this week schmoozing and meeting with outdoor recreation industry leaders, sportsman group officials and the NRA. He speaks early Tuesday morning at an outdoor industry group event in Washington. Friday afternoon, Zinke and Trump are both scheduled to address a meeting of the NRA's lobbying arm, the Institute for Legislative Action, in Georgia. On his first day in office earlier this year, Zinke revoked an agency rule that had banned lead ammunition and fishing sinkers and directed agency heads to help figure out new opportunities for hunting and outdoor recreation on public lands.

**OLD KING COAL:** The Institute for Energy Economics and Financial Analysis released a research analysis Friday looking at the impacts of 24 coal-fired units at 14 plants retiring in 2017, and 22 more units at 11 plants shuttering in 2018. It looks at how the closures would affect specific mining companies and regions.

**HELPING OUT:** The American Council for Capital Formation is out with a report today recommending a number ways to lessen regulatory burdens on small businesses. They include expanding congressional authority to review and potentially repeal regulations; expanding opportunities for small business input in the rulemaking process and boosting staffing levels at OMB and OIRA so they can better evaluate the costs and benefits of rules before they're finalized.

**PIPELINES, NEEDED:** Failing to construct additional pipeline infrastructure in the Northeast could cost 78,000 jobs and \$7.6 billion in GDP by 2020, a [new report](#) out today by the U.S. Chamber's Institute for 21st Century Energy concludes. It looks at the impacts of pipelines on electricity prices in New England, New York, New Jersey, Pennsylvania, Ohio and West Virginia.

**QUIST RELEASES PUBLIC LANDS AD:** Democrat congressional candidate Rob Quist released [another ad](#) Friday vowing to "defend our right to hunt on public lands and protect our public lands from private developers" as the race to fill the seat held by Zinke heats up. That comes as the NRCC [pours an additional \\$1.2 million](#) in TV ad airtime backing Republican Greg Gianforte in the race.

**Speaking of Montana,** the president's son, Donald Trump Jr., [tweeted](#) that he was out West for the weekend: "No better way to spend #EarthDay than in the stunning state of Montana! Loved getting out with terrific people in one of my favorite states!" Fishing and hunting appeared to be on the agenda.

**CH-CH-CHANGES:** Senate Finance Chairman [Orrin Hatch](#) told a Utah political gathering over the weekend to expect "[some changes](#)" to the Bears Ears National Monument in the state. He didn't provide further details, but his comments come [days after](#) the veteran senator visited the monument.

**TEAMING UP:** The Business Council for Sustainable Energy today announces a new partnership with The Pew Charitable Trusts' Clean Energy Business Network. "This partnership will give the clean energy industry a stronger, more unified voice in our nation's capital and throughout the country," Lisa Jacobson, the council's president, said in a statement.

**MOVER, SHAKER:** Claire Douglass is joining the National Audubon Society as director of national campaigns. She was previously the campaign director for climate and energy at Oceana (h/t POLITICO Influence).

**Dennis McGinn** has joined the board of directors of CustomerFirst Renewables; he was previously assistant secretary of the Navy for energy, installations and environment.

## QUICK HITS

Chicago EPA Workers Prepare For Budget Battle With Storytelling Class. [WBEZ](#).

New SUNY chancellor is ex-Obama energy official, sources say. [Times Union](#).

Protesters demand Frelinghuysen support EPA on Earth Day. [Daily Record](#).

Embattled EPA pitches 40 "quick fixes" to slow poisoning of water at inactive Colorado mines. [Denver Post](#).

Michael Bloomberg to world leaders: ignore Trump on climate change. [The Guardian](#).

Authorities Drop 33 Cases Against Dakota Access Protesters. [The Associated Press](#).

## HAPPENING THIS WEEK

### MONDAY

1:00 p.m. Arctic 21 briefing on climate change, Hyatt Regency Reston, 1800 Presidents St., Reston, Va.

### TUESDAY

8:00 a.m. Outdoor Industry Association releases its "2017 Outdoor Recreation Economy Report," National Press Club, Holeman Lounge, 529 14th St. NW, 13th floor

### WEDNESDAY

7:30 a.m. BakerHostetler's 28th Annual Legislative Seminar, Hyatt Regency on Capitol Hill, 400 New Jersey Ave. NW

10:00 a.m. "A Review of the Technical, Scientific, and Legal Basis of the WOTUS (Waters of the United States) Rule," Senate Environment and Public Works Committee, 406 Dirksen

10:00 a.m. "H.R. \_\_\_\_\_, the Nuclear Waste Policy Amendments Act of 2017," House Energy and Commerce Environment Subcommittee, 2123 Rayburn

### THURSDAY

9:00 a.m. Our Children's Trust and Earth Guardians host a "Youth Climate Lawsuit Speak-Out" on the steps of the Supreme Court, U.S. Supreme Court

10:00 a.m. "Outdoor Recreation: Vast Impact of the Great Outdoors," House Energy and Commerce Digital Commerce and Consumer Protection, 2123 Rayburn

10:00 a.m. Hearing to receive testimony on H.R. 339, the Northern Mariana Islands Economic Expansion Act, Senate Energy and Natural Resources, 366 Dirksen

1:30 p.m. "Cracking a Frozen Debate: Where's the Political Consensus on Clean Energy Policy?" Information Technology & Innovation Foundation, G-11 Dirksen

### FRIDAY

12:00 p.m. BOEM offshore wind listening session, The Westin Annapolis Hotel, 100 Westgate Circle, Annapolis, MD 21401

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*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/04/energy-rare-bright-spot-for-trump-as-100-days-near-022487>

## **Stories from POLITICO Pro**

### **Trump to sign executive orders on drilling, cybersecurity and a rural America task force** [Back](#)

By Andrew Restuccia | 04/23/2017 08:42 PM EDT

President Donald Trump will sign a series of executive orders this week on offshore drilling, cybersecurity, veterans affairs and agriculture, according to sources familiar with the administration's plans.

The orders come in the run-up to the president's 100th day in office. By Friday, Trump will have signed 32 executive orders, the most signed by a president in the first 100 days since World War II, according to the White House.

One order will mark the administration's first steps this week toward expanding oil and gas drilling in waters off the U.S. coast.

The order will call for a "review of the locations available for offshore oil and gas exploration and of certain regulations governing offshore oil and gas exploration," the White House said.

Former President Barack Obama put large portions of the Chukchi Sea in the Arctic and dozens of underwater canyons off the East Coast permanently off limits for drilling during his final weeks in office. His administration had previously shelved plans that would have opened up other parts of East Coast and Arctic waters to oil exploration in the coming years.

Some advocates for offshore drilling have also called for opening up the Pacific Coast for new drilling for the first time in decades, and lifting the prohibition on exploration in the eastern part of the Gulf of Mexico, a move that's long been opposed by politicians from both parties in Florida.

Trump will also sign an executive order calling on the Interior Department to review previous monument designations under the Antiquities Act. Republicans have criticized Obama for designating more than two dozen national monuments during his time in office. Once an area becomes a national monument, it is largely off limits to drilling, fishing and mining.

A third executive order will establish a Office of Accountability and Whistleblower Protection in the Department of Veterans Affairs. The office will help the Secretary of Veterans Affairs to discipline or terminate VA managers or employees who fail to carry out their duties in helping our veterans."

A fourth order will set up an an interagency task force to "examine the concerns of rural America and suggest legislative and regulatory changes to address them."

Axios [first reported](#) details of the executive orders.

Trump is also expected to sign his long-awaited executive order on cybersecurity later this week, but with a major portion removed, according to multiple people familiar with the White House's plans.

The directive, which could come on Friday, will kick off reviews of each federal agency's digital defenses and direct agency heads to adopt specific cyber standards.

But the presidential fiat which has undergone numerous revisions since an early version leaked in January will no longer contain a section on modernizing federal IT systems, according to these sources.

Instead, White House senior adviser Jared Kushner will oversee the development of a separate executive order focusing on a federal IT overhaul, said a former official with insight into the administration's strategy.

*Cory Bennett and Eric Geller contributed to this report.*

[Back](#)

## **Mulvaney downplays chances of government shutdown** [Back](#)

By Patrick Temple-West | 04/23/2017 09:42 AM EDT

The White House is continuing to negotiate with congressional Democrats over funding for the government, and a shutdown after Friday is not likely, President Donald Trump's budget director said Sunday.

Speaking on "Fox News Sunday," Mick Mulvaney, the Office of Management and Budget director, downplayed concerns that Trump might demand funding for the proposed border wall along the U.S.-Mexico border.

Asked whether Trump will sign a government funding bill that does not include funding for border security, Mulvaney said: "We don't know yet. We are asking for our priorities and, importantly, we are offering to give Democrats some of their priorities as well."

He scolded Democrats for obstructionism by saying that in 2006, Democratic Sens. Barack Obama and Chuck Schumer (now the Senate minority leader) voted for border security funding.

"We're trying to get a border wall to protect millions of low-income Americans," Mulvaney said, but added: "We'll negotiate with the Democrats. The negotiations are not finished yet. We think we have given them a reasonable set of choices that they want in exchange for what we want."

"I don't think anybody foresees or expects or wants a shutdown at the end of next week," he said.

[Back](#)

## **Democrats push government toward shutdown [Back](#)**

By Burgess Everett, Seung Min Kim and Ben Weyl | 12/08/2016 06:41 PM EDT

Democrats are pushing the government to the brink of a shutdown, with coal country Senate Democrats leading a strategy to oppose a GOP spending bill if their demands aren't met for a longer extension of expiring health care benefits for coal miners.

Democratic Sens. Joe Manchin of West Virginia and Sherrod Brown of , who are both up for reelection in 2018 from states won by Donald Trump, are leading the charge to get a better deal from Republican leaders. And their push helped hardened resistance to the GOP throughout the rest of the 46-member Democratic caucus as the day went on. But Republicans say they will not renegotiate a four-month extension of coal miner health benefits and that Democrats have lost all leverage after the House passed the spending bill, 326-96, and then promptly left town.

Senate Majority Leader Mitch McConnell (R-Ky.) set in motion votes to pass the bill, leaving Democrats only procedural tactics to delay the measure through Friday's funding deadline which would put Senate Democrats in line to be blamed for a potential government shutdown. Flanked by coal miners during a bitingly cold outdoor news conference on Thursday evening, Manchin insisted this is "not a shutdown issue" and maintained he has a "strong commitment" from his Democratic colleagues to stand firm and demand a yearlong health care extension.

"I just want to say to everybody here, we are going to win this fight. I can't predict the exact path, but we are going to win this fight because we're right," said Sen. Chuck Schumer of New York, the ascending Democratic leader. "We want to get these beautiful people their due, and we won't stop 'til we do."

Schumer and Senate Minority Leader Harry Reid (D-Nev.), met privately with Manchin and Democratic Sens. Heidi Heitkamp of North Dakota and Mark Warner of Virginia to hash out the matter on Thursday afternoon. This followed an hours-long Democratic caucus meeting that ginned up the party in opposition to the government funding measure which did not include a yearlong insurance extension for miners and a water infrastructure bill that excluded "Buy America" provisions.

"A few months extension is not sufficient," Warner said after meeting with party leaders. He chuckled when asked whether he was comfortable with a shutdown. "The solution is pretty easy. It is for our Republican friends to get this fixed."

But after all those meetings, Democrats have not come up with a viable plan to achieve their goals or rule out a government shutdown. Their hope is that they can persuade the House to unanimously pass a bill with the health care extension in it, a long-shot plan that GOP leaders say is entirely implausible.

"The House can do things when they leave. Three people show up and they do it," Brown said in an interview. "That's a solution."

AshLee Strong, a spokeswoman for House Speaker Paul Ryan, said the time for negotiation is over.

"The House just took its last votes of the year," she said after the spending bill passed the House.

The Senate will hold a rare Friday session to try to work out a last minute deal and avert a shutdown.

Republicans said that despite their tactics, Democrats are going to be on the losing end of the fight. With the House slated to leave for the year on Thursday afternoon, it became impossible for the Senate to amend the spending legislation without hauling back House members later. And Senate Republicans said their members are increasingly irked by Brown and Manchin's fight.

"They're not going to get what they want. They ought to actually be grateful for what they got," said Sen. John Cornyn, the No. 2 Senate Republican. Manchin "can make life more difficult for everybody else and kill a lot of good legislation. It's not going to advance his issue."

"If Republicans want to shut it down, they will," shot back Sen. Tim Kaine (D-Va.). "We are all committed. We want to find health care for miners and widows for a year."

Republican aides argued that it was only through McConnell's advocacy for miners that the four-month health care extension is even in the bill. One senior Republican source said that the opportunity for negotiating further is "history" now that the House is gone.

On the line is health care coverage for more than 8,000 West Virginia miners and for thousands more in other Appalachian states. A Democratic aide said that even with the four-month extension miners will get cancellation notices in January.

So Democrats said it wasn't enough and that the GOP was turning its back on the working class voters who just elected Donald Trump. Heitkamp said that Democrats believe "there has been a renewed interest in these types of issues with the election of president-elect Trump."

"They totally gave the back of their hand to miners," Sen. Claire McCaskill (D-Mo.) told reporters. "Now, who's for the working people? Where is Donald Trump on miners? Crickets."

Heitkamp and McCaskill are also up for reelection in 2018 in states that Trump won resoundingly. Sen. Bob Casey of Pennsylvania, another state Trump won, has joined Manchin and Brown in objecting to routine procedural requests. On Wednesday evening, Brown objected to a resolution observing the Pearl Harbor anniversary.

Under Senate procedure, Manchin and Brown could hold up the spending bill until Sunday, though a blockade of that length would take efforts from more Democratic senators than just those two. The government shuts down at 12:01 a.m. on Saturday without congressional action. Cornyn said that Senate won't leave until it wraps up its work, which may mean weekend work and a Monday session.

Manchin's West Virginia colleague, Sen. Shelley Moore Capito, also said she will oppose the spending legislation. But the funding bill is likely to pass when it gets a vote, Republicans said.

"They don't have the votes," said Sen. John Thune (R-S.D.). "It's just a question of how much they want to drag it out. Right now, sounds like a lot."

Manchin is scheduled to go to Trump Tower on Friday morning, just hours before the Friday shutdown deadline, and according to news reports, he might be interviewing for a job in the Trump administration.

The moderate Democrat said he would "absolutely" cancel the meeting if the senatorial dispute continued.

"I'm supposed to go in the morning, so we'll see," Manchin said. "I'm sure people would understand [if I canceled]. I've got to be here and voting."

House Appropriations Chairman Hal Rogers assured reporters a government shutdown would not happen. Asked whether his committee would have to draft a three-day stopgap bill in case the Senate doesn't clear the continuing resolution by Friday night, he said. "That call will come from leadership. We'll be ready if that happens." Asked if he would be getting on a plane after the House's final votes this afternoon, he said, "No I'm not."

Further scrambling the situation, Democrats are trying to amend water infrastructure legislation passed by the House to include permanent "Buy America" language. The fights are becoming intertwined because the spending bill and water bill are the last two major pieces of legislation in Congress this year.

"We'll see how this unfolds. We haven't made a final decision" on whether to block those bills, said Senate Minority Whip Dick Durbin (D-Ill.).

The legislation, which would maintain current funding and policy for the government through April 28, must be passed by midnight Friday. Lawmakers are eager to get home and the bill, which House Republicans unveiled Tuesday night, is largely free of controversy. And as the last train leaving the station for the 114th Congress, the so-called continuing resolution is serving as a prime vehicle for other sought-after measures designed to appeal to members on both sides of the aisle.

*Elana Schor and Kaitlyn Burton contributed to this report.*

[Back](#)

**NRCC ups Montana ad spending to \$1.2 million** [Back](#)

By Elena Schneider | 04/21/2017 01:13 PM EDT

The NRCC is upping its TV ad reservations in Montana to \$1.2 million before the May 25 special House election there, a NRCC aide confirmed, expanding its spending in the race between Republican Greg Gianforte and Democrat Rob Quist.

The NRCC has already invested \$148,000 in the Montana special election. So far, [the NRCC's ads](#) have labeled Quist a liberal on health care, taxes and guns and linked him to House Minority Leader [Nancy Pelosi](#).

Congressional Leadership Fund has also expanded its ad buy in the district and [released a new](#)



TV ad Friday. The increased Republican spending comes as Quist's fundraising has accelerated. On Thursday, his campaign announced passing \$2 million raised, including \$700,000 in the previous nine days.

The NRCC ads will air on Great Falls and Missoula broadcast stations, but will expand to statewide.

Quist and Gianforte, who lost a run for governor in 2016, are running to replace Interior Secretary Ryan Zinke in the state's at-large House district.

[Back](#)

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Yes, very	Somewhat	Neutral	Not really	Not at all

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**This email was sent to heather\_swift@ios.doi.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA**

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**To:** Casey Hammond (casey\_hammond@ios.doi.gov)[casey\_hammond@ios.doi.gov]  
**From:** Carrie Domnitch  
**Sent:** 2017-04-18T11:06:36-04:00  
**Importance:** Normal  
**Subject:** API letter to Secretary Zinke on SO 3349  
**Received:** 2017-04-18T11:09:02-04:00  
17 April 17 API Letter to DOI Sec on SO 3349 Final.pdf

Casey,

Wanted to be sure that you've gotten the attached letter that API sent to Secretary Zinke yesterday in response to Secretarial Order 3349. Specifically, we provide comments on the regulatory efforts identified in SO 3349 including the USFWS management of non-federal oil and gas rights rule. We have requested a meeting with Kate and Rich and the team they deem appropriate to walk through these and additional rules/policies/etc that have impacted oil and natural gas access and production on federal lands. We are always happy to come over there and discuss these and other items with you and your team.

Take care and let me know if you have any questions.

Carrie

---

Carrie M. Domnitch  
Director, Federal Relations  
American Petroleum Institute  
202-682-8424



Erik Milito  
Group Director  
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April 17, 2017

Honorable Ryan Zinke  
Secretary of the U.S. Department of the Interior  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240

SUBJECT: Secretarial Order 3349

The Honorable Secretary Ryan Zinke,

API is pleased to see the Administration and the Department of the Interior embrace a vision and a forward-looking policy agenda that will “put our nation on track to full and dominant energy independence.” The oil and natural gas industry is committed to an approach that promotes safety and environmental performance while securing the tremendous benefits of domestic energy production for our nation. API is a leader in developing the industry technical standards and programs that enhance the safety of operations worldwide. It is also clear that producing the energy that we, and our allies, rely upon to fuel our economy have been a proven tool for job creation, economic stimulation, federal revenues, and national security.

In terms of your Secretarial Order 3349, the review of all regulations and associated documents and policies, and the revocation of Secretarial Order 3330 are important steps in the effort to “better balance conservation strategies and policies with the equally legitimate need of creating jobs for hard-working American families,” as set forth in your March 29, 2017 Order. We provide this letter as your Department and you continue to implement Secretarial Order 3349. This letter is intended to outline broad themes, as well as concerns with specific regulatory actions identified in Secretarial Order 3349.

API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America’s energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

Federal regulations from numerous departments, agencies, commissions and other entities impact domestic energy production. API has supported efforts to relieve the burdens imposed by rules from the previous Administration, many of which fall under the authority of the Department of the Interior. We believe there continue to be opportunities for improvements on many of the rules and policies of the Department which will ultimately promote safety and environmental

performance while at the same time securing the benefits of domestic energy production. We look forward to further working with the Interior Department leadership and staff on these and other rules.

The oil and natural gas industry depends on a cost-effective regulatory framework that promotes the certainty and predictability necessary to make the massive capital investments required to bring energy and other projects to the U.S. economy. Consistent with the Administration’s stated objectives of American energy dominance and energy independence, federal agencies should embrace smart, cost-effective regulations and efficient permitting processes that promote access to domestic oil and natural gas resources.

There are, however, obstacles to achieving these objectives. Many projects are delayed due to the lack of clarity and efficiency in interagency coordination. Specific agencies should be designated as the lead role to ensure that permitting of energy projects is efficiently shepherded through all other relevant agencies.

Executive agencies should work to streamline these processes and eliminate the many unnecessary and duplicative steps. Furthermore, analyses under the National Environmental Policy Act (NEPA) may extend months and years past the expected deadlines for action, with some projects stuck in the NEPA process for well over a decade. Interagency consultation under the Endangered Species Act can similarly add lengthy delays.

For example, we have seen opportunities for leasing on BLM-managed lands impacted by new policies that create additional regulatory layers to remove multi-use lands from leasing opportunities. It is important to note that the lands in question are designated as multi-use and specifically for oil and natural gas leasing, and are not wilderness or national park areas. Major problems with development of resources on BLM-managed lands relate to the pace of approvals for permits to drill and the number of permits that are processed each year. A recent report by the Congressional Research Service shows a steady decline since 2006 in the number of permits processed per year (the report is provided for the record):

**Table 6. Onshore Oil and Gas Drilling Permits (FY2006-FY2014)**

Fiscal Year	New APDs Received	Total APDs Processed	APDs Pending at Year-End
2014	5,316	4,924	4,121
2013	4,757	4,892	3,546
2012	5,240	5,861	3,683
2011	4,728	5,200	4,108
2010	4,251	5,237	4,603
2009	5,257	5,306	5,589
2008	7,884	7,846	5,638
2007	8,370	8,964	5,600
2006	10,492	8,854	6,194

Source: DOI/ BLM, *FY2016 Budget Justification* for years FY2011-FY2016. For earlier years, see DOI, *Oil and Gas Utilization, Onshore and Offshore*, May 2012.

Timing is a key factor in the ability to efficiently develop oil and natural gas resources, and the slow process for securing permits from BLM is in stark contrast to the permitting timeline for securing similar permits from state regulators. This overall regulatory environment provides disincentives for investment in U.S. energy and manufacturing projects, preventing the nation from enhanced energy security and denying the U.S. Treasury significant revenues in the forms of bonuses, rents and royalties, along with jobs and project-related spending that can benefit the communities in which we operate.

Specific regulatory efforts identified in Secretarial Order 3349:

1. Rescission of final rule entitled, “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands.” The rescission of this rule is appropriate given its invalidation by a federal court in June 2016, along with the proven ability of state agencies to effectively regulate oil and natural gas operations, with expertise and knowledge of the specific geology, hydrology and other factors unique to each state. In originally promulgating this rule, BLM failed to identify a regulatory void that requires an additional regulatory layer, and failed to cite an example of groundwater pollution from more than 1 million wells that have been hydraulically fractured in the U.S. to justify this additional layer of regulation. Interior should work closely with state regulators to create consistency between the state-level requirements and oil and natural gas operations occurring on federally-managed lands.
2. Review of the final rule entitled, “Waste Prevention, Production Subject to Royalties, and Resource Conservation.” Interior should continue to work with Congress to secure repeal of this rule through the Congressional Review Act (CRA). BLM’s redundant and technically flawed rule exceeds BLM’s authority under the Mineral Leasing Act (MLA) to prevent waste by proposing to regulate emissions from drilling and production operations on federal lands for air quality and climate change purposes in contravention of the Clean Air Act (CAA) authority reserved to EPA and to the states. API believes this rule could impede energy production on federal lands, where natural gas production is already down 18 percent from 2010 to 2015. This rule could result in the shut-in of many currently producing wells, reducing revenues to the federal treasury and the supply of affordable energy for American consumers and businesses. Furthermore, repeal pursuant to the CRA is appropriate because though the rule is contrary to law, prevention of waste and conservation of resources can be accomplished using BLM’s proper authority under the MLA.
3. Review of final rule entitled, “General Provisions and Non-Federal Oil and Gas Rights.” In comments to this rule, API, joined by other industry associations, stated that the record demonstrates that the previous 9B regulations have adequately equipped the National Park Service (NPS) to carry out its responsibilities under 54 U.S.C. § 100101 in a manner that achieves a balance between the purposes for which units in the National Park System are managed with the valid existing rights of a modest number of owners of mineral rights under surface lands within NPS units. API and its allied associations believe that it is imperative that evaluation of the new rule examine the principles under which the 9B regulations had been administered.

4. Review of final rule entitled, "Management of Non-Federal Oil and Gas Rights." In comments to this rule, API and the Independent Petroleum Association of America (IPAA) acknowledged that though a mineral interest owner's use of surface National Wildlife Refuge lands must be reasonable and provide due regard for federal interests, it is inappropriate for the U. S. Fish and Wildlife Service (FWS) to condition access upon a permitting system that contains burdensome requirements that could drive premature closure of operations on valid mineral rights that pre-exist the establishment of the Refuges within which they are located. API and IPAA recommended that the FWS instead perform a careful assessment of the effectiveness of guidelines for oversight of these operations administered by the agency through a program that is adequately funded and staffed.

As stated above, regulatory systems must promote a cost-effective approach that provides certainty and predictability for continued investments in U.S. projects. We appreciate the actions of this Administration to eliminate unnecessary burden and to restore certainty and predictability into the permitting and regulatory systems. We look forward to continued engagement with the Department and you on these important issues to assure that the energy that is fundamental to our society can be developed and delivered safely and with respect for the environment we share.

Thank you again for your consideration of these comments.

Sincerely,



Erik Milito  
Group Director  
Upstream and Industry Operations  
American Petroleum Institute

**To:** Cantanzaro, Michael (b) (6) - Michael Cantanzaro ]  
**From:** Macgregor, Katharine  
**Sent:** 2017-04-13T16:35:43-04:00  
**Importance:** Normal  
**Subject:** Fwd: BLM V/F Ltr  
**Received:** 2017-04-13T16:35:49-04:00  
4-11-17 - DRAFT Response.docx

----- Forwarded message -----

**From:** **Chambers, Micah** <[micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov)>  
**Date:** Thu, Apr 13, 2017 at 3:29 PM  
**Subject:** BLM V/F Ltr  
**To:** Katharine Macgregor <[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov)>

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

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Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202 208 3671 (Direct)

The Honorable Rob Portman  
United States Senator  
448 Russell Senate Office Building  
Washington, D.C. 20510

April xx, 2017

Dear Senator Portman:

Thank you for your letter regarding the Department of the Interior's (DOI) Venting and Flaring rule. I, too, believe DOI has an integral role to play in this issue, which is why I intend to act within my authority as Secretary to craft solutions that incentivize responsible development.

I share your concerns regarding methane waste and I agree that we must manage our public lands in a pragmatic way. Should you and your Senate colleagues choose to rescind the rule through the Congressional Review Act (CRA), the Bureau of Land Management (BLM) will continue to have the ability to act under its existing authorities to meaningfully update its policies to reduce waste. The BLM will continue to regulate venting, flaring, and beneficial use of gas pursuant to the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). (b) (5)

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

I have been tasked to lead and plan for the Department's future over the next 100 years. As an admirer of President Teddy Roosevelt, you can rest assured that the policies I propose will reflect the promise I made to you and your colleagues during my confirmation hearing: we will work together to ensure the use of our public lands reflects higher purpose so that our children's children can look back and say, "We did it right."

Sincerely,

Secretary Ryan Zinke



**To:** Ryan Ullman[rullman@ipaa.org]  
**From:** Chambers, Micah  
**Sent:** 2017-04-12T12:01:47-04:00  
**Importance:** Normal  
**Subject:** BLM V/F Memo  
**Received:** 2017-04-12T12:02:34-04:00  
[4-6-17 VF CRA Briefing.pdf](#)

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

## BLM Venting & Flaring Rule

### Summary of the Final Rule:

The “Venting & Flaring Rule” (the Rule) is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). Currently, only 12 percent of operators have reported flared gas from oil well production. The Rule is codified in 43 CFR subparts 3178 and 3179 and became effective on January 17, 2017.

### Statutory Authority and Regulatory History:

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §§ 188–287) subjects federal oil and gas leases to the condition that lessees will “use all reasonable precautions to prevent waste of oil and gas developed in the land . . . .” 30 U.S.C. § 225. Further, the MLA requires lessees to exercise “reasonable diligence, skill, and care” in their operations and requires lessees to observe “such rules for the health and safety of the miners and for the prevention of undue waste as may be prescribed by [the] Secretary [of the Interior].” 30 U.S.C. § 187. The Federal Oil and Gas Royalty Management Act (FOGRMA) makes lessees liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence or the failure to comply with applicable rules or regulations. 30 U.S.C. § 1756. Both the MLA and FOGRMA authorize the Secretary of the Interior to prescribe rules and regulations necessary to carry out the purposes of those statutes. 30 U.S.C. § 189; 30 U.S.C. § 1751.

Before promulgation of the Venting and Flaring Rule, the Bureau of Land Management (BLM) regulated the venting, flaring, and beneficial use of gas pursuant to NTL-4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule included many regulatory changes, including emissions-focused requirements that did not appear in NTL-4A. Multiple states and industry groups believe that these new requirements are actually within the jurisdiction of the Clean Air Act (CAA) and therefore outside the Department’s authority to regulate.

### If the Rule is Not Repealed under the Congressional Review Act (CRA):

Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare for compliance dates. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), imposes restrictions on venting, and clarifies that when gas is “avoidably lost” and it is therefore subject to royalties. Operators must comply with the Rule’s flaring (or “gas capture”) requirements, equipment upgrade/replacement requirements, and leak detection and repair (LDAR) requirements beginning on January 17, 2018.

The BLM expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million, with first year compliance costs estimated to be \$113 million (\$84 million for LDAR alone).

The Rule will continue in effect unless the BLM rescinds or replaces the Rule through the rulemaking process outlined below, or the Rule is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with a minimum litigation cost of \$500,000. If the new rulemaking is overturned in litigation, the Venting and Flaring Rule would come back into effect.

If the Rule is Repealed under the CRA:

If the Rule is repealed under the CRA, NTL-4A would come back into effect immediately. The BLM retains its existing authority under the MLA and FOGRMA to make effective updates to NTL-4A while ceding some of the more duplicative regulatory provisions to states/EPA under the CAA.

The BLM could consider policy actions to curb waste and focus on revisions to NTL-4A to address the following:

- Encouraging beneficial use of oil or gas on lease
- Regulating flaring of unmarketable gas from oil wells
- Conserving unsold gas by reinjection
- Improving ROW timelines and removing obstacles to timely approval for pipeline infrastructure
- Recognizing existing State/tribal policy/rules, such as those in North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana

If a court overturns any replacement or revision of NTL-4A, NTL-4A would come back into effect.

**Table: Rulemaking Schedule**

Activity	Description	Timing
Advanced Notice of Proposed Rulemaking (ANPR)	OPTIONAL. The BLM would solicit input from the public on whether, and how, NTL-4A should be revised.	1 month to publish 2 months for public comment
Notice of Proposed Rulemaking (NPR)	The BLM would develop a NPR based on previous rule experiences or comments received from ANPR process. The Office of Management and Budget (OMB) needs to review and clear the proposal.	3 months to draft NPR 3 months for OMB review
NPR comment period	The NPR is published in the Federal Register for notice-and-comment period.	2 months
Comment review/ Drafting final rule	The BLM reviews the comments and revises the rule in light of those comments. The BLM sends the revised/final rule to OMB for review.	2 months review/drafting 3 months OMB review
Final rule is published	The BLM publishes the final rule in the Federal Register	After publishing, 2 months until effective
Total time to publish		13 months (for NPR) 16 months (including ANPR)
Total cost		\$1.2 2.1 million

**To:** Orth, Patrick (Portman)[patrick\_orth@portman.senate.gov]  
**From:** Chambers, Micah  
**Sent:** 2017-04-11T16:09:43-04:00  
**Importance:** Normal  
**Subject:** Re: Draft letter  
**Received:** 2017-04-11T16:10:29-04:00

THanks Pat. looks good and we'll chat later.

On Tue, Apr 11, 2017 at 2:19 PM, Orth, Patrick (Portman) <patrick\_orth@portman.senate.gov> wrote:

Dear Secretary Zinke,

Over the last decade, advancement in technology and engineering has enabled an unprecedented opportunity for the production of oil and natural gas from underground shale formations. As a result of this increased production, the United States has become more energy secure and states like Ohio have seen an increase in direct and indirect oil and gas investments.

The Department of the Interior, through the Bureau of Land Management (BLM), plays an integral role in the responsible development of the vast energy resources owned and managed by the federal government. The BLM, through the Mineral Leasing Act, is responsible for preventing the waste of methane emitted during the oil and natural gas production process. It is important that the Department minimize the waste of methane through a pragmatic approach that prevents waste but does not discourage investment. I have been encouraged by your comments during your confirmation process and in your time as Secretary that you have made public comments about your desire to reduce methane waste in a similar approach.

As you know, a Congressional Review Act (CRA) resolution currently sits before the Senate that would repeal the previous Administration's Methane and Waste Prevention Rule. I have concerns with the rule as it was written but also believe that there are actions that you can take to reduce methane waste than the previous status quo. As I consider whether or not I will vote for the CRA resolution it would be helpful to know what actions you can commit to taking should the CRA pass.

I look forward to working with you to reduce the waste of our natural resources.

Sincerely,

RP

Patrick Orth

Legislative Assistant

Office of Senator Rob Portman

Phone: 202-224-3353

Email: [Patrick\\_orth@portman.senate.gov](mailto:Patrick_orth@portman.senate.gov)

--

Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

**To:** Memmott, Justin (EPW)[justin\_memmott@epw.senate.gov]  
**From:** Chambers, Micah  
**Sent:** 2017-04-07T13:22:14-04:00  
**Importance:** Normal  
**Subject:** V/F Docs  
**Received:** 2017-04-07T13:22:57-04:00  
[4-6-17 VF CRA Briefing.pdf](#)  
[4-6-17 VF CRA VF Expanded Bullet List.docx](#)

These were delivered to Portman yesterday.

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

## BLM Venting & Flaring Rule

### Summary of the Final Rule:

The “Venting & Flaring Rule” (the Rule) is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). Currently, only 12 percent of operators have reported flared gas from oil well production. The Rule is codified in 43 CFR subparts 3178 and 3179 and became effective on January 17, 2017.

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Before promulgation of the Venting and Flaring Rule, the Bureau of Land Management (BLM) regulated the venting, flaring, and beneficial use of gas pursuant to NTL-4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule included many regulatory changes, including emissions-focused requirements that did not appear in NTL-4A. Multiple states and industry groups believe that these new requirements are actually within the jurisdiction of the Clean Air Act (CAA) and therefore outside the Department’s authority to regulate.

### If the Rule is Not Repealed under the Congressional Review Act (CRA):

Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare for compliance dates. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), imposes restrictions on venting, and clarifies that when gas is “avoidably lost” and it is therefore subject to royalties. Operators must comply with the Rule’s flaring (or “gas capture”) requirements, equipment upgrade/replacement requirements, and leak detection and repair (LDAR) requirements beginning on January 17, 2018.

The BLM expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million, with first year compliance costs estimated to be \$113 million (\$84 million for LDAR alone).

The Rule will continue in effect unless the BLM rescinds or replaces the Rule through the rulemaking process outlined below, or the Rule is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with a minimum litigation cost of \$500,000. If the new rulemaking is overturned in litigation, the Venting and Flaring Rule would come back into effect.

If the Rule is Repealed under the CRA:

If the Rule is repealed under the CRA, NTL-4A would come back into effect immediately. The BLM retains its existing authority under the MLA and FOGRMA to make effective updates to NTL-4A while ceding some of the more duplicative regulatory provisions to states/EPA under the CAA.

The BLM could consider policy actions to curb waste and focus on revisions to NTL-4A to address the following:

- Encouraging beneficial use of oil or gas on lease
- Regulating flaring of unmarketable gas from oil wells
- Conserving unsold gas by reinjection
- Improving ROW timelines and removing obstacles to timely approval for pipeline infrastructure
- Recognizing existing State/tribal policy/rules, such as those in North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana

If a court overturns any replacement or revision of NTL-4A, NTL-4A would come back into effect.

**Table: Rulemaking Schedule**

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  - Under the Mineral Leasing Act, oil or gas that is used on lease for production purposes is not subject to royalties. NTL-4A provided guidance as to the particular uses of oil or gas termed “beneficial purposes” that would not be subject to royalties. NTL-4A’s “beneficial purposes” included heating oil or gas to condition it for market, compressing gas to place in marketable condition, and fueling drilling rig engines.
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  - Oftentimes, especially in tight oil formations like the Bakken, oil production is accompanied by a extensive amounts of gas production, termed “associated gas.” Depending on the value of the associated gas and the availability of gas pipelines, it may not be economical for an oil-well operator to capture the gas, leading the operator to dispose of the gas through flaring.
  - NTL-4A required BLM approval for the routine flaring of associated gas. Such approval could be obtained upon a showing that capture of the gas is not economically justified and that conservation of the gas would lead to a premature abandonment of recoverable oil reserves and ultimately to a greater loss of energy than if the gas were flared. Following a repeal of the Rule, the BLM could consider how NTL-4A’s restrictions on routine flaring could be strengthened, either through internal guidance or through additional rulemaking.
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  - Operators may find the subsurface injection of gas to be an attractive means of disposing of gas that cannot be economically captured for market. Gas may be injected into the reservoir to enhance oil recovery, or it could be injected with the intent to recover it later. The viability of injecting unsold gas is dependent on the local geology as to whether it is suitable for accepting gas for reinjection to conserve it for future needs.
- Improving ROW timelines and removing obstacles to timely approval for pipeline infrastructure.
  - An important factor driving the flaring of associated gas is the lack of access to gas pipelines. Operators complain that pipeline construction is being delayed by the BLM’s failure to approve rights-of-way (ROW) in a timely manner. ROW approvals are impacted by coordination with other surface managing agencies (BIA/USFS/FWS/BOR/ArmyCOE).
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  - Many states with Federal oil and gas production already have regulations addressing flaring. North Dakota, for example, requires operators to submit waste minimization plans with their APDs and requires operators to capture a certain percentage of the gas they produce. Wyoming and Utah place volumetric limits on flaring, and Colorado has detailed LDAR requirements. The BLM could consider avoiding a duplicative, one-size-fits-all rule that ignores effective regulations already imposed by the states.

**To:** Harrell, Jeremy (Heller)[Jeremy\_harrell@heller.senate.gov]  
**From:** Chambers, Micah  
**Sent:** 2017-04-06T17:00:43-04:00  
**Importance:** Normal  
**Subject:** Fwd: BLM V/F Docs  
**Received:** 2017-04-06T17:01:33-04:00  
[4-6-17 VF CRA Briefing.pdf](#)

Jeremy. Thanks for chatting and appreciate the quick response today for the call. The doc is attached and expanded bullet points from the attached document are below.

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Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

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### Statutory Authority and Regulatory History:

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §§ 188–287) subjects federal oil and gas leases to the condition that lessees will “use all reasonable precautions to prevent waste of oil and gas developed in the land . . . .” 30 U.S.C. § 225. Further, the MLA requires lessees to exercise “reasonable diligence, skill, and care” in their operations and requires lessees to observe “such rules for the health and safety of the miners and for the prevention of undue waste as may be prescribed by [the] Secretary [of the Interior].” 30 U.S.C. § 187. The Federal Oil and Gas Royalty Management Act (FOGRMA) makes lessees liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence or the failure to comply with applicable rules or regulations. 30 U.S.C. § 1756. Both the MLA and FOGRMA authorize the Secretary of the Interior to prescribe rules and regulations necessary to carry out the purposes of those statutes. 30 U.S.C. § 189; 30 U.S.C. § 1751.

Before promulgation of the Venting and Flaring Rule, the Bureau of Land Management (BLM) regulated the venting, flaring, and beneficial use of gas pursuant to NTL-4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule included many regulatory changes, including emissions-focused requirements that did not appear in NTL-4A. Multiple states and industry groups believe that these new requirements are actually within the jurisdiction of the Clean Air Act (CAA) and therefore outside the Department’s authority to regulate.

### If the Rule is Not Repealed under the Congressional Review Act (CRA):

Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare for compliance dates. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), imposes restrictions on venting, and clarifies that when gas is “avoidably lost” and it is therefore subject to royalties. Operators must comply with the Rule’s flaring (or “gas capture”) requirements, equipment upgrade/replacement requirements, and leak detection and repair (LDAR) requirements beginning on January 17, 2018.

The BLM expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million, with first year compliance costs estimated to be \$113 million (\$84 million for LDAR alone).

The Rule will continue in effect unless the BLM rescinds or replaces the Rule through the rulemaking process outlined below, or the Rule is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with a minimum litigation cost of \$500,000. If the new rulemaking is overturned in litigation, the Venting and Flaring Rule would come back into effect.

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If the Rule is repealed under the CRA, NTL-4A would come back into effect immediately. The BLM retains its existing authority under the MLA and FOGRMA to make effective updates to NTL-4A while ceding some of the more duplicative regulatory provisions to states/EPA under the CAA.

The BLM could consider policy actions to curb waste and focus on revisions to NTL-4A to address the following:

- Encouraging beneficial use of oil or gas on lease
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**Table: Rulemaking Schedule**

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**To:** Sterne, Kate (Cornyn)[Kate\_Sterne@cornyn.senate.gov];  
neil\_chatterjee@mccconnell.senate.gov[neil\_chatterjee@mccconnell.senate.gov]  
**From:** Chambers, Micah  
**Sent:** 2017-04-06T16:59:34-04:00  
**Importance:** Normal  
**Subject:** Venting/Flaring Docs  
**Received:** 2017-04-06T17:00:22-04:00  
[4-6-17 VF CRA Briefing.pdf](#)  
[4-6-17 VF CRA VF Expanded Bullet List.docx](#)

Neil and Kate. Thank you both for chatting. I've attached the docs that have been sent to Portman's office for your reference. I will also be sending to Heller's. Both Senators will be doing a call with the Secretary tomorrow. Glad to talk about either if needed.

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Special Assistant / Acting Director  
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**To:** domnitchc@api.org[domnitchc@api.org]  
**From:** Chambers, Micah  
**Sent:** 2017-04-06T16:39:32-04:00  
**Importance:** Normal  
**Subject:** V/F Doc  
**Received:** 2017-04-06T16:40:20-04:00  
[4-6-17 VF CRA Briefing.pdf](#)  
[4-6-17 VF CRA Briefing.docx](#)

Here they are. Please keep close hold for right now.

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The Rule will continue in effect unless the BLM rescinds or replaces the Rule through the rulemaking process outlined below, or the Rule is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with a minimum litigation cost of \$500,000. If the new rulemaking is overturned in litigation, the Venting and Flaring Rule would come back into effect.

If the Rule is Repealed under the CRA:

If the Rule is repealed under the CRA, NTL-4A would come back into effect immediately. The BLM retains its existing authority under the MLA and FOGRMA to make effective updates to NTL-4A while ceding some of the more duplicative regulatory provisions to states/EPA under the CAA.

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- Recognizing existing State/tribal policy/rules, such as those in North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana

If a court overturns any replacement or revision of NTL-4A, NTL-4A would come back into effect.

**Table: Rulemaking Schedule**

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Final rule is published	The BLM publishes the final rule in the Federal Register	After publishing, 2 months until effective
Total time to publish		13 months (for NPR) 16 months (including ANPR)
Total cost		\$1.2 2.1 million

**To:** Orth, Patrick (Portman)[patrick\_orth@portman.senate.gov]  
**From:** Chambers, Micah  
**Sent:** 2017-04-06T16:37:29-04:00  
**Importance:** Normal  
**Subject:** BLM V/F Docs  
**Received:** 2017-04-06T16:38:17-04:00  
[4-6-17 VF CRA Briefing.pdf](#)

Pat. Here it is. Expanded bullet points from the attached document are below.

- Encouraging beneficial use of oil or gas on lease
  - Under the Mineral Leasing Act, oil or gas that is used on lease for production purposes is not subject to royalties. NTL-4A provided guidance as to the particular uses of oil or gas termed “beneficial purposes” that would not be subject to royalties. NTL-4A’s “beneficial purposes” included heating oil or gas to condition it for market, compressing gas to place in marketable condition, and fueling drilling rig engines.
  - A non-controversial part of the Venting & Flaring Rule (43 C.F.R. subpart 3178) replaced NTL-4A’s “beneficial purposes” with an expanded and clarified list of “royalty-free uses.” Following a repeal of the Rule, the BLM would consider how the beneficial-use policies of NTL-4A could be strengthened, either through internal guidance or additional rulemaking, in order to encourage conservation through beneficial use of oil or gas on lease.
- Regulating flaring of unmarketable gas from oil wells
  - Oftentimes, especially in tight oil formations like the Bakken, oil production is accompanied by a extensive amounts of gas production, termed “associated gas.” Depending on the value of the associated gas and the availability of gas pipelines, it may not be economical for an oil-well operator to capture the gas, leading the operator to dispose of the gas through flaring.
  - NTL-4A required BLM approval for the routine flaring of associated gas. Such approval could be obtained upon a showing that capture of the gas is not economically justified and that conservation of the gas would lead to a premature abandonment of recoverable oil reserves and ultimately to a greater loss of energy than if the gas were flared. Following a repeal of the Rule, the BLM could consider how NTL-4A’s restrictions on routine flaring could be strengthened, either through internal guidance or through additional rulemaking.



- Conserving unsold gas by injection
  - Operators may find the subsurface injection of gas to be an attractive means of disposing of gas that cannot be economically captured for market. Gas may be injected into the reservoir to enhance oil recovery, or it could be injected with the intent to recover it later. The viability of injecting unsold gas is dependent on the local geology as to whether it is suitable for accepting gas for reinjection to conserve it for future needs.
  
- Improving ROW timelines and removing obstacles to timely approval for pipeline infrastructure.
  - An important factor driving the flaring of associated gas is the lack of access to gas pipelines. Operators complain that pipeline construction is being delayed by the BLM's failure to approve rights-of-way (ROW) in a timely manner. ROW approvals are impacted by coordination with other surface managing agencies (BIA/USFS/FWS/BOR/ArmyCOE).
  
- Recognizing State/tribal policy/rules, such as those in North Dakota, Wyoming, Utah, New Mexico, Colorado, and Montana
  - Many states with Federal oil and gas production already have regulations addressing flaring. North Dakota, for example, requires operators to submit waste minimization plans with their APDs and requires operators to capture a certain percentage of the gas they produce. Wyoming and Utah place volumetric limits on flaring, and Colorado has detailed LDAR requirements. The BLM could consider avoiding a duplicative, one-size-fits-all rule that ignores effective regulations already imposed by the states.

--

Micah Chambers  
Special Assistant / Acting Director  
Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior

## BLM Venting & Flaring Rule

### Summary of the Final Rule:

The “Venting & Flaring Rule” (the Rule) is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). Currently, only 12 percent of operators have reported flared gas from oil well production. The Rule is codified in 43 CFR subparts 3178 and 3179 and became effective on January 17, 2017.

### Statutory Authority and Regulatory History:

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §§ 188–287) subjects federal oil and gas leases to the condition that lessees will “use all reasonable precautions to prevent waste of oil and gas developed in the land . . . .” 30 U.S.C. § 225. Further, the MLA requires lessees to exercise “reasonable diligence, skill, and care” in their operations and requires lessees to observe “such rules for the health and safety of the miners and for the prevention of undue waste as may be prescribed by [the] Secretary [of the Interior].” 30 U.S.C. § 187. The Federal Oil and Gas Royalty Management Act (FOGRMA) makes lessees liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence or the failure to comply with applicable rules or regulations. 30 U.S.C. § 1756. Both the MLA and FOGRMA authorize the Secretary of the Interior to prescribe rules and regulations necessary to carry out the purposes of those statutes. 30 U.S.C. § 189; 30 U.S.C. § 1751.

Before promulgation of the Venting and Flaring Rule, the Bureau of Land Management (BLM) regulated the venting, flaring, and beneficial use of gas pursuant to NTL-4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule included many regulatory changes, including emissions-focused requirements that did not appear in NTL-4A. Multiple states and industry groups believe that these new requirements are actually within the jurisdiction of the Clean Air Act (CAA) and therefore outside the Department’s authority to regulate.

### If the Rule is Not Repealed under the Congressional Review Act (CRA):

Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare for compliance dates. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), imposes restrictions on venting, and clarifies that when gas is “avoidably lost” and it is therefore subject to royalties. Operators must comply with the Rule’s flaring (or “gas capture”) requirements, equipment upgrade/replacement requirements, and leak detection and repair (LDAR) requirements beginning on January 17, 2018.

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The Rule will continue in effect unless the BLM rescinds or replaces the Rule through the rulemaking process outlined below, or the Rule is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with a minimum litigation cost of \$500,000. If the new rulemaking is overturned in litigation, the Venting and Flaring Rule would come back into effect.

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**Table: Rulemaking Schedule**

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**To:** Timothy Spisak[tspisak@blm.gov]  
**Cc:** Jill Moran[jcmoran@blm.gov]; Joseph (Gene) Seidlitz[gseidlit@blm.gov]; Richard Cardinale[richard\_cardinale@ios.doi.gov]; Shannon Stewart[scstewar@blm.gov]; Matthew Allen[mrallen@blm.gov]; Michael Nedd[mnedd@blm.gov]; Katharine Macgregor[katharine\_macgregor@ios.doi.gov]; James Cason[james\_cason@ios.doi.gov]; Micah Chambers[micah\_chambers@ios.doi.gov]; Kathleen Benedetto[kathleen\_benedetto@ios.doi.gov]; Chris Rhymes[christopher.rhymes@sol.doi.gov]; Jack Haugrud[jack.haugrud@sol.doi.gov]  
**From:** Hawbecker, Karen  
**Sent:** 2017-04-06T13:55:40-04:00  
**Importance:** Normal  
**Subject:** Re: Venting and Flaring Updated BP  
**Received:** 2017-04-06T13:56:11-04:00  
[2017.04.06 VF CRA Briefing Memo v2 ksh.docx](#)

I've noted my suggested edits in the attachment. Thank you. --Karen

On Thu, Apr 6, 2017 at 12:38 PM, Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)> wrote:

Per discussion...for your consideration (thanks Chris!) <<...>>

Thanks

Tim

'Serenity Now!' – Frank Costanza, *Seinfeld*, 1997

'Serenity now, insanity later' – Lloyd Braun, *Seinfeld*, 1997

\*\*\*\*\*

Timothy 'Tim' R. Spisak

Acting Assistant Director,

Energy, Minerals & Realty Management, WO-300

DOI-Bureau of Land Management

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\*\*\*\*\*

Original Appointment

**From:** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov) [mailto:[gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov)] **On Behalf Of** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov)

**Sent:** Wednesday, April 05, 2017 9:25 AM

**To:** [gareth\\_rees@ios.doi.gov](mailto:gareth_rees@ios.doi.gov); [tspisak@blm.gov](mailto:tspisak@blm.gov); [jcmoran@blm.gov](mailto:jcmoran@blm.gov); [gseidlit@blm.gov](mailto:gseidlit@blm.gov);  
[richard\\_cardinale@ios.doi.gov](mailto:richard_cardinale@ios.doi.gov); [scstewar@blm.gov](mailto:scstewar@blm.gov); [mrallen@blm.gov](mailto:mrallen@blm.gov); [mnedd@blm.gov](mailto:mnedd@blm.gov);  
[katharine\\_macgregor@ios.doi.gov](mailto:katharine_macgregor@ios.doi.gov); [james\\_cason@ios.doi.gov](mailto:james_cason@ios.doi.gov); [micah\\_chambers@ios.doi.gov](mailto:micah_chambers@ios.doi.gov);  
[kathleen\\_benedetto@ios.doi.gov](mailto:kathleen_benedetto@ios.doi.gov); [karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)

**Subject:** Follow up Meeting on Venting and Flaring

**When:** Thursday, April 06, 2017 11:00 AM 12:00 PM (UTC 05:00) Eastern Time (US & Canada).

**Where:** 6120

Summary of the Final Rule

The “Venting & Flaring Rule” (the Rule) is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL 4A). Recently, 12 percent of operators have reported flared gas from oil well production. The Rule is codified at new 43 CFR subparts 3178 and 3179 and became effective on January 17, 2017.

Statutory Authority and Regulatory History

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*If the Rule is Not Repealed under the Congressional Review Act (CRA)*

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(b) (5)

The Rule will continue in effect unless/until the BLM rescinds or replaces the Rule through the rulemaking process outlined below, or the Rule is overturned in pending litigation. Any new rule that the BLM promulgates would likely be challenged in court with an estimated litigation cost of (b) (5)

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If the new rulemaking is overturned in litigation, the Venting and Flaring Rule would come back into effect.

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**To:** Timothy Spisak[tspisak@blm.gov]  
**From:** Macgregor, Katharine  
**Sent:** 2017-04-06T09:51:59-04:00  
**Importance:** Normal  
**Received:** 2017-04-06T09:52:06-04:00  
2017.03.31 VF CRA Briefing Memo KM comments.docx

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Kate MacGregor  
1849 C ST NW  
Room 6625  
Washington DC 20240

202 208 3671 (Direct)



Summary of the Final Rule

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Prior to the enactment of the Venting and Flaring Rule, the Bureau of Land Management (BLM) has regulated the venting, flaring, and (b) (5) pursuant to NTL 4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule included many regulatory changes, including emissions focused requirements that did not appear in NTL 4A. Many states and industry groups have asserted that these requirements are actually within the jurisdiction of the (b) (5) the states under the Clean Air Act (CAA).

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  - [Redacted sub-bullet point]
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(b) (5)

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**To:** Katharine Macgregor[katharine\_macgregor@ios.doi.gov]; Nedd, Michael D[mnedd@blm.gov]  
**Cc:** Shelley McGinnis[smcginnis@blm.gov]; Shannon Stewart[scstewar@blm.gov]  
**From:** Timothy Spisak  
**Sent:** 2017-04-05T13:02:00-04:00  
**Importance:** Normal  
**Subject:** RE: Updated V&F paper UPDATE!!  
**Received:** 2017-04-05T13:02:08-04:00  
2017 04 05 VF CRA Briefing Memo v2.1.docx

Please use this version as we got some staff review (including the SOL Office) in this version. My apologies if you already started the other one.

Thanks!  
Tim

'Serenity Now!' – Frank Costanza, *Seinfeld*, 1997  
'Serenity now, insanity later' – Lloyd Braun, *Seinfeld*, 1997

\*\*\*\*\*  
Timothy 'Tim' R. Spisak  
Acting Assistant Director,  
Energy, Minerals & Realty Management, WO-300  
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[tspisak@blm.gov](mailto:tspisak@blm.gov)  
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\*\*\*\*\*

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**From:** Timothy Spisak [mailto:[tspisak@blm.gov](mailto:tspisak@blm.gov)]  
**Sent:** Wednesday, April 05, 2017 12:46 PM  
**To:** Katharine Macgregor; Nedd, Michael D  
**Cc:** Shelley McGinnis ([smcginnis@blm.gov](mailto:smcginnis@blm.gov)); Shannon Stewart  
**Subject:** Updated V&F paper

Kate, per our discussion, I have made modifications. Note: Mike has not yet had a chance to review but indicated it okay to send these concurrently.

Thanks  
Tim

'Serenity Now!' – Frank Costanza, *Seinfeld*, 1997

\*\*\*\*\*  
Timothy 'Tim' R. Spisak  
Acting Assistant Director,  
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**To:** Katharine Macgregor[katharine\_macgregor@ios.doi.gov]; Nedd, Michael D[mnedd@blm.gov]  
**Cc:** Shelley McGinnis[smcginnis@blm.gov]; Shannon Stewart[scstewar@blm.gov]  
**From:** Timothy Spisak  
**Sent:** 2017-04-05T12:46:00-04:00  
**Importance:** Normal  
**Subject:** Updated V&F paper  
**Received:** 2017-04-05T12:46:11-04:00  
[2017 04 05 VF CRA Briefing Memo v2.docx](#)

Kate, per our discussion, I have made modifications. Note: Mike has not yet had a chance to review but indicated it okay to send these concurrently.

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\*\*\*\*\*  
Timothy 'Tim' R. Spisak  
Acting Assistant Director,  
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DOI-Bureau of Land Management  
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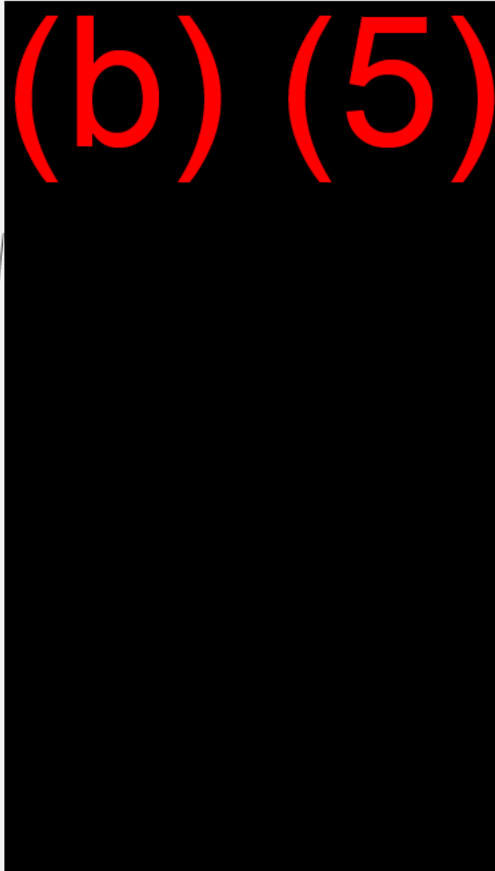
Statutory Authority and Regulatory History

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §§ 188–287) subjects federal oil and gas leases to the condition that lessees will “use all reasonable precautions to prevent waste of oil and gas developed in the land . . . .” 30 U.S.C. § 225. Further, the MLA requires lessees to exercise “reasonable diligence, skill, and care” in their operations and requires lessees to observe “such rules for the health and safety of the miners and for the prevention of undue waste as may be prescribed by [the] Secretary [of the Interior].” 30 U.S.C. § 187. The Federal Oil and Gas Royalty Management Act (FOGRMA) makes lessees liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence or the failure to comply with applicable rules or regulations. 30 U.S.C. § 1756. Both the MLA and FOGRMA authorize the Secretary of the Interior to prescribe rules and regulations necessary to carry out the purposes of those statutes. 30 U.S.C. § 189; 30 U.S.C. § 1751.

Prior to the enactment of the Venting and Flaring Rule, the Bureau of Land Management (BLM) has regulated the venting, flaring, and (b) (5) pursuant to NTL 4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule included many regulatory changes, including emissions focused requirements that did not appear in NTL 4A. Many states and industry groups have asserted that these requirements are actually within the jurisdiction of the (b) (5) states under the Clean Air Act (CAA).

(b) (5)  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
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Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs), imposes restrictions on venting, and clarifies when lost gas is “avoidably lost” and therefore subject to royalties. Operators do not have to comply with the Rule’s flaring (or “gas capture”) requirements, equipment upgrade/replacement requirements, or leak detection and repair (LDAR) requirements until January 17, 2018. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources to prepare to comply at the appropriate time.



(b) (5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

- [Redacted list item]
- [Redacted list item]
- [Redacted list item]

(b) (5)

Table: Rulemaking Schedule

Activity	Description	Timing
Advanced Notice of Proposed Rulemaking (ANPR)	OPTIONAL. The BLM would solicit input from the public on whether, and how, NTL 4A should be revised.	1 month to publish 2 months for public comment
Notice of Proposed Rulemaking (NPR)	The BLM would develop a NPR based on previous rule experiences or comments received from ANPR process. The Office of Management and Budget (OMB) needs to review and clear the proposal.	3 months to draft NPR 3 months for OMB review
NPR comment period	The NPR is published in the Federal Register for notice and comment period.	2 months
Comment review/ Drafting final rule	The BLM reviews the comments and revises the rule in light of those comments. The BLM sends the revised/final rule to OMB for review.	2 months review/drafting 3 months OMB review
Final rule is published	The BLM publishes the final rule in the Federal Register	After publishing, 2 months until effective
Total time to publish		13 months (for NPR) 16 months (including ANPR)
Total cost		\$1.2 – 2.1 million





**To:** Jack Haugrud[jack.haugrud@sol.doi.gov]; Downey Magallanes[downey\_magallanes@ios.doi.gov]; James Schindler[james\_schindler@ios.doi.gov]; Edward T Keable[edward.keable@sol.doi.gov]  
**Cc:** Christopher Rhymes[christopher.rhymes@sol.doi.gov]; Richard McNeer[Richard.McNeer@sol.doi.gov]  
**From:** Hawbecker, Karen  
**Sent:** 2017-04-03T13:49:39-04:00  
**Importance:** Normal  
**Subject:** Re: Final VF CRA letter  
**Received:** 2017-04-03T13:52:09-04:00  
[2017.03.31 VF CRA Briefing Memo \(1\) ksh edits.docx](#)

I've noted a few edits, but it otherwise looks good to me. Let me know if you plan to review this. Thank you. --  
Karen

On Mon, Apr 3, 2017 at 1:03 PM, Hawbecker, Karen <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)> wrote:

This is the draft two-pager that Jim requested at last week's venting & flaring rule meeting and that BLM has sent to ASLM for review. Please let me know if you have any edits or comments. Thank you. --Karen

----- Forwarded message -----

**From:** McGinnis, Shelley <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>  
**Date:** Mon, Apr 3, 2017 at 11:23 AM  
**Subject:** Fwd: Final VF CRA letter  
**To:** Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Lonny Bagley <[lbagley@blm.gov](mailto:lbagley@blm.gov)>, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Christopher Rhymes <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)>, "Wells, Steven" <[s1wells@blm.gov](mailto:s1wells@blm.gov)>

All,

Please see attached version of the memo that was sent to ASLM. Tim Shannon sent me the wrong document earlier. Attached is the correct version. Thanks, Shelley

----- Forwarded message -----

**From:** Shannon, Timothy <[tshannon@blm.gov](mailto:tshannon@blm.gov)>  
**Date:** Mon, Apr 3, 2017 at 11:18 AM  
**Subject:** Fwd: Final VF CRA letter  
**To:** Shelley McGinnis <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>

Correct version, TR

----- Forwarded message -----

**From:** Shannon, Timothy <[tshannon@blm.gov](mailto:tshannon@blm.gov)>  
**Date:** Fri, Mar 31, 2017 at 5:54 PM  
**Subject:** Final VF CRA letter  
**To:** "Stewart, Shannon" <[scstewar@blm.gov](mailto:scstewar@blm.gov)>  
**Cc:** Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Lonny Bagley <[lbagley@blm.gov](mailto:lbagley@blm.gov)>

Here is the final, TR

--

***Timothy R. Shannon***  
Senior Policy Advisor  
Office of the Director

1849 C. St NW Rm.5639  
Washington DC, 20240  
Office: 202-208-0469  
cell: 520.289.1573

--

***Timothy R. Shannon***  
Senior Policy Advisor  
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cell: 520.289.1573

--

Shelley McGinnis, Ph.D.  
Resource Advisor  
Bureau of Land Management  
Energy, Minerals, and Realty Management  
1849 C Street NW, Room 5625  
Washington, DC 20240  
Office: 202-208-6551  
Cell: 202-578-3010  
Email: [smcginnis@blm.gov](mailto:smcginnis@blm.gov)

## Summary of the Final Rule

The “Venting & Flaring Rule” is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). These regulations are codified at new 43 CFR subparts 3178 and 3179 and became effective on January 17, 2017.

## Statutory Authority and Regulatory History

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. §§ 188–287) subjects federal oil and gas leases to the condition that lessees will “use all reasonable precautions to prevent waste of oil and gas developed in the land . . . .” 30 U.S.C. § 225. Further, the MLA requires lessees to exercise “reasonable diligence, skill, and care” in their operations and requires lessees to observe “such rules for the health and safety of the miners and for the prevention of undue waste as may be prescribed by [the] Secretary [of the Interior].” 30 U.S.C. § 187. The Federal Oil and Gas Royalty Management Act (FOGRMA) makes lessees liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence or the failure to comply with applicable rules or regulations. 30 U.S.C. § 1756. Both the MLA and FOGRMA authorize the Secretary of the Interior to prescribe rules and regulations necessary to carry out the purposes of those statutes. 30 U.S.C. § 189; 30 U.S.C. § 1751.

From 1979 until this January, the Department regulated the venting, flaring, and (b) (5) pursuant to NTL-4A, which placed limits on the venting and flaring of gas and defined when gas was “unavoidably lost” and therefore not subject to royalties. The BLM’s Venting & Flaring Rule updated NTL-4A’s royalty-free use provisions as well as its restrictions on venting and flaring. The Venting & Flaring Rule (b) (5)

did not appear in NTL-4A and some states and industry groups have asserted that these requirements are actually within the jurisdiction of the (b) (5) states under the Clean Air Act.

(b) (5)

Although the Venting & Flaring Rule went into effect in January 2017, many of the Rule’s more onerous requirements are not yet operative. Presently, the Rule requires operators to submit a waste minimization plan with their applications for permits to drill (APDs) and imposes restrictions on venting. Operators do not have to comply with the Rule’s gas capture requirements, equipment upgrade/replacement requirements, or LDAR requirements until January 17, 2018. Although operators are not yet obligated to comply with these requirements, they will need to expend time and resources now to prepare to comply at the appropriate time.

(b) (5)

The Bureau of Land Management (BLM) expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million. (b) (5)

First year compliance costs are estimated to be \$113 million, with \$84 million of that cost being for LDAR.

(b) (5)

**To:** Jack Haugrud[jack.haugrud@sol.doi.gov]; Downey Magallanes[downey\_magallanes@ios.doi.gov]; James Schindler[james\_schindler@ios.doi.gov]; Edward T Keable[edward.keable@sol.doi.gov]  
**Cc:** Christopher Rhymes[christopher.rhymes@sol.doi.gov]; Richard McNeer[Richard.McNeer@sol.doi.gov]  
**From:** Hawbecker, Karen  
**Sent:** 2017-04-03T13:03:10-04:00  
**Importance:** Normal  
**Subject:** Fwd: Final VF CRA letter  
**Received:** 2017-04-03T13:05:40-04:00  
[2017.03.31 VF CRA Briefing Memo.docx](#)

This is the draft two-pager that Jim requested at last week's venting & flaring rule meeting and that BLM has sent to ASLM for review. Please let me know if you have any edits or comments. Thank you. --Karen

----- Forwarded message -----

**From:** **McGinnis, Shelley** <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>  
**Date:** Mon, Apr 3, 2017 at 11:23 AM  
**Subject:** Fwd: Final VF CRA letter  
**To:** Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Lonny Bagley <[lbagley@blm.gov](mailto:lbagley@blm.gov)>, Karen Hawbecker <[karen.hawbecker@sol.doi.gov](mailto:karen.hawbecker@sol.doi.gov)>, Christopher Rhymes <[christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)>, "Wells, Steven" <[slwells@blm.gov](mailto:slwells@blm.gov)>

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**Date:** Mon, Apr 3, 2017 at 11:18 AM  
**Subject:** Fwd: Final VF CRA letter  
**To:** Shelley McGinnis <[smcginnis@blm.gov](mailto:smcginnis@blm.gov)>

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**To:** "Stewart, Shannon" <[scstewar@blm.gov](mailto:scstewar@blm.gov)>  
**Cc:** Michael Nedd <[mnedd@blm.gov](mailto:mnedd@blm.gov)>, Timothy Spisak <[tspisak@blm.gov](mailto:tspisak@blm.gov)>, Lonny Bagley <[lbagley@blm.gov](mailto:lbagley@blm.gov)>

Here is the final, TR

--

*Timothy R. Shannon*

Senior Policy Advisor  
Office of the Director

1849 C. St NW Rm.5639  
Washington DC, 20240  
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--

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--

Shelley McGinnis, Ph.D.  
Resource Advisor  
Bureau of Land Management  
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Cell: 202-578-3010  
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did not appear in NTL-4A and some states and industry groups have asserted that these requirements are actually within the jurisdiction of the (b) (5) states under the Clean Air Act.

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(b) (5)

The Bureau of Land Management (BLM) expects industry’s annual compliance costs from 2017 to 2026 to be between \$114 and \$279 million. (b) (5). First year compliance costs are estimated to be \$113 million, with \$84 million of that cost being for LDAR.

(b) (5)



**To:** Jack Haugrud[jack.haugrud@sol.doi.gov]; Downey Magallanes[downey\_magallanes@ios.doi.gov]; James Schindler[james\_schindler@ios.doi.gov]; Edward T Keable[edward.keable@sol.doi.gov]  
**From:** Hawbecker, Karen  
**Sent:** 2017-03-31T08:56:32-04:00  
**Importance:** Normal  
**Subject:** Fwd: Venting/Flaring Briefing Paper  
**Received:** 2017-03-31T08:57:00-04:00  
V&F Memo 2017 0317 final (1).docx

FYI

----- Forwarded message -----

**From:** **Rhymes, Christopher** <christopher.rhymes@sol.doi.gov>  
**Date:** Fri, Mar 31, 2017 at 7:44 AM  
**Subject:** Fwd: Venting/Flaring Briefing Paper  
**To:** Karen Hawbecker <karen.hawbecker@sol.doi.gov>

Karen,

FYI: Here is the briefing paper re: Venting and Flaring that BLM prepared for today's meeting with ASLM.

Chris

----- Forwarded message -----

**From:** **McGinnis, Shelley** <smcginnis@blm.gov>  
**Date:** Thu, Mar 30, 2017 at 5:37 PM  
**Subject:** Fwd: Venting/Flaring Briefing Paper  
**To:** Timothy Spisak <tspisak@blm.gov>, Lonny Bagley <lbagley@blm.gov>, "Wells, Steven" <slwells@blm.gov>, Catherine Cook <ccook@blm.gov>, "McNeer, Richard" <richard.mcneer@sol.doi.gov>, Christopher Rhymes <christopher.rhymes@sol.doi.gov>, Ryan Sklar <ryan.sklar@sol.doi.gov>, Erica Pionke <epionke@blm.gov>

Please see final version of V&F paper for tomorrow's briefing.

----- Forwarded message -----

**From:** **Moran, Jill** <jcmoran@blm.gov>  
**Date:** Thu, Mar 30, 2017 at 2:53 PM  
**Subject:** Venting/Flaring Briefing Paper  
**To:** Tracie Lassiter <tracie\_lassiter@ios.doi.gov>, Michael Anderson <michael\_anderson@ios.doi.gov>  
**Cc:** "Stewart, Shannon" <scstewar@blm.gov>, "Winston, Beverly" <bwinston@blm.gov>, Shelley McGinnis <smcginnis@blm.gov>

Tracie and Micheal,

The following briefing paper is for tomorrow's 9:00 am meeting.

(Also, I should have the Onshore Orders materials to you around 4:15 pm)

Thanks!

Jill

--

**Jill Moran**

*Energy Program Analyst - BLM Liaison*

Office of the Assistant Secretary Land and Minerals Management  
(202) 208-4114

--

Shelley McGinnis, Ph.D.  
Resource Advisor  
Bureau of Land Management  
Energy, Minerals, and Realty Management  
1849 C Street NW, Room 5625  
Washington, DC 20240  
Office: 202-208-6551  
Cell: 202-578-3010  
Email: [smcginnis@blm.gov](mailto:smcginnis@blm.gov)

--

**Christopher M. Rhymes** | Attorney-Advisor, Division of Mineral Resources  
Office of the Solicitor | United States Department of the Interior  
1849 C Street NW, #5354 | Washington, DC 20240  
Phone: (202) 208-4307 | Email: [christopher.rhymes@sol.doi.gov](mailto:christopher.rhymes@sol.doi.gov)

**INFORMATION/BRIEFING MEMORANDUM  
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

**DATE:** March 30, 2017

**FROM:** Tim Spisak, Acting Assistant Director, Energy, Minerals and Realty Management

**SUBJECT:** Venting & Flaring Rule

**BACKGROUND**

The “Venting & Flaring Rule” is formally the *Waste Prevention, Production Subject to Royalties, and Resource Conservation* rulemaking that replaced the requirements related to venting, flaring, and royalty-free use of gas contained in the 1979 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL-4A). These regulations are codified at new 43 CFR subparts 3178 and 3179. The recent rulemaking also includes provisions to make regulatory and statutory authority consistent with respect to royalty rates that may be levied on competitively offered oil and gas leases on Federal lands. This rule implements recommendations from several oversight reviews, including reviews by the Office of the Inspector General of the Department of the Interior (OIG) and the Government Accountability Office (GAO).<sup>1</sup> The OIG and GAO reports recommended that the Bureau of Land Management (BLM) update its regulations to require operators to augment their waste prevention efforts, afford the BLM greater flexibility in setting royalty rates, and clarify BLM policies regarding royalty-free, on-site use of oil and gas.

**DISCUSSION**

**(b) (5)**

(b) (5)

(b) (5)

**To:** Jorjani, Daniel[daniel\_jorjani@ios.doi.gov]  
**Cc:** Douglas Domenech[douglas\_domenech@ios.doi.gov]; Scott Hommel[scott\_hommel@ios.doi.gov]  
**From:** Chambers, Micah  
**Sent:** 2017-03-09T17:54:03-05:00  
**Importance:** Normal  
**Subject:** Re: Follow up information on the Congressional Review Act  
**Received:** 2017-03-09T17:54:46-05:00

I spoke with him. He was good and said he'd talk to Jack about it. I told him we might need it expedited and he understood. As a side note, as I'm sure you saw, Sen. Graham (whom RZ is speaking with tomorrow morning) publicly came out in opposition to Venting/Flaring CRA this afternoon. Unique timing, since he's speaking with the Secretary in the morning.

Micah

On Thu, Mar 9, 2017 at 5:49 PM, Jorjani, Daniel <daniel\_jorjani@ios.doi.gov> wrote:

Micah - please let me know how the conversation with Robert goes.

----- Forwarded message -----

**From:** Johnston, Robert <robert.johnston@sol.doi.gov>

**Date:** Thu, Feb 9, 2017 at 4:48 PM

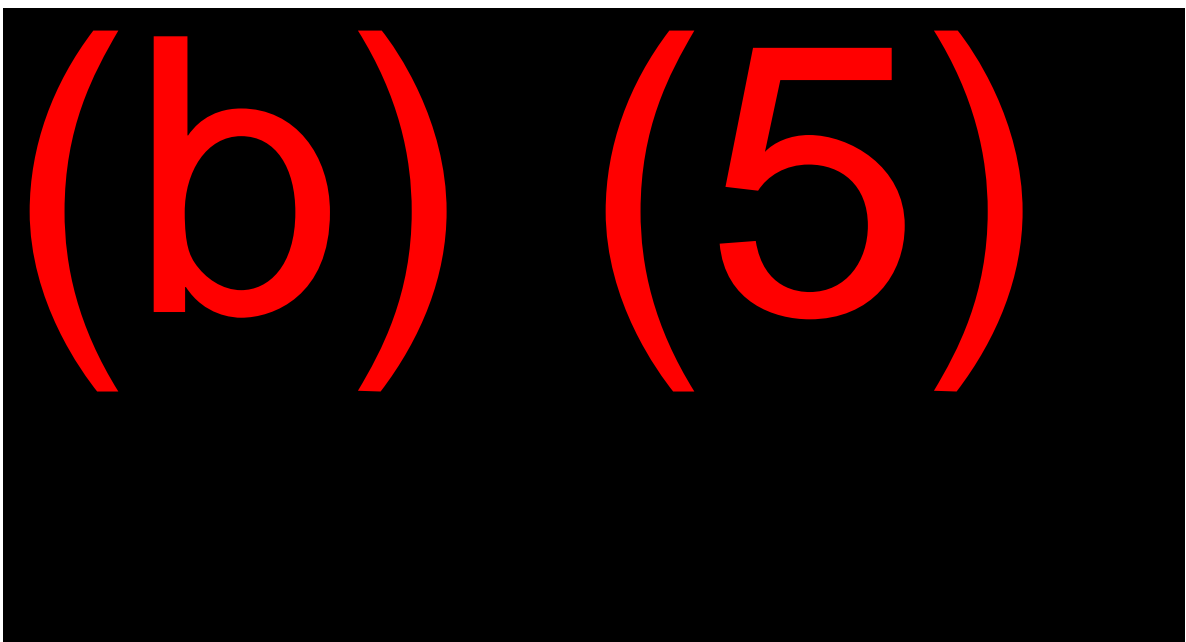
**Subject:** Follow up information on the Congressional Review Act

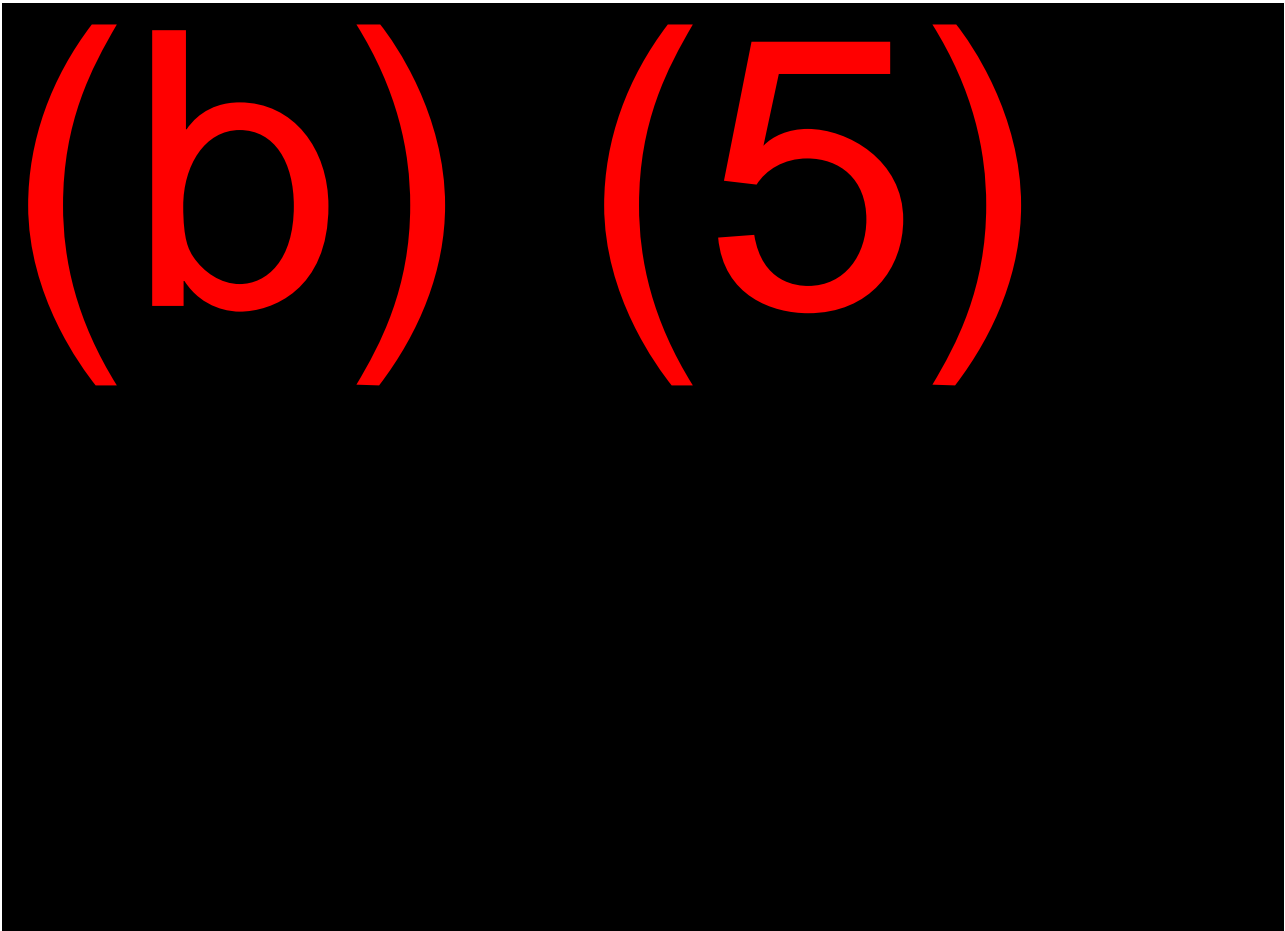
**To:** Daniel Jorjani <daniel\_jorjani@ios.doi.gov>

**Cc:** "Keable, Edward" <edward.keable@sol.doi.gov>, "Harris, Kaprice" <kaprice.harris@sol.doi.gov>, "Murphy, Timothy" <timothy.murphy@sol.doi.gov>

Dan,

It was a pleasure meeting you this morning. A few quick follow-up items from our discussion on the Congressional Review Act:





Please let me know if you have any additional questions.

Thank you,  
Rob

--

Robert O. Johnston, Jr.  
Office of the Solicitor  
U.S. Department of the Interior  
Phone: 202 208 6282  
Fax: 202 208 5584  
[robert.johnston@sol.doi.gov](mailto:robert.johnston@sol.doi.gov)

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--

Micah Chambers  
Special Assistant / Acting Director

Office of Congressional & Legislative Affairs  
Office of the Secretary of the Interior



**To:** Johnston, Robert[robert.johnston@sol.doi.gov]; Kevin Haugrud[jack.haugrud@sol.doi.gov]  
**Cc:** Keable, Edward[edward.keable@sol.doi.gov]; Harris, Kaprice[kaprice.harris@sol.doi.gov];  
Murphy, Timothy[timothy.murphy@sol.doi.gov]  
**From:** Jorjani, Daniel  
**Sent:** 2017-03-06T14:24:41-05:00  
**Importance:** Normal  
**Subject:** Re: Follow up information on the Congressional Review Act  
**Received:** 2017-03-06T14:25:27-05:00

Robert - Thank you again for the superb CRA briefing you put together. As demonstrated by the recent CRA activities on the Hill, your insights have again been validated. Dan

On Thu, Feb 9, 2017 at 4:48 PM, Johnston, Robert <[robert.johnston@sol.doi.gov](mailto:robert.johnston@sol.doi.gov)> wrote:

Dan,

It was a pleasure meeting you this morning. A few quick follow-up items from our discussion on the Congressional Review Act:

A large black rectangular redaction box covers the majority of the page content. In the center of this box, the text "(b) (5)" is written in a large, bold, red font, indicating that the information has been withheld under FOIA exemption (b)(5).

(b) (5)

Please let me know if you have any additional questions.

Thank you,  
Rob

--

Robert O. Johnston, Jr.  
Office of the Solicitor  
U.S. Department of the Interior  
Phone: 202 208 6282  
Fax: 202 208 5584  
[robert.johnston@sol.doi.gov](mailto:robert.johnston@sol.doi.gov)

*This e-mail (including attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you receive this e-mail in error, please notify the sender immediately and destroy all copies. Thank you.*

**To:** heather\_swift@ios.doi.gov[heather\_swift@ios.doi.gov]  
**From:** POLITICO Pro Energy  
**Sent:** 2017-03-03T05:54:39-05:00  
**Importance:** Normal  
**Subject:** Morning Energy, presented by Utah Diné Bikéyah: Zinke, Perry address their teams for first time — Keystone won't have to be built with American steel — Congressional pressure for FERC nominees continues  
**Received:** 2017-03-03T05:54:47-05:00

By Anthony Adragna | 03/03/2017 05:51 AM EDT

*With help from Darius Dixon*

**TRUMP'S ENERGY CABINET IS COMPLETE!** Newly-confirmed Energy Secretary Rick Perry and Interior chief Ryan Zinke deliver their first remarks to agency personnel this morning, as President Donald Trump now has his energy and environmental Cabinet personnel fully installed. Zinke plans to address his employees from the fancy-sounding Bison Bistro on agency grounds today at 11:00 a.m. on the Interior Department's 168th birthday. Perry plans to make his inaugural remarks at 10:30 a.m., according to a post on DOE's website.

**That comes after Vice President Mike Pence** swore in Perry to his new role shortly after 6:00 p.m. Thursday evening. "We collectively understand that the opportunity that we have been given, this maybe once-in-a-lifetime opportunity, Mr. Vice President, to truly put America on a course that will deliver for future generations extraordinary opportunities," the former Texas governor said after taking his oath using the Bible signed by every person he ever swore in as governor.

**Washington's most-watched commute:** One day after Zinke won the Internet by coming to work by horse, everyone wondered how Perry could top him. And the former Texas governor played ball. "On a single-stage rocket ... what could go wrong," he quipped, before adding to a skeptical pool at the White House that he planned to "quietly drive over and go to work."

**Must follows:** @SecretaryPerry and @SecretaryZinke. ME is impressed with Zinke's early social media game and cautiously optimistic he'll bring a less stuffy online persona than previous agency heads. His first official day included tweets congratulating Perry on his confirmation, touting a "top notch" rodeo in Montana and offering behind-the-scenes pictures of his memorable entrance. Shortly after being sworn in, Perry tweeted: "Thanks for this opportunity to serve you. Let's get to work!"

**This one's for you:** Perry hasn't even gotten a chance to enjoy the lovely view from his new office at the Energy Department yet, but the Heritage Foundation has already lined up an agenda for him. In a 7-page paper published shortly after Perry's Senate confirmation, the conservative think tank pumped out a mission statement: Pull the conditional loan guarantees, stop tightening energy efficiency regulations, move the agency more towards basic science and away from deploying technology, and cease its use of the social cost of carbon/methane/nitrous oxide figures. Instead, DOE needs to focus more intently on cleaning up the Cold War nuclear sites, completing the licensing process for the Yucca Mountain nuclear waste project and expediting

liquefied natural gas applications. The national labs also got some love from Heritage on an issue near and dear to those 17 sites: The group urges Perry to reduce the "bureaucratic micromanagement" of the labs, a subject reviewed several times by the agency and Congress that is still a sensitive topic for headquarters and the labs.

**MEANWHILE, PRUITT SPRINGS INTO ACTION:** Thousands of oil and gas companies no longer have to report detailed technical information about their operations' methane emissions after EPA Administrator Scott Pruitt pulled an Obama-era mandatory information request, Pro's Alex Guillén reports. That comes one day after 11 state attorneys general asked the agency to abandon what they called an "unnecessary and onerous burden on oil and gas producers." Pruitt's action marks EPA's first step away from an Obama-era plan to regulate methane emissions from existing oil and gas operations.

**METHANE CRA STILL COMING:** Senior Republicans say they're still committed to bringing up a Congressional Review Act resolution nullifying a BLM rule aimed at curbing methane emissions on public lands but wouldn't comment on whether they had the votes for passage. "It's on the list, but the order hasn't been decided yet," Senate Majority Whip John Cornyn told ME. A senior GOP Senate aide told ME the CRA would be brought up when "attendance" could be assured, suggesting a close final vote.

**TGIF MY FRIENDS!** I'm your host Anthony Adragna, and Sens. John Hoeven and Angus King are currently the only members of the Senate mustache club. Your end-of-the-week quiz: At the start of the 1st Congress (in 1789), how many House seats were there? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](https://twitter.com/AnthonyAdragna), [@Morning\\_Energy](https://twitter.com/Morning_Energy), and [@POLITICOPro](https://twitter.com/POLITICOPro).

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**A KEYSTONE-SHAPED LOOPHOLE:** The Keystone XL pipeline won't have to comply with Trump's executive order requiring infrastructure projects to be built with American steel, a White House spokeswoman told Pro's Ben Lefebvre. That order called for U.S. steel to be used in "all new pipelines, as well as retrofitted, repaired or expanded pipelines" inside the U.S. projects "to the maximum extent possible." But that won't include Keystone: "The Keystone XL pipeline is currently in the process of being constructed, so it does not count as a new, retrofitted, repaired, or expanded pipeline," the White House spokeswoman said.

**PAGE MET WITH RUSSIAN ENVOY:** Oil industry consultant Carter Page, a former unpaid foreign policy adviser to Trump, met with Russian Ambassador Sergey Kislyak during the GOP convention last summer, POLITICO's Josh Meyer reports. Page declined to comment about what they discussed during their conversation, saying in a text message that "Everyone assumes everything is nefarious!" Trump officials have distanced themselves from Page, who left the campaign in late September.

**\*\* A message from Utah Diné Bikéyah:** The protection of the Bears Ears National Monument reflected the will of Utahns and Native Americans. Now, President Trump and Interior Secretary-nominee Ryan Zinke are considering undermining this designation and threatening this sacred

public land. Join us as we ask them to honor Tribes and stand with Bears Ears:  
<http://bit.ly/2luGehY> \*\*

**'THEY REALLY NEED TO BE EDUCATED':** Senate Democrats are deeply concerned with the targeted cuts to EPA from the Trump administration, but they have a blunt reality check for the president's team: they'll need 60 votes for legislation to pass the Senate. "I think they really need to be educated about how everything works," [Tom Udall](#), top Democrat on the subcommittee handling EPA funding, told ME. "A lot of Republicans were not very supportive of this, so that's encouraging to me." [Brian Schatz](#), another appropriator, said Congress simply wouldn't go along with the 24 percent EPA cut sought by Trump's team. "They're still in campaign mode and they're still declaring things to be true that they wish to be true, but now that they have to govern and contend with co-equal branches of government, they're getting knocked around a little bit," the Hawaii Democrat told ME.

**CONCERTED FERC PUSH CONTINUES:** Senior congressional Republicans continue to push Trump's team to fill FERC vacancies, as the agency seeks a quorum necessary to conduct much of its business. "I've expressed my interest in getting those filled," Senate EPW Chairman [John Barrasso](#) told ME. That comes as two senior House Republicans Energy and Commerce Chairman [Greg Walden](#) (R-Ore.) and former Chairman [Fred Upton](#) (R-Mich.) sent a letter to Trump warning "without a quorum, major decisions are stalled, including those involving the licensing of interstate natural gas pipelines, liquefied natural gas terminals, and hydropower projects." They called for Trump to "swiftly" nominate FERC commissioners.

**AWK-WARD:** Nevada Rep. [Dina Titus](#) [tweeted](#) shortly before Perry's confirmation vote "Any senator that supports Perry's nomination is advocating for the Trump administration's position on Yucca Mountain." (Side note: That position on Yucca Mountain is not super clear.) But Titus' own Nevada colleagues Republican [Dean Heller](#) and Democrat [Catherine Cortez Masto](#) both [backed](#) Perry's nomination.

**GAO TO THE NRC: SHOW YOUR MATH:** The Nuclear Regulatory Commission has been less than fully transparent in how it explains the fees it puts on the industries it oversees, government watchdogs say in a new report. About 90 percent of the NRC's budget is covered with fees on nuclear power plants but, in a [report released Thursday](#), the Government Accountability Office says the agency's fee rules haven't defined "key terms, use terms consistently, or provide key calculations, and included errors, all of which obscured NRC's calculations and limited industry stakeholders' ability to understand them." The NRC has started a project aimed at increasing the transparency of its fee calculations, GAO said, but that "they have not established goals for performance or a way to measure progress toward meeting these goals."

**Piggybacking on the report,** Republican Rep. [Adam Kinzinger](#) and Democrat Rep. [Mike Doyle](#) introduced the Nuclear Utilization of Keynote Energy Act, H.R. 1320, on Thursday, which aims to improve the "efficiency" of NRC licensing and regulatory processes.

**ISSA JOINS BIPARTISAN CLIMATE CAUCUS:** California Reps. [Darrell Issa](#) (R) and [Juan Vargas](#) (D) are the latest pair of lawmakers to join the Climate Solutions Caucus, Issa's office confirmed to ME. "Coastal communities, like mine in Southern California, are counting on us to

come up with solutions that encourage a strong and vibrant economy, while also ensuring we are taking care of our environment," Issa said.

**MINIBUSES LEAVING THE STATION?** House Appropriators are hoping to avoid another short-term stopgap spending bill by bundling up the remaining fiscal 2017 spending bills into the packages for the floor, POLITICO's Sarah Harris [reports](#). Speaker [Paul Ryan](#) earlier Thursday [ruled out](#) the possibility of considering individual spending bills on the House floor, citing a time crunch.

**WINTER IS COMING?** Frustrated with the leaks from the federal bureaucracy, advisers to Trump are pushing him to remove remaining officials from the Obama administration and install new people more loyal to him, POLITICO's Josh Dawsey [reports](#). But the reality is more complex with some Cabinet secretaries saying they need the Obama people during a rocky transition and other advisers warning that aggressively going after federal employees carries its own risks. "The administration needs to be careful not to make too many dramatic changes because the federal bureaucracy itself is a powerful machine, and they tend to have very establishment ideas," Newsmax CEO Chris Ruddy, a longtime Trump friend, said.

**MAIL CALL! FIRST DAY, FIRST DOCUMENT REQUEST:** House Oversight Chairman [Jason Chaffetz](#) isn't forgetting about seven unresolved, Obama-era document requests and sent Zinke [a letter](#) to "reiterate" his demands. Chaffetz is seeking information on BLM's fracking rule, Obama's decision to use the Antiquities Act on a number of national monuments and BLM activities in Nevada and Utah, among others. The letter also reiterates a fairly meta request for a briefing on how Interior responds to demands from members of Congress and FOIA requests.

**MINING GROUP PUSHES ROSS TO SLASH REGULATIONS:** Warning it takes between seven and 10 years to obtain the necessary permits for projects, the National Mining Association sent Commerce Secretary Wilbur Ross [a letter](#) urging the Trump administration to take action to streamline the process. "The length, complexity and uncertainty of the permitting process are primary reasons investors give for not investing in U.S. mineral projects," CEO Hal Quinn wrote in a letter obtained Thursday. "These best practices include better coordination among state and federal agencies, clarifying responsibilities, minimizing duplication, setting goals and timeframes and introducing more accountability among agencies."

**MORMON LEADERS BACK BEARS EARS:** More than 200 members of the Mormon faith sent [a letter](#) to Zinke and congressional leaders urging them to support the Obama-era Bears Ears National Monument designation. "We urge you to reject any proposal to repeal it or change its boundaries," they said.

**CONSERVATIVES HOPE REINS SUPREME:** FreedomWorks sent [a letter](#) to Senate offices Thursday urging them to push leadership to take up the REINS Act (S. 21) for a full chamber vote. House members passed the bill, which would require explicit congressional approval for any new major regulation, as one of their first actions this Congress. But the Senate has never taken it up. The legislation would need the support of eight Democratic senators to clear the chamber — an unlikely feat despite the number of moderates up for reelection in 2018.

**CHEMISTRY COUNCIL PUSHES FOR INFRASTRUCTURE SPENDING:** As Trump

lays the groundwork for shepherding a \$1 trillion infrastructure package through Congress, companies and industries are strategizing on how to get their priorities included in the legislation. The latest move comes from the American Chemistry Council, which commissioned [a report](#) from PricewaterhouseCoopers on how an infrastructure spending boost could fuel a chemical manufacturing "renaissance." The report identifies shortcomings in the truck, marine and rail infrastructure the industry relies on. The council's member companies include giants like Dow, DuPont, Honeywell, 3M, Merck and Monsanto (h/t POLITICO Influence).

**LIFE COMES AT YA FAST:** One year ago, more than 95 percent of California was in drought conditions. Today? Just 8.73 percent, federal scientists [report](#). That's the lowest level of drought in the Golden State since 2011.

**MOVERS, SHAKERS:** Todd Lester has joined FTI Consulting as senior managing director in its economic consulting branch and a member of the Energy, Power and Products practice.

**Thomas Cunningham** has joined Statoil's Washington office as director of international affairs; he was most recently with Atlantic Council Global Energy Center after 13 years with the State Department.

## QUICK HITS

Lawyers Request EPA Intervention For Lead In East Chicago Water. [Indiana Public Media](#).

Was Aubrey McClendon a Billionaire, or Broke? [The Wall Street Journal](#).

Judge throws out recall effort against Sen. Ericksen. [KGMI](#).

Top Trump Advisers Are Split on Paris Agreement on Climate Change. [The New York Times](#).

Oil Falls to Three-Week Low as Record U.S. Supply Outweighs OPEC. [Bloomberg](#).

## HAPPENING TODAY

8:20 a.m. POLITICO Playbook [breakfast](#) on the first 100 days of the Trump administration, Newseum, 555 Pennsylvania Ave. NW

12:00 p.m. "Carbon Capture: Tomorrow Just Happened," American Energy Society, 2075 Rayburn

## THAT'S ALL FOR ME!

**\*\* A message from Utah Diné Bikéyah:** The designation of the Bears Ears National Monument reflected the will of a majority of Utahns and Native American Tribes. This monument permanently protected public lands threatened by vandalism and looting in southeast Utah that we consider sacred. Yet already, politicians are pushing President Trump and Interior Secretary-nominee Ryan Zinke to reduce or undo its protections. We call on President Trump to resist efforts to seize or sell off Bears Ears and other parks and monuments. Stand with Bears Ears.

Let's protect our national public lands for future generations of all people. Learn more at: <http://bit.ly/2luGehY> \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/03/zinke-perry-address-their-teams-for-first-time-021654>

## **Stories from POLITICO Pro**

### **Zinke shows up on horseback for first day at Interior [Back](#)**

By Eric Wolff | 03/02/2017 09:54 AM EDT

Newly confirmed Interior Secretary Ryan Zinke decided to ride to work on a horse this morning, his first day on the job.

According to [a picture](#) posted by the Bureau of Safety and Environmental Enforcement, Zinke donned a black Stetson and saddled up for his inaugural trip to his new office.

An Interior spokesperson did not immediately respond to a request for comment on Zinke's unorthodox commute.

[Back](#)

### **EPA pulls methane information request [Back](#)**

By Alex Guillén | 03/02/2017 04:36 PM EDT

EPA says more than 15,000 oil and gas companies no longer have to report detailed technical information about methane emissions from their operations.

The move was announced via a Federal Register [notice](#) that will be published on March 7 but will take immediate effect.

It is the agency's first step away from an Obama-era plan to regulate methane emissions from existing oil and gas operations. EPA in November directed oil and gas operators to respond to an "information collection request" on the topic that the agency estimated would cost companies, which are required by law to respond, about \$42 million in total.

"By taking this step, EPA is signaling that we take these concerns seriously and are committed to strengthening our partnership with the states," EPA Administrator Scott Pruitt said in a release. "Today's action will reduce burdens on businesses while we take a closer look at the need for additional information from this industry."

EPA also noted it received a letter on Wednesday from eleven state attorneys general or governors, including new Oklahoma Attorney General Mike Hunter, [asking](#) EPA to drop the "onerous" request.

[Back](#)



## **AGs ask EPA to drop methane information request** [Back](#)

By Alex Guillén | 03/01/2017 12:50 PM EDT

Eleven state attorneys general today [asked](#) EPA to halt its ongoing direction for oil and gas companies to answer questions related to Obama-era plans for methane emission regulations.

EPA [finalized](#) its Information Collection Request just days after the election. The ICR requires oil and gas companies to answer a litany of technical questions and is the first step toward regulating methane emissions from existing oil and gas operations.

The AGs note EPA itself predicted it would cost companies more than \$42 million and 284,000 hours to comply with the request.

"We believe the EPA's requests to be an unnecessary and onerous burden on oil and gas producers that is more harassment than a genuine search for pertinent and appropriate information," the letter says.

EPA's request "comes at a time when the oil and gas industry is recovering from its most significant economic downturn in decades," it adds. "Many of the company can ill-afford the time and expense to comply with yet another empty regulatory burden."

The signatories include EPA Administrator Scott Pruitt's successor as Oklahoma attorney general, Mike Hunter.

[Back](#)

## **White House: Keystone exempt from 'Buy American' requirements** [Back](#)

By Ben Lefebvre | 03/02/2017 09:12 PM EDT

The Keystone XL pipeline will not be subject to President Donald Trump's executive order requiring infrastructure projects to be built with American steel, a White House spokeswoman said today.

Trump signed the order calling for the Commerce Department to develop a plan for U.S. steel to be used in "all new pipelines, as well as retrofitted, repaired or expanded pipelines" inside the US projects "to the maximum extent possible."

By the White House's judgment, that description would not include Keystone XL, which developer TransCanada first proposed in 2008.

"The Keystone XL pipeline is currently in the process of being constructed, so it does not count as a new, retrofitted, repaired, or expanded pipeline," the White House spokeswoman said.

That interpretation removes one potential [hurdle](#) for Keystone, and it clarifies shifting rhetoric from Trump on the order.

"We put you heavy into the pipeline business because we approved, as you know, the Keystone

Pipeline, but they have to buy ... steel made in this country and pipelines made in this country," Trump told U.S. Steel chief executive Mario Longhi at a Feb. 23 meeting.

However, in his address to Congress earlier this week, Trump spoke of the order in the same sentence as Keystone but carefully described it as directing "that new American pipelines be made with American steel."

Removing the steel condition could help convince TransCanada to fully drop the \$15 billion NAFTA complaint against the US, which it suspended earlier this week.

A TransCanada spokesman declined today to comment on the NAFTA lawsuit.

[Back](#)

### **Former Trump adviser Carter Page also met with Russian envoy [Back](#)**

By Josh Meyer | 03/02/2017 07:32 PM EDT

When Russian Ambassador Sergey Kislyak traveled to the GOP convention last summer, he met with then Sen. Jeff Sessions, as well as with two other Trump campaign advisers, including oil industry consultant Carter Page.

Page, at the time an unpaid foreign policy adviser to Trump, engaged in a conversation with the ambassador at the same July 20 luncheon in Cleveland where Sessions, now attorney general, and Kislyak chatted, according to J.D. Gordon, a national security adviser to the Trump campaign who was also present at the lunch.

Page declined to comment Thursday about what he and the Russian ambassador discussed, saying it was a private, off-the-record conversation. "Everyone assumes everything is nefarious!" Page said in a text message. "Thanks, but no comment."

Contacts between Russian officials and Trump campaign staff are now the subject of investigations by the FBI and congressional committees into Russian interference in the election, and whether Trump campaign representatives played any role in it. On Thursday, Sessions recused himself from investigations into Russian efforts to sway the 2016 election in Trump's favor.

The disclosure that other Trump officials met with Kislyak raise additional questions about White House assertions that the Trump campaign had little or no contact with Russian officials prior to the election.

Page's conversation with Kislyak just days after news reports of Russian hacking of the Democratic National Committee is part of a broader pattern of activity by Page that raised U.S. suspicions about his interactions with the Russians, according to a former Obama White House official. At the time of the lunch, Page had just returned from a trip to Moscow.

The official said the Obama administration was gravely concerned in its final days about increasingly apparent ties between Trump associates and Russians, and about what appeared to

be promises made by more than one individual to people affiliated with Russian President Vladimir Putin about policy changes that would occur once Trump was sworn in as president. The Obama official declined to discuss specifics but said Page was one of the Trump associates whose activities had drawn the most U.S. attention and concern.

Trump has defended Sessions. White House spokesman Sean Spicer repeated Thursday afternoon that Sessions and other officials have not done anything wrong. "There's no there there," Spicer told reporters.

Gordon, a retired Navy commander, said Page and Kislyak spoke at some length about how to improve relations between the two countries on issues like counterterrorism and energy security. "Carter told him we should have a new chapter of U.S.-Russia relations that build on mutual respect and common goals and that there is no need to keep up this hostility," Gordon said. "He said we should have better relations with Russia."

He added that Kislyak suggested the two countries cooperate "so that we don't have problems like the Tsarnaev brothers," the Chechen-Americans who set off two pressure-cooker bombs at the 2013 Boston Marathon, more than a year after Russia tried to warn U.S. officials about one of them.

Page and Sessions were among several people affiliated with the Trump campaign who engaged with Kislyak while in Cleveland, including at the lunch, which was part of a State Department-funded initiative to bring foreign ambassadors to both political conventions, Gordon said. "The Trump campaign advisers were there to interact with the ambassadors, just like [the ambassadors] were interacting with the Democrats in Philadelphia the next week," Gordon said. "That was the whole point of the program."

Trump officials have distanced themselves from Page, who left the campaign in late September. The founder and managing partner of Global Energy Capital, Page spent seven years as an investment banker at Merrill Lynch in London, Moscow and New York. His website says he has been involved in more than \$25 billion of transactions in the energy and power sector, and that he spent 3 years in Moscow where he was an adviser on key transactions for Russian state-owned gas company Gazprom and other energy-related companies.

After Trump identified Page as one of his foreign policy and energy advisers last March, Page said in a Bloomberg News interview that he had been an investor in, and adviser to, the Gazprom. He also criticized the Obama administration sanctions on Russia imposed because of its annexation of Crimea.

Officially, Page's role was "advising Mr. Trump on energy policy and Russia," according to a campaign release at the time. Throughout the spring and summer, Page sent policy memos to the campaign and kept in contact with Trump's national security advisory board, including Sessions, Gordon said. "He wanted access to Trump, he wanted his policy memos to be reflected in Trump speeches. And he wanted to go to Russia, which we thought was a bad idea," he added.

He said Page was discouraged from taking that trip by some campaign officials but went anyway after others in the campaign approved the trip, though he was told he could not represent the campaign.

During the trip, two weeks before the GOP convention, Page made remarks critical of U.S. policy at an event in Moscow held by a Russian organization with ties to pro-Putin oligarchs. At the time, Page refused to comment on whether he was meeting with Russian officials. "It was a terrible idea," Gordon said of the trip. "It just reflected negatively on the campaign, because people drew conclusions that weren't there. And he fed right into it and walked right into the lion's den."

By September, three months after his conversation with Kislyak in Cleveland, U.S. intelligence officials were seeking to determine whether Page had opened up private communications with senior Russian officials, [Yahoo News reported](#), including talks about the possible lifting of economic sanctions if the Republican nominee became president.

After lawmakers were briefed on suspected efforts by Russia to meddle in the election, then-Senate Minority Leader Harry Reid of Nevada asked FBI Director James Comey to investigate meetings between a Trump official, later identified as Page, and "high ranking sanctioned individuals" in Moscow who Reid believed were evidence of "significant and disturbing ties" between the Trump campaign and Moscow.

In late September, as allegations of ties between Page and Russian officials intensified, he took leave from the campaign. His name later appeared repeatedly in the controversial dossier on Trump-Russia ties compiled by a former British Intelligence operative that alleges a pattern of interactions between the Trump campaign and Moscow.

On Thursday, Page said he's never been questioned by the FBI, insisted that he has done nothing wrong and blamed Democrats and the Clinton campaign for drumming up false allegations against him.

When pressed for details of his talk with Kislyak and his visits to Moscow, Page said, "Go ask the Clinton campaign and associates about their illegal activities. That's a real story for you, as opposed to this same fake news theme."

Page wrote Comey in September asking the FBI director to quickly clear him of wrongdoing, saying what a "complete waste of time this witch-hunt directed at me is," and blaming the Clinton campaign, the media and others. He said his July 7 commencement address at the New Economic School in Moscow was based on his scholarly research, that his visit was "outside of my informal, unpaid role" on the Trump campaign and that he had divested any stake in Gazprom. Also, he said, he had "not met this year with any sanctioned official in Russia despite the fact that there are no restrictions on U.S. persons speaking with such individuals."

Three weeks ago, Page wrote to the Justice Department, asking to be publicly cleared. In the 37-page letter, Page said that besides harming his reputation and ability to advise the Trump campaign, the "continued false questions aimed at me also carry immediate risks to U.S. national security as political opponents of the President try to derail his agenda - most likely their main objective for this whole exercise."

Page said that he has not heard from either the FBI or Justice Department on the status of any investigations. Kislyak and the press office at the Russian embassy in Washington did not respond to requests for comment.

In an interview with MSNBC's Chris Hayes Thursday night, Page initially evaded questions on whether he met with Kislyak in Cleveland, before saying, "I'm not going to deny that I talked to him. Although I will say that I never met him anywhere outside of Cleveland, let's just say that much."

Page also denied acting as a liaison between Russia and the Trump campaign, and said he "was not aware of" speaking to any intelligence officials during his July 2016 visit to Moscow, where he met with "scholars and professors and some students there."

Page also refused to answer whether he was in contact with anyone at the White House, saying that while he knows "various people there ... I don't talk about any specific discussions."

[Back](#)

### **Appropriators predict series of Fiscal 2017 minibuses** [Back](#)

By Sarah Ferris | 03/02/2017 02:53 PM EDT

House Republican leaders are considering passing "packages" of Fiscal 2017 spending bills to avoiding another stopgap spending measure in April.

House Appropriations Chairman [Rodney Frelinghuysen](#) believes "it is likely" the panel will bundle the remaining fiscal 2017 spending bills and send them to the House floor before next month's deadline, according to a committee aide.

"The commitment and intention from the committee and leadership is to pass all remaining bills. It is likely that it would be processed via 'packages' of bills," the aide said, adding that those bundles would come from the House side.

Frelinghuysen has personally discussed that path with GOP leaders, the aide said.

That strategy offers the clearest indication yet on how GOP leaders plan to avoid a major spending fight and a potential government shutdown in April.

Earlier today, House Speaker [Paul Ryan](#) ruled out the possibility of considering individual spending bills on the House floor, citing a time crunch.

That statement signals a shift from the plan some House lawmakers had been expecting after House GOP leaders announced they would vote on the Fiscal 2017 defense package next week.

Some lawmakers have openly speculated the Senate could turn the defense bill into a larger spending package. But Ryan declined today to say whether he expects the measure to come back to the House with additional appropriations measures attached.

"Whether or not they can take it up, or if they are going to do something with it, merge it with something else, that's more of a Senate question," Ryan said.

[Back](#)

## **Ryan not ruling out fiscal 2017 spending package ahead of CR deadline [Back](#)**

By Sarah Ferris | 03/02/2017 02:03 PM EDT

House Speaker [Paul Ryan](#) suggested today that Congress will need to pass another stopgap spending bill or bundled appropriations package to finish out fiscal 2017 and avoid government shutdown.

Ryan told reporters the House would not have time to vote on all 11 spending bills still pending for fiscal 2017 before the current continuing resolution expires April 28.

"Are we going to have 11 bills moving? No," Ryan said. "We don't have the time for that."

The speaker was asked about the fate of fiscal 2017 appropriations just after House GOP leaders [announced](#) this year's defense spending bill would get a vote next week. That measure has bipartisan support in the House, and some Democrats are hopeful it could make it through the Senate as part of a package with other domestic spending.

Any decision to package the bills would likely take place in the upper chamber, and Ryan declined to comment on the prospects.

"We're passing that bill off the floor here in the House. Whether or not they can take it up, or if they are going to do something with it, merge it with something else, that's more of a Senate question," Ryan said.

He added that House leaders are planning to pass the defense bill "first" because a short-term spending bill is "uniquely bad for the military."

[Back](#)

## **Trump's advisers push him to purge Obama appointees [Back](#)**

By Josh Dawsey | 03/02/2017 07:19 PM EDT

Advisers to President Donald Trump are urging him to purge the government of former President Barack Obama's political appointees and quickly install more people who are loyal to him, amid a cascade of damaging stories that have put his nascent administration in seemingly constant crisis-control mode.

A number of his advisers believe Obama officials are behind the leaks and are seeking to undermine his presidency, with just the latest example coming from reports that Attorney General Jeff Sessions met twice last year with the Russian ambassador to the U.S. and apparently misled senators about the interactions during his confirmation hearing.

That was coupled with a New York Times story that Obama appointees spread information about the investigation into the Trump campaign's contacts with Russia in an attempt to create a paper trail about the probe. Trump's aides have also blamed Obama appointees for other damaging leaks, like Trump's erratic phone calls with foreign leaders.

Inside the White House, the chatter about Obama officials in the government has heightened in recent weeks, one administration official said. And advisers are saying it is time to take action.

"His playbook should be to get rid of the Obama appointees immediately," said Newt Gingrich, a top surrogate. "There are an amazing number of decisions that are being made by appointees that are totally opposed to Trump and everything he stands for. Who do you think those people are responding to?"

"If you employ people who aren't loyal to you, you can't be surprised when they leak," said Roger Stone, another longtime adviser. A third person close to Trump said: "He should have gotten these people who are out to get him out a long time ago, a long, long time ago. I think they know that now."

The reality, however, is more complicated: The White House has thousands of open jobs across the agencies, many nonpolitical civilian employees are critical of the administration, and some Cabinet secretaries say they need the Obama people during a rocky transition.

Only a few dozen Obama political appointees remain in the federal government apparatus, according to the Partnership for Public Service. Many of them are in crucial positions, including Robert Work, a top official at the Department of Defense, and Thomas Shannon, the acting deputy at the State Department.

Even if Trump were to ax those remaining senior political appointees, he would still have to reckon with the hundreds of thousands of civilian employees, who stay with every administration. Many of them are skeptical of Trump because they resent his assault on Washington and its culture, his impulsive decisions and his seeming lack of intellectual curiosity about their agencies and work.

They have spent the past six weeks on edge. Many are quietly on the job market, but others have been clashing with Trump appointees, either in the open or privately among colleagues, according to officials across agencies. From Homeland Security to Defense and beyond, it's become a regular conversation among employees about what lines they will not cross before quitting, and how best to slow-walk orders from above to frustrate implementation.

Amid those conversations is a running thread: how long they'd be willing to hold out to bear witness, and try to improve a climate they increasingly hate, or whether to leak information about changes they see in order to try and stop them. "I want to be able to tell people what's happening here," one State Department official said.

"Nixon essentially tried to bypass the federal bureaucracy, and the bureaucracy won and removed him from office," said Newsmax CEO Chris Ruddy, a longtime Trump friend. "The administration needs to be careful not to make too many dramatic changes because the federal bureaucracy itself is a powerful machine, and they tend to have very establishment ideas."

Gingrich added: "Ninety-five percent of the bureaucrats are against him."

The White House did not respond to a request for comment.

Some in Trump's inner circle increasingly fear that the FBI and the intelligence community are out to damage him. But some of the damaging leaks have also come from within his administration, advisers say, because the West Wing is plagued by competing factions that are vying for Trump's attention and affection.

"You hire a bunch of people in the West Wing who are hacks and aren't loyal to you, and you'll have a bunch of leaks," Stone said. "There aren't that many Trump loyalists in the White House."

In meetings, Trump aides like Stephen Miller, his senior policy adviser, have frequently complained about leaks and blamed the Obama appointees and longtime bureaucrats. Other aides have complained about having to sit in inter-agency meetings with Obama holdovers in senior positions. And Trump aides have told their people at agencies not to share plans and documents with Obama holdovers or others who are not sympathetic to them.

Yet across federal agencies, there are few Trump people. Candidates for only about three dozen of 550 critical Senate-confirmed positions have even been nominated, according to the Partnership for Public Service.

Several advisers and people close to Trump described the problem like this: During the transition, aides ignored hundreds of names that had been developed during New Jersey Gov. Chris Christie's time leading the transition. For several weeks after he was removed, work stopped as the team came to grips with Trump's improbable win.

Then, little was done to pick officials beneath the Cabinet level after Trump made a series of wham-bam choices. Picks have frequently been held up by the White House because they weren't loyal to Trump during the campaign, and people have grown increasingly skittish about being employed in a West Wing frequently described as chaotic and dysfunctional.

"I wish I had more of my staff on board," Sessions said Thursday, during a news conference in which he announced that he would recuse himself from any investigation related to the presidential campaigns.

In a twist, it will be an Obama appointee, Dana Boente, who will now be handling the investigation into the Trump campaign and Russian officials. Sally Yates, who was previously the No. 2 Justice Department official under Obama, was fired in late January after she refused to defend his controversial travel ban.

Gingrich said he blamed Sen. Chuck Schumer for slow-walking the nominees, though Schumer's office notes that many of the picks were not properly vetted: At least three have already dropped out. The Office of Government Ethics remains overwhelmed with applications now, "but they are beginning to catch up," one person involved in the nominations said. At many agencies, no top positions are filled, which means the layers of political appointees that report to them haven't been picked, either.

"I didn't get it early on. This is not about slowing down the Cabinet. This is about keeping working control of the government for Obama," Gingrich said. "It's actually very shrewd on Schumer's part. Trump is not going to have control of the government until at least June."



Others say it could be even longer. And that a massive purge is not the answer.

"The solution is not to purge the Obama holdovers but rather to actually identify people and move them forward," said Max Stier, president of the Partnership for Public Service, which has advised the Trump team. "Historically, it has taken a year plus for administrations to get their entire team in place. I'm afraid the Trump team is behind that, and that would not be a good thing. He has to have his own team in place if he's going to be able to get things done."

*Edward-Isaac Doveve contributed to this report.*

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## Bureau of Land Management

Daily update · February 23, 2017

### NEWS

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#### Idaho Settlement Ensures Notification for Wildlife-killing Contests on **BLM** Lands

Center for Biological Diversity (press release)

BOISE, Idaho— The Federal District Court of Idaho today approved a settlement agreement between six conservation groups and the **Bureau of Land** ...



Flag as irrelevant

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#### Environmental group appeals SW Idaho power line approval

Capital Press

The U.S. **Bureau of Land Management** last month issued a formal decision ... Western Watersheds Project in its appeal contends the **BLM** violated ...



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#### A&M Corpus Christi professor discusses fracking concerns - KRISTV.com | Continuous News ...

KRIS Corpus Christi News

As we first reported Monday, the **Bureau of Land Management** wants to sell the leases to oil and gas companies that would use fracking.



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#### Utah wants the feds to rein in wild horse problem, or it will

Deseret News

This image provided by the **Bureau of Land management** shows wild horses charging out of a trailer upon release back to the open range of ...



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#### New gas development could bring 35 new wells to Gunnison County

Crested Butte News

The **Bureau of Land Management** and the Forest Service are accepting comments on a

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natural gas development proposal within Gunnison County ...



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**BLM** reports rise in human-caused fires due to target shooting

KKCO-TV

MESA COUNTY, Colo. (KKCO/KJCT)-- Drier than normal weather and fires on the Front

Range are sparking some concern that the Western Slope ...



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Daines, don't ax **BLM's** Planning 2.0

The Missoulian

Invoking the rarely used Congressional Review Act (CRA), the U.S. House just passed a

measure to eliminate the **Bureau of Land Management's** ...



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Repealing the **BLM** methane waste rule will hurt a growing NM industry

New Mexico Political Report

This policy, known as the **Bureau of Land Management** Methane Waste Rule, requires commonsense steps like regular leak inspections to cut the ...

**BLM's** Methane and Waste Prevention rule hurts American consumers and local economies - Yahoo News

GOP Considering Repealing Obama's Methane Rule - Daily Caller

Full Coverage



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Editorial: Another day, another fuss (or two) over public lands

Albany Democrat Herald

The land was reconveyed to the U.S. government in 1916 — precisely 100 years ago —

and currently is managed by the **Bureau of Land Management** ...



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Trump may upend 'epic conservation effort' for sage grouse

E&E News

Trump cannot simply dismiss the blueprints, which amended 98 **Bureau of Land**

**Management** and Forest Service land-use plans to incorporate ...



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**Received:** 2017-02-23T15:29:24-05:00  
[Safari Club notice of no position on intervention.pdf](#)  
[Safari Club Conservation Grps opposition to motion to stay.pdf](#)  
[SOA motion for extension.pdf](#)

A couple of developments in the Alaska cases:

In Safari Club, yesterday the prospective intervenors filed a motion for leave to file an opposition to Safari Club's motion for a stay, essentially saying that they don't oppose a stay generally while the CRA winds its way through the Senate, but they oppose staying ruling on their motion. Later yesterday, Safari Club filed a notice saying they take no position on intervention.

The State of Alaska filed its motion yesterday for an extension of time to respond to the prospective intervenor's motion until March 31.

The groups that are trying to intervene in the State of Alaska and Safari Club cases have not moved to intervene in the Alaska Professional Hunters case, 3:17-cv-26, at least not yet. We will reach out to those plaintiffs soon.

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Attorneys for Applicant Intervenor-Defendants

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

SAFARI CLUB INTERNATIONAL,

Plaintiff,

v.

KEVIN HAUGRUD, in his official capacity  
as the Acting Secretary of the United States  
Department of the Interior, *et al.*,

Defendants.

Case No. 3:17-cv-00014-JWS

**APPLICANT INTERVENOR-  
DEFENDANTS ALASKA WILDLIFE  
ALLIANCE ET AL. MOTION FOR  
LEAVE TO FILE OPPOSITION TO  
PLAINTIFF'S MOTION FOR STAY  
OF PROCEEDINGS**

Applicant Intervenor-Defendants Alaska Wildlife Alliance, Alaskans for Wildlife, Friends of Alaska National Wildlife Refuges, Denali Citizens Council, Copper Country Alliance, Kachemak Bay Conservation Society, Northern Alaska Environmental Center, Defenders of Wildlife, National Parks Conservation Association, National Wildlife Refuge Association, The Wilderness Society, Wilderness Watch, Sierra Club, Center for Biological Diversity, and The Humane Society of the United States (“Groups”) seek leave to file a short opposition to the Plaintiff Safari Club International’s (“Safari Club”) motion to stay the proceedings.

Safari Club's motion to stay appears to be a request for an extension of time to respond to the Groups' intervention motion. The Groups' motion to intervene is the only item pending on the docket that requires a response from the Safari Club. That response is due today, February 22, 2017. Filing a motion for a stay, as opposed to a motion for an extension of time, unfairly attempts to cut the Groups out of the proceedings that affect their pending motion. Requesting an extension of time was the appropriate course of action by the Safari Club, as it would automatically give the Groups a right to respond. As a result, the Groups should be granted leave to file an opposition to Safari Club's motion to stay.

Respectfully submitted February 22, 2017.

s/ M. Sinnott  
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Katherine Strong (AK Bar No. 1105033)  
Valerie Brown (AK Bar No. 9712099)  
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## CERTIFICATE OF SERVICE

I certify that on February 22, 2017, I caused a copy of the APPLICANT INTERVENOR-DEFENDANTS ALASKA WILDLIFE ALLIANCE, *et al.*'s MOTION FOR LEAVE, [PROPOSED] OPPOSITION TO MOTION TO STAY, and [PROPOSED] ORDER to be electronically filed with the Clerk of the Court for the U.S. District Court of Alaska using the CM/ECF system, which will send electronic notification of such filings to the attorneys of record in this case whom are registered with the CM/ECF system.

s/ M. Sinnott  
Michelle Sinnott



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**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

SAFARI CLUB INTERNATIONAL,

Plaintiff,

v.

KEVIN HAUGRUD, in his official capacity  
as the Acting Secretary of the United States  
Department of the Interior, *et al.*,

Defendants.

Case No. 3:17-cv-00014-JWS

**[PROPOSED] APPLICANT  
INTERVENOR-DEFENDANTS  
ALASKA WILDLIFE ALLIANCE ET  
AL. OPPOSITION TO MOTION FOR  
STAY OF PROCEEDINGS**

Applicant Intervenor-Defendants Alaska Wildlife Alliance, Alaskans for Wildlife, Friends of Alaska National Wildlife Refuges, Denali Citizens Council, Copper Country Alliance, Kachemak Bay Conservation Society, Northern Alaska Environmental Center, Defenders of Wildlife, National Parks Conservation Association, National Wildlife Refuge Association, The Wilderness Society, Wilderness Watch, Sierra Club, Center for Biological Diversity, and The Humane Society of the United States (“Groups”) oppose the Plaintiff Safari Club International’s (“Safari Club”) motion to stay the proceedings because it would delay a ruling on their pending intervention motion.

In general, the Groups do not oppose a stay of the litigation to allow time for the Joint Resolution on the U.S. Fish and Wildlife Non-Subsistence Take of Wildlife regulation (81 Fed. Reg. 52248 (Aug. 5, 2016)) to be considered by the Senate. However, the Groups are opposed to entering a stay before the Court rules on the pending intervention motion. *See* ECF No. 6. A motion to intervene is procedural. It simply asks the Court to decide whether the Groups have meet the requirements of the federal rules and can be identified as parties to the litigation. While the Joint Resolution could render a few of Safari Club's claims moot, it will not alter the merits of the Groups' intervention motion. Indeed, deciding the appropriate parties to the litigation at this time is not a waste of judicial and party resources because, regardless of how the Joint Resolution is resolved in Congress, this determination will have to be made. The Groups request that this determination be made before any stay is put in place.

Respectfully submitted February 22, 2017.

s/ M. Sinnott

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Katherine Strong (AK Bar No. 1105033)

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Attorneys for Applicant Intervenors-Defendants

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

SAFARI CLUB INTERNATIONAL,

Plaintiff,

v.

KEVIN HAUGRUD, in his official capacity  
as the Acting Secretary of the United States  
Department of Interior, *et al.*,

Defendants,

Case No. 3:17-cv-00014-JWS

**[PROPOSED] ORDER GRANTING  
APPLICANT INTERVENOR-  
DEFENDANTS ALASKA WILDLIFE  
ALLIANCE ET AL. MOTION FOR  
LEAVE TO FILE OPPOSITION TO  
PLAINTIFF'S MOTION FOR STAY  
OF PROCEEDINGS**

This matter having come before the Court on the Applicant Intervenor-Defendants Alaska Wildlife Alliance, *et al.*, Motion for Leave, and the Court being fully informed, it is hereby ORDERED that the Motion for Leave is GRANTED.

DATED this \_\_\_\_ day of \_\_\_\_, 2017.

---

Judge John W. Sedwick  
U.S. District Court Judge

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**UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF ALASKA**

SAFARI CLUB INTERNATIONAL	)	
	)	
Plaintiff,	)	
	)	Civ. No. 3:17-cv-14 (JWS)
v.	)	
	)	
KEVIN HAUGRUD, in his official capacity as Acting Secretary of the U.S. Department of the Interior, <i>et al.</i>	)	
	)	
Defendants,	)	
	)	

**RESPONSE TO MOTION TO INTERVENE  
 SUBMITTED BY PLAINTIFF SAFARI CLUB INTERNATIONAL**

Plaintiff Safari Club International (“Safari Club”) takes no position on the Motion to Intervene filed by Alaska Wildlife Alliance *et al.* (“Defendant-Intervenor-Applicants”), Dkt.7, other than to state that Safari Club disagrees with the facts and legal arguments Defendant-Intervenor-Applicants allege in their motion that relate to the merits of this case.

In addition, Safari Club notes that on February 21, 2017, Safari Club filed a Motion for a Stay of Proceedings in Light of Legislative Action, Dkt. 43, due to the fact that the U.S. Senate

will imminently consider Senate Joint Resolution 69, which if approved would nullify one of the three regulations that Safari Club's case challenges and upon which Defendant-Intervenor-Applicants rely, in part, for assertions in support of intervention.

Dated this 22nd day of February, 2017

Respectfully submitted,

/s/ Anna M. Seidman

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**UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF ALASKA**

STATE OF ALASKA	)	
	)	
Plaintiff	)	
	)	
v.	)	Case No.: 3:17-cv-00013-JWS
	)	
KEVIN HAUGRUD, <sup>1</sup> in his official capacity	)	
as the Acting Secretary of the U.S. Department	)	<b>STATE OF ALASKA’S MOTION</b>
of the Interior, <i>et al.</i>	)	<b>FOR ENLARGEMENT OF TIME</b>
	)	<b>TO RESPOND TO MOTION TO</b>
Defendants.	)	<b>INTERVENE</b>
	)	

Plaintiff State of Alaska (“State”) seeks an enlargement of time to respond to a motion to intervene filed by the Alaska Wildlife Alliance and several other groups. (Dkt. 6.) The State’s response is currently due on February 22, and the State is seeking an extension until March 31, 2017. In support of this motion, the State shows:

1. This case involves the State’s challenge to a regulation adopted by Defendant U.S. Fish and Wildlife Service (“FWS”) and a regulation adopted by

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<sup>1</sup> Substituted for Sally Jewell by operation of Fed. R. Civ. P. 25(d).

Defendant National Park Service. The FWS Regulation restricts and/or prohibits certain hunting methods on all National Wildlife Refuges in Alaska.<sup>2</sup>

2. On February 16, 2017, the U.S. House of Representatives, under authority of the Congressional Review Act, considered and approved House Joint Resolution 69 to nullify the FWS Regulation.<sup>3</sup> That Joint Resolution is now before the U.S. Senate for consideration. The State does not have specific information on when the Senate will consider the Joint Resolution, but the State believes there is a strong possibility that the Senate will pass the resolution and the President will sign it.

3. If enacted, this Joint Resolution will nullify the FWS Regulation and the State's claims challenging that regulation will become moot. In that case, the State will need to amend its Complaint and remove those claims.

4. The motion to intervene filed by the Defendant-Intervenor-Applicants alleged, in part, an interest in defending the FWS Regulation. If Congress and the President approve the Joint Resolution, the intervenor-applicants may also want to amend their motion to intervene to remove reference to the FWS Regulation.

5. Granting the State's motion will hopefully provide sufficient time to allow Congress and the President to act on the Joint Resolution.

6. In addition to the above, Counsel for the State requests the enlargement of time to account for their current workload. Lead counsel for the State, Cheryl Brooking,

---

<sup>2</sup> Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska," 81 Fed. Reg. 52248 (Aug. 5, 2016).

<sup>3</sup> <http://clerk.house.gov/evs/2017/roll098.xml>.

is currently in Fairbanks attending the Board of Game meetings. Co-counsel Jessie Alloway had limited workload capacity given briefing in another matter and work-related travel to Juneau.

The Defendant-Intervenor-Applicants have indicated that they will not oppose a two-week extension until March 8 to accommodate workloads but that “any extension of time for the purpose of waiting to see how the House resolution on the FWS rule proceeds through the Senate is inappropriate in light of the fact that the State’s litigation challenges both the FWS and NPS rules.” Counsel for the Federal Defendants indicated that they do not oppose this motion.

The State respectfully requests the Court enter an order extending the due date for the State’s response to the motion to intervene to March 31, 2017. A proposed order is provided with this motion.



DATED February 22, 2017.

JAHNA LINDEMUTH  
ATTORNEY GENERAL

By: /s/ Jessica Moats Alloway

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### **Certificate of Service**

I certify that on February 22, 2017 the foregoing was served electronically on all parties via CM/ECF.

/s/ Jessica Moats Alloway

Jessica M. Alloway  
Assistant Attorney General

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

STATE OF ALASKA )

Plaintiff )

v. )

Case No.: 3:17-cv-00013-JWS

KEVIN HAUGRUD,<sup>1</sup> in his official capacity )  
as the Acting Secretary of the U.S. Department )  
of the Interior, *et al.* )

Defendants. )

**PROPOSED ORDER**

The State of Alaska's Motion for Enlargement of time filed on February 22, 2017 is GRANTED. IT IS ORDERED that the State's response to the motion to intervene (Dkt. 6) is due on March 31, 2017.

DATED this \_\_\_\_\_ day of February, 2017.

\_\_\_\_\_  
JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE

<sup>1</sup> Substituted for Sally Jewell by operation of Fed. R. Civ. P. 25(d).

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By Nancy Cook, Maggie Severns and Kelsey Tamborrino | 02/17/2017 05:00 PM EDT

**IS THE TRUMP ADMINISTRATION FALLING BEHIND?** This week was one of the more chaotic ones in the Trump administration's short tenure. The national security adviser resigned after only 24 days on the job, raising fresh questions about the Trump administration's ties to Russia. Trump's pick for Labor secretary withdrew his nomination, and Trump himself gave a roughly 80-minute rambling press conference in an effort to reset the conversation and a cascade of negative headlines. Oh, and the Israeli prime minister also visited.

**Amid this swirl of news, it's clear that the Trump is falling behind in assembling his top team.** Just 13 of Trump's Cabinet picks have been confirmed as of Feb. 16, compared to 28 Cabinet confirmations under Barack Obama within the same time period and 19 confirmations under George W. Bush.

Even the first-term of Bill Clinton's White House, which was plagued by well-publicized chaos, had 24 people confirmed by mid-February, according to data collected by the nonpartisan Partnership for Public Service.

**Meanwhile, Trump has selected only three deputy secretaries,** leaving many agencies without a political appointee to run the day-to-day operations and "creating a vacuum across the government that has businesses, lobbyists and lawmakers in limbo as they wait to see how Trump's agenda will be carried out," as POLITICO's Andrew Restuccia and Josh Dawsey [write](#).

There's also been little movement on selecting ambassadors and chiefs of staff at agencies, although the Treasury Department did name its chief of staff this week. (It's Eli Miller, a close ally to Treasury Secretary Steven Mnuchin and ex-Trump campaign fundraiser).

**The one place where Trump is not falling behind: Passing laws through Congress,** per the politics and policy website FiveThirtyEight. Under Trump, Congress has signed three laws, so far. "A look back at the last six presidents ([Jimmy Carter](#) through [Obama](#)) reveals that at the same point in their terms, the average president had signed just two bills or resolutions into law, or one fewer than the number Congress has passed under Trump," writes FiveThirtyEight's Harry Enten.

**DAILY DATAPOINT: 23** That's the number of executive actions that Trump has [signed](#), so far.

**TRUMP PICKS FROM THE MAINSTREAM FOR COMMS JOB:** Republican strategist Mike Dubke has been picked to serve as White House communications director, multiple sources

confirmed to POLITICO. Dubke will do a job the administration has struggled to fill since Trump took office. As the founder of a company called Crossroads Media, he's served as a consultant for multiple GOP Senate candidates over the past two election cycles. But Dubke hasn't previously been a Trump loyalist, reports Eli Stokols, Alex Isenstadt and Annie Karni. A sign Reince Priebus is stocking the White House with members of the mainstream establishment wing of the Republican party. Read [more](#).

Trump is **29** into the first 100 days of his presidency.

**Hello, and welcome to the Pro Transition 2017 newsletter**, where your hosts are wondering what type of news will break over the three-day weekend since Team Trump never seems to slow down. Send your thoughts and ideas to Nancy Cook at [ncook@politico.com](mailto:ncook@politico.com) and Maggie Severns at [mseverns@politico.com](mailto:mseverns@politico.com).

**PROGRAMMING NOTE** — Due to the President's Day recess, Transition 2017 will not publish on Monday, Feb. 20. Our next Transition 2017 will publish on Tuesday, Feb. 21. Please continue to follow the transition [here](#).

**QUOTE OF THE DAY:** "I thought the presidency was supposed to exhaust the president, not the American people." Anthony Blinken, former deputy secretary of State in Obama's second term about Trump's first few weeks in office. Read more [here](#).

**COMING NEXT WEEK: NEW IMMIGRATION EO:** Trump said during his Thursday press conference that a new executive order on immigration "will be done sometime next week, toward the beginning or middle at the latest part." As your transition newsletter hosts unpacked [earlier this week](#), it will be difficult to craft a new order that stands up under legal scrutiny. But it looks like Trump is attempting to do just that: He said Thursday that "the new order is going to be very much tailored to what I consider to be a very bad decision," presumably referring to the U.S. Court of Appeals 9th Circuit's recent ruling. "But we can tailor the order to that decision and get just about everything, in some ways, more," Trump continued. "We have some of the best lawyers in the country working on it."

**Among the lawyers working on the new executive action** is White House counsel Don McGahn, who is taking a leading role in drafting the order to make sure it goes smoothly. "I don't know if McGahn saw the first order before it went out," says Leonard Leo, executive vice president of The Federalist Society, who worked closely with McGahn on the choice of Trump's SCOTUS nominee. "The important thing is not what happened initially. It's that the process was looked at and protocols have now been put in place."

**Disputed memo lays out plan for unprecedented immigrant round-up:** An 11-page draft memo [obtained by The Associated Press](#) lays out a plan to mobilize up to 100,000 National Guard troops to round up unauthorized immigrants. The memo has circulated among DHS staff in recent weeks, per the AP. But White House press secretary Sean Spicer said the story is "100 percent not true" and "irresponsible," and added "there is no effort at all to utilize the National Guard to round up unauthorized immigrants."

**HOT DOC:** A Virginia winery owned by Trump's son put in another request for H-2A guest worker visas for 23 workers, according to [a document](#) filed with the Department of Labor this

week (h/t BuzzFeed, which wrote about the request

**DAILY DATAPOINT, II: 6** The number of White House staffers dismissed this week after failing FBI background checks, per POLITICO's Tara Palmeri. Our takeaway: That lack of vetting may be catching up to the administration.

## CONFIRMATION WATCH

**Republicans 'will rue' today:** On the eve of a vote to confirm Trump's nominee Scott Pruitt to lead the EPA, an Oklahoma judge last night ordered the release of Pruitt's email conversations with oil, gas and coal groups ... but not until Tuesday. Democrats sought unsuccessfully to use that as ammunition to delay today's vote.

But Majority Leader Mitch McConnell insisted the vote on the former Oklahoma attorney general take place before recess, and called Democrats' efforts to delay votes on Pruitt and other candidates "truly historic, unprecedented and harmful obstruction." Shortly afterward, Pruitt was confirmed 52-46, largely along party lines. Democrats warned of potentially dire consequences. "Time will tell and facts will out, but I believe our Republican friends will rue the day that they had this nomination rammed through the Senate on the very day that the emails were being litigated in Oklahoma, in order to get ahead of any counter-pressure," Rhode Island Sen. Sheldon Whitehouse said.

## VIEWS FROM THE HILL

**More tax proposals, more problems :** Some GOP senators have privately said they detest Speaker Paul Ryan's so-called border adjustment tax plan — an ominous sign for a linchpin of Ryan's tax plan and perhaps for the prospects of tax reform in general, report POLITICO's Rachael Bade, Burgess Everett and Eliana Johnson. The House speaker has framed his proposal as a compromise between a tariff, which the president wants, and conservative orthodoxy against border taxes. But others, including the president's chief economic adviser Gary Cohn, are opposed and many Republican senators fret that it will hurt retailers in their states. All of which is sharply dividing Republicans, even within the White House. More here.

**McConnell's pitch:** Hours before a congressional recess and a day before Trump gives a campaign-style rally, the Senate majority leader was pleading with the president to stay on message. McConnell has tried for months to convince Trump to adapt McConnell's own disciplined style, Burgess Everett reports, but to no avail. "I've been pretty candid with him and all of you that I'm not a great fan of daily tweets. What I am a fan of is what he's been actually doing," McConnell told reporters today. "I've not been a fan of the extra discussions that he likes to engage in. But we're going to soldier on." More on that here.

**Republican-only:** McConnell also said today Republicans will likely have to go it alone when it comes to repealing and replacing Obamacare, acknowledging the unified Democratic opposition. "We don't expect any Democratic cooperation on the replacement of Obamacare ... or tax reform," McConnell told reporters. "We as Republicans expect that both of those issues which are very big issues — will have to be tackled Republican-only."

**Trump promises transpo funds:** Trump told House Transportation Chairman Bill Schuster

he should expect "some money" to fund transportation in the future during a meeting this week at the White House, POLITICO's Kathy Wolfe [reports](#). But where that money would come from and how it might be spent is unclear.

**Whistleblowers wanted:** Democratic Reps. Ted Lieu and Don Beyer have [released](#) a "resource guide" for federal employees who want to leak information that includes information on whistleblower statutes and how to send encrypted messages. Lieu said in a release that "we believe the American people have a right to know how their government works."

**NO CLIMATE MUZZLE AT NOAA:** POLITICO's Morning Energy [reports](#) that "concerns the Trump administration would crack down on NOAA climate change work appear unfounded for now. The agency released [a report](#) Thursday finding the average land surface temperature for January was 2.77 degrees Fahrenheit, or about the 20th-century average. That marked the third-warmest monthly land average on record."

**REGULATION ROLLBACK HITS ITS STRIDE:** Republicans have started ticking resolutions to roll back Obama administration regulations off the party's (lengthy) list. Earlier this week, Trump signed a rollback of an Obama regulation that required oil and mining companies to disclose their payments to foreign governments, [per](#) POLITICO's Alex Guillén. And on Thursday, Trump [signed off](#) on a resolution that killed a regulation that protected streams from certain coal mining.

## WHAT WE'RE READING

Trump flees Washington as he seeks a reset, [POLITICO](#).

Lobbyists helped bankroll Trump's transition, [Center for Public Integrity](#).

Trump's inroads in union ranks have labor leaders scrambling, [The New York Times](#).

Trump anti-leak drive could prompt prosecutions, [POLITICO](#).

Federal immigration raids net many without criminal records, sowing fear, [The Washington Post](#).

"I'm a dead man walking," [POLITICO Magazine](#).

Donald Trump: 28 Days Later, [POLITICO](#).

EPA workers try to block Pruitt in show of defiance, [The New York Times](#).

Priebus: Reports of Trump campaign-Russia contact "exaggerated," [POLITICO](#).

Trump weighs mobilizing National Guard for immigration roundups, [The Associated Press](#).

Flynn changed story to FBI, no charges expected, [CNN](#).

Trump says he's considering Kellogg and three others for NSA, [POLITICO](#).

Russians are turning on Trump, [Foreign Policy](#).

*To view online:*

<https://www.politicopro.com/tipsheets/transition-2017/2017/02/is-the-trump-administration-falling-behind-021465>

## Stories from POLITICO Pro

### Trump missing top lieutenants across federal government [Back](#)

By Andrew Restuccia and Josh Dawsey | 02/03/2017 12:21 PM EDT

President Donald Trump has so far failed to nominate deputies and other top officials to run the day-to-day operations at most federal agencies, creating a vacuum across the government that has businesses, lobbyists and lawmakers in limbo as they wait to see how Trump's agenda will be carried out.

While Trump has announced nominees for his entire Cabinet, as well as key national security and White House positions, the Senate has confirmed only six nominees so far, leaving most agencies without a permanent leader.

Meanwhile, the president has named just three deputy secretaries at the Commerce Department, Justice Department and the Department of Homeland Security.

The delay in filling these deputy and other high-level political appointee positions could have far-reaching consequences, as deputies act as the chief operating officers at federal agencies. Experts say experienced No. 2s are essential to ensuring the smooth implementation of Trump's policy proposals.

As he [rankles world leaders](#) with his unorthodox public statements, Trump has yet to fill out the top ranks of the State Department, the agency tasked with international diplomacy. Neither the Treasury Department nor the Defense Department, both core to Trump's economic and national security message, have deputy secretaries. And work at many less high-profile agencies from the Environmental Protection Agency to the Education Department has slowed as federal employees wait for their marching orders from Trump's nominees.

Career employees at two federal agencies told POLITICO that Trump's aides have had limited contact with them over the past two weeks because the aides don't want to make waves before secretaries and other top leaders arrive. Senior officials at several agencies also say they haven't gotten much day-to-day guidance on what the administration wants or what will change.

"The clock is running," said Max Stier, president of the Partnership for Public Service, a nonprofit group that has advised the Trump transition. "It's not as if the world waits patiently while the United States government staffs up."

As of Friday, Trump had nominated people to just 35 of the 690 most important federal jobs that require Senate confirmation, according to an analysis conducted by Stier's group. In total, Trump will need to fill about 4,000 politically appointed positions.

While the pace for deputies is not far behind where former President Barack Obama was at this point in 2009, Trump's team has taken an unusually hands-on approach to selecting candidates and is intent on finding Trump loyalists. Also, Democratic senators have been ramping up their opposition to Trump's nominees as the president has advanced controversial policies. That means many vacancies could persist for a while.

And at some agencies, longtime officials say they have no idea what to expect once Trump puts his team in place. Trump administration officials say they don't trust federal officials at many of the agencies because they believe they are loyal to former President Barack Obama. The slow pace has some lobbyists and business officials feeling as if they're in limbo as they await guidance on major issues such as Trump's infrastructure proposal or his health care plan.

"You work with them and you realize there is virtually no Cabinet, and there is absolutely no sub-Cabinet," one lobbyist close to the administration said. "They don't have the worker-bee people. The White House is small and it's stacked with senior people."

"You don't have these agencies slowing down the process and making it more deliberative," this person said.

Another tech executive who was seeking information after last week's sweeping immigration and travel ban said: "I have no idea who I'd go to."

Trump's supporters counter that they have installed large "beachhead" teams consisting of temporary political appointees at the agencies to hold them over until formal appointments are made and the rest of the president's nominees are greenlighted by the Senate.

The White House did not respond to a request for comment.

To be sure, it is difficult to build an entire government in several months. Obama's team also struggled to fill jobs quickly at the beginning of his first term. By the end of January 2009, Obama had nominated only deputies at the State Department, Justice Department, Defense Department and the Office of Management and Budget, records show.

Still, some lawmakers have begun publicly calling on Trump to speed up his nominations. "I'd love to see them as soon as possible," Sen. John McCain (R-Ariz.) told reporters this week, referring to top spots at DOD.

The pace is in part a result of Trump's political inexperience, a quality his supporters admire.

"If Clinton would have won, the Clintons have 30 years of collecting names — they don't have 30 years of collecting names. If Jeb would have won, they would have had all the Bush names," said former House Speaker Newt Gingrich, a Trump adviser. "This administration didn't have a list of names. They are truly, truly a different kind of outsiders, and it's going to take them a while to sort it out."

The hunt for deputy secretaries and other top officials has slowed, in part, because top Trump White House aides are deeply involved in hiring. His aides are hoping to install Trump loyalists across the government, according to interviews with people in and close to the administration.



In recent months, White House chief of staff Reince Priebus has told people his power in the White House comes from stacking the West Wing and agencies with Republican operatives with ties to him.

Even some low-level jobs have needed high-level approval. For instance, White House staff have been involved in deciding who will run social media and other midlevel jobs at agencies, according to two people involved in the matter.

"Reince really cares about the personnel," one person close to him said.

While Gov. Chris Christie and his transition team provided hundreds of names to the transition before he was removed as leader, many top aides didn't expect Trump to win. After Trump's victory, Trump's team put the process of staffing the agencies largely on hold for several weeks, according to people familiar with the matter.

Trump's staffers "weren't heavily focused on people below the Cabinet level during the transition. They just weren't," one person familiar with the operation said.

A senior administration official said the White House often makes recommendations for jobs and signs off on most hires. Preference is often given to people who are loyal to Trump, and officials at some agencies, like the State Department, have made a concerted effort to keep out people who were supportive of other candidates.

Jared Kushner, Trump's son-in-law and senior adviser, and deputy chief of staff Rick Dearborn are also said to be playing a major role in hiring across the administration.

White House aides' involvement has frustrated some Cabinet secretaries who want to pick their own staff. Defense Secretary James Mattis has clashed with Trump's team over hiring. After a behind-the-scenes fight, DHS Secretary John Kelly prevailed in tapping his choice for deputy, Elaine Duke.

But others likely don't have enough sway with Trump's team to install their preferred deputies.

Tension between a secretary and a deputy can echo through an agency, leading to low morale, conflicting directives and backbiting.

During the Obama administration, some agencies suffered as a result of disagreements between top officials. For example, Steven Chu, Obama's first-term energy secretary, often clashed with his deputy, Daniel Poneman, who was handpicked by Obama's team.

Sources familiar with the process said Trump's team has already lined up prospective deputies at several agencies, and they're waiting until after Cabinet secretaries are confirmed to consult with them.

For example, a person close to the transition said Trump's team has narrowed the EPA deputy secretary job to two candidates: Don van der Vaart, a North Carolina environmental regulator, and Andrew Wheeler, a lawyer at the firm Faegre Baker Daniels and a former Republican staff director on the Senate Environment and Public Works Committee who has advised Trump aides

on energy issues. But the person cautioned that the decision-making process is in flux.

While career employees and acting leadership at the agencies have continued all essential government programs and services, other work has slowed dramatically.

As soon as Trump took office, he signed an executive order freezing all pending Obama administration regulations. As a result, policy-related discussions at many federal agencies are largely on pause while Trump gets his team in place, according to interviews with government employees.

"We are just waiting," said one employee at a federal agency, adding that colleagues at the agency are "trying to find work to do."

Another person close to the administration said Trump's five-year lobbying ban is limiting the number of people who want to serve, causing Trump aides to look outside Washington for relatively unknown and inexperienced candidates.

"I had a person at the transition tell me that out of 300 positions and résumés she was looking at, she recognized like two names. A lot of them are think-tankers, lawyers or randoms just for that sector," the person said. "They don't have the usual suspects looking for work."

*Connor O'Brien and Marianne Levine contributed to this report.*

[Back](#)

**Donald Trump: 28 Days Later** [Back](#)

By Matthew Nussbaum and Henry C. Jackson | 02/17/2017 05:05 AM EDT

Donald Trump will hit the four-week-mark Friday on a presidency that has begun like no other full of big promises, constant controversy, the ever-present encroaching of major scandal, and zero regard for the previous norms of American politics.

Beneath the noise, however, there has been a march, however halting and disorganized, toward Trump's promised radical remaking of American policy, foreign and domestic. The border wall his critics said he'd never build has been ordered, his promised rollback of regulations is in full swing, his Supreme Court pick that will likely sit on the bench for decades, and even the "Muslim ban" he promised during the Republican primary was put in place, however briefly, in altered form.

The dual track is familiar to those who watched his campaign, during which a series of controversies and scandals garnered mass attention while few foresaw Trump's success in building a winning coalition. But a presidency is a longer race than even the campaign, and it remains to be seen whether Trump can outrun his missteps the way he did last fall.

So far, Trump has signed at least 23 executive actions, signed five bills into law, seen 12 members of his Cabinet confirmed, nominated one justice to the Supreme Court, sent 168 (undeleted) tweets, fired one acting attorney general and demanded one resignation: that of his

own national security adviser.

It has been 28 days. Here they are.

### **Inauguration Day: Jan. 20**

#### **Where things went according to plan:**

**The speech:** In a short address, Trump stuck to the themes that won him the election, painting a scene of current "American carnage" claims of economic decay and rising crime that are contradicted by a considerable volume of statistical evidence as well as his own promise to usher in a new American glory.

**First executive actions:** Trump signed an executive order that allowed for the delay or waiver of certain Affordable Care Act provisions, and another that froze pending regulations until they won approval from the White House or a newly appointed agency head early moves toward core promises of his campaign.

**Cabinet confirmations kick off:** Two of Trump's best-received Cabinet picks, retired Marine Gens. James Mattis for Defense Secretary and John Kelly for Homeland Security, both won easy confirmation in the Senate. Vice President Mike Pence swore them in that evening.

#### **Where things went off the rails:**

**The crowd size:** The crowds for the inauguration and ensuing parade were bested by the audience that attended former President Barack Obama's first inauguration, a disparity unveiled both by Metro rail ridership numbers and, more immediately, by aerial photographs.

### **Day 2: Jan. 21**

#### **According to plan:**

**First foreign leader visit is announced:** Press secretary Sean Spicer announced the first visit from a foreign leader, with the Prime Minister Theresa May of the United Kingdom scheduled to visit Trump at the White House during his first week in office.

#### **Off the rails:**

**The Women's March:** Hundreds of thousands of protesters descended on Washington and cities around the nation (as well as internationally) in massive numbers to demonstrate against the new president, opening questions about whether his election would galvanize progressives into a more politically effective resistance.

**The CIA speech:** Trump visited the CIA headquarters to show his support for their work, but while standing before the Agency's wall honoring the 117 CIA officers who died in service, he delivered a campaign-style address that stepped on his message.

**Sean Spicer:** The new press secretary called a news conference, but instead of taking questions, he offered a searing critique of the news media's accuracy while delivering no fewer than five demonstrably (at times even obviously) false statements in five minutes. The appearance won Spicer widespread mockery as his inaccuracy became the subject of a short-lived but widely shared meme.

### **Day 3: Jan. 22**

#### **According to plan:**

**Conversation with Netanyahu:** Trump spoke by phone with Israeli Prime Minister Benjamin Netanyahu, extending the invitation for him to visit the United States in February and taking an early step toward a promise of warmer U.S.-Israeli relations.

**Trump's second response to the Women's March:** After initially complaining about the

protests (see below), Trump took a more measured tone in a follow-up tweet : "Peaceful protests are a hallmark of our democracy. Even if I don't always agree, I recognize the rights of people to express their views."

#### **Off the Rails:**

**"Alternative facts":** White House counselor Kellyanne Conway defended Spicer's Saturday night falsehoods by telling NBC's Chuck Todd that Spicer was simply presenting "alternative facts." The phrase was widely mocked and cast further doubt on White House credibility just days into the administration.

**The beginning of the end of Flynn:** Sunday night, The Wall Street Journal published an article with an eyebrow-raising lede: "U.S. counterintelligence agents have investigated communications that President Donald Trump's national security adviser had with Russian officials, according to people familiar with the matter." The problem would not go away quietly.

#### **Day 4: Jan. 23**

##### **According to plan:**

**More executive actions:** Trump signed three more executive actions aimed at fulfilling campaign promises on what the White House billed as the first work day of the administration. The orders officially withdrew the U.S. from negotiations over the Trans-Pacific Partnership, froze federal hiring (except for the military and in certain security situations) and barred federal funds from going to international groups that provide abortions. The move on trade was the final nail in the coffin for U.S. participation in TPP, which had been slowly careening toward doom during the presidential campaign in which Trump and Clinton both voiced opposition to it. The hiring and abortion orders represented two more boxes checked on the conservative wish list.

**Spicer, take 2:** Spicer's much-anticipated Monday briefing was mostly drama-free, and the press secretary pledged the administration's "intention is never to lie to you."

**Tillerson on the move:** Rex Tillerson won a party line vote in the Senate Foreign Relations Committee to advance his nomination for secretary of state. His prospects were uncertain after a rocky confirmation hearing and doubts voiced by Sen. Marco Rubio (R-Fla.), who ended up supporting the former ExxonMobil CEO nonetheless.

##### **Off the Rails:**

**Trump's meeting with lawmakers:** In a meeting with bipartisan congressional leadership at the White House, Trump repeated his false claim that widespread voter fraud cost him the popular vote in the general election.

**Conway on tax returns:** Conway walked back a claim she made Sunday in which she seemed to indicate Trump never had any intention of releasing his tax returns and returned to the line repeated throughout the campaign, that his returns would be released after the completion of an audit.

#### **Day 5: Jan. 24**

##### **According to plan:**

**More executive orders:** Trump signed five more executive actions: Two encouraged the construction of pipelines, one sought to expedite the approval of infrastructure projects, one called for material used to build pipelines to be made in America "to the maximum extent possible," and another called for swifter permitting for domestic manufacturers.

**Nikki Haley:** Trump's pick for ambassador to the United Nations, former South Carolina Gov. Nikki Haley, was confirmed by the Senate 96-4.

##### **Off the Rails:**

**Spicer on voter fraud:** Spicer defended Trump's voter fraud claims by incorrectly citing a widely debunked study. He did not say whether he agreed with Trump's claim, though he claimed that Trump had based his belief on "studies and evidence."

I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and....

Donald J. Trump (@realDonaldTrump) January 25, 2017

### **Day 6: Jan. 25**

#### **According to plan:**

**Immigration orders, Part 1:** Trump signed two orders on immigration. One included a call for the beginning of planning and construction of the border wall and the hiring of 5,000 more border patrol agents, another pushed for the hiring of 10,000 additional Immigration and Customs Enforcement officers and aimed to cut off federal funding to "sanctuary cities."

**Paul Ryan's Philly speech:** In a speech at congressional Republicans' retreat in Philadelphia, House Speaker Paul Ryan said the Republican-led Congress would replace Obamacare, cut taxes and fund Trump's border wall by August. It's usually the White House making grand predictions and Congress coming in with the cold water, but Ryan's statements represented a show of unity.

#### **Off the Rails:**

**Voter fraud tweet:** While his administration worked to steer the conversation toward Trump's policy, the president himself possibly still upset over focus on his loss in the popular vote couldn't resist relitigating the election. "I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and... even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!"

### **Day 7: Jan. 26**

#### **According to plan:**

**Bannon bashes the press:** From the campaign trail into the White House, Trump and his team have grown fond of attacking the news media a move that seems always to rile up their base. Trump's chief strategist Steve Bannon added his voice to the chorus, telling *The New York Times* that the media is "the opposition party" and that the press should "keep its mouth shut and just listen for awhile." Trump would later repeat the "opposition party" phrase to describe the press.

#### **Off the Rails:**

**Spicer, again:** On a flight back from Philadelphia, where Trump addressed the Republican congressional retreat, Spicer suggested a 20 percent tax on imports from countries "like Mexico" could be used to pay for the border wall. But Spicer quickly walked back the proposal, saying it was not a policy proposal but rather "one idea" for how the wall could be paid for. The idea was out there long enough to get panned by some Republicans, including Sens. Ben Sasse and Lindsey Graham.

**Mexico responds:** Mexican President Enrique Peña Nieto canceled a planned visit to the U.S. in response to Trump's Jan. 25 executive actions.

## **Day 8: Jan. 27**

### **According to plan:**

**March for Life:** The March for Life came to Washington with anti-abortion activists feeling a sense of renewed vigor now that Trump has been elected. Pence, in particular, won plaudits by being the first sitting vice president to address the annual event a hometown crowd for him if there ever was one.

**First presidential presser:** Donald Trump welcomed British Prime Minister Theresa May, an event that went smoothly and showcased a tight partnership between the two nations. Trump answered his first questions from reporters as president.

### **Off the Rails:**

**Refugee executive order stumbles out of the gate:** Trump signed a far-reaching executive order that temporarily halted the admission of new refugees into the United States, imposed an indefinite ban on the entry of refugees from Syria, and suspended the entry of citizens of seven Muslim-majority countries. The executive order, signed late on a Friday afternoon, prompted immediate confusion about its enforcement, including chaos at points of U.S. entry. And, within hours, it met resistance in court, including legal challenges that would eventually succeed in putting the order on ice.

**Holocaust Remembrance Day statement:** The White House released a statement to honor International Holocaust Remembrance Day, but made no explicit mention Jewish people. Later in the weekend, two Republican groups joined in criticism of the statement. The White House later called criticism of its statement "pathetic."

**Senate pushback:** Senate Majority Leader Mitch McConnell felt compelled to warn Donald Trump not to lift sanctions on Russia, ahead of a scheduled Saturday morning call between Trump and Russian President Vladimir Putin.

## **Day 9, Jan. 28**

### **According to plan:**

**Executive orders:** Trump signed three executive actions a reorganization of the National Security Council; a five-year ban on lobbying for administration appointees and a lifetime ban on lobbying the government for other countries; and an order tasking the Department of Defense with coming up with a plan to defeat the Islamic State within 30 days. The NSC order proved the most significant, as it moved Trump's chief strategist, Steve Bannon, onto the principals committee of the National Security Council.

**Putin on the line:** Trump's first phone call with Russian President Vladimir Putin was "positive," the White House said, and involved discussions of how the nations could cooperate to combat terrorism. The White House made no announcement regarding election interference-related sanctions after the call, assuaging the fears of some who worried Trump would roll back the sanctions.

### **Off the Rails:**

**Travel ban fallout rulings:** A series of rulings from federal courts Saturday night significantly curtailed Trump's order. A judge in Brooklyn suspended deportations, a Boston judge issued a temporary restraining order on the action and a Virginia judge blocked the deportation of green-card holders.

**Travel ban fallout optics:** As some travelers from the seven affected countries found themselves detained at American airports even if they had valid visas and government officials scrambled to make sense of the order, civil liberties lawyers, protesters and Democratic politicians descended on airports. The backlash marked a spontaneous rebuke to

Trump's order and raised questions about how much planning went into the sweeping action. **Australia calling:** Trump's phone call with Australian Prime Minister Malcolm Turnbull went off the rails after Trump bragged about his election win, expressed anger over a deal to take refugees from Australia and told Turnbull it was his "worst call by far" of the day. Details of the contentious conversation emerged in a Washington Post report a few days later.

### **Day 10, Jan. 29**

#### **According to plan:**

**Order rewrite:** The Department of Homeland Security attempted to modify the travel order by saying it no longer applied to green-card holders from the seven targeted countries. That portion of the ban had been especially troubling to the courts.

**Clarification:** Trump posted a statement on Facebook defending his travel ban, saying the order was "not a Muslim ban," and stressing the temporary nature of it.

#### **Off the Rails:**

**Yemen raid:** A special operations raid ordered by Trump in Yemen resulted in the death of a U.S. service member, Chief Petty Officer William "Ryan" Owens, the wounding of three others and significant civilian casualties. The White House argued that the raid, which targeted fighters from a branch of Al Qaeda, was successful because 14 militants were killed and intelligence was gathered.

**Continued protests:** Protesters continued to rally against the travel ban with protests in cities and at airports around the country, and at a large, impromptu march from the White House to the Capitol.

**ACLU money haul:** The American Civil Liberties Union, a nonprofit spearheading legal challenges to Trump's immigration ban, raised more than \$24 million in online donations over the weekend about six times what they typically receive annually in online donations.

### **Day 11, Jan. 30**

#### **According to plan:**

**One in, two out:** Rolling ahead with executive orders to fulfill campaign promises, Trump signed an order decreeing that for every new federal regulation, two existing regulations must be repealed. Conservative groups cheered the move.

**You're fired:** Trump took authoritative action Monday night in defense of his travel ban, firing acting Attorney General Sally Yates for refusing to defend it. Trump also swiftly replaced Yates, an Obama administration appointee, with Dana Boente, the U.S. attorney in Alexandria, Virginia, ensuring essential functions of the Justice Department remained intact.

#### **Off the Rails:**

**'Betrayal' attack:** The White House statement on Yates' firing was inflected with personal attacks and sounded less like a presidential statement than a piece of campaign rhetoric. "The acting Attorney General, Sally Yates, has betrayed the Department of Justice by refusing to enforce a legal order designed to protect the citizens of the United States. This order was approved as to form and legality by the Department of Justice Office of Legal Counsel. Ms. Yates is an Obama Administration appointee who is weak on borders and very weak on illegal immigration."

**Spicer vs. State:** As State Department employees registered dissent with the travel ban, Spicer announced from the White House that career employees who disagree with the new administration "can go."

**Behind the scenes:** A Monday night report revealed Hill staffers had aided the drafting of the

controversial immigration order but without informing party leadership, explaining some of the initial confusion and crossed wires after the order dropped.

### **Day 12, Jan. 31**

#### **According to plan:**

**LGBT order:** Making good on another campaign theme, Trump pledged to keep in place an Obama order barring federal contractors from discriminating on the basis of sexual orientation. Trump ran as the most outspoken supporter of LGBT rights to win the Republican nomination.

**Gorsuch for SCOTUS:** In a crowning moment for Trump and the conservative movement not to mention Sen. Mitch McConnell, who made it possible the president announced Neil Gorsuch as his pick for the Supreme Court in a prime-time unveiling from the White House. For many Republicans who disliked Trump but voted for him anyway with the Supreme Court in mind, this was a moment of vindication. The announcement went off without a hitch, and Gorsuch was quickly the recipient of praise, at least some of it bipartisan.

#### **Off the Rails:**

**A ban, or not a ban?:** Spicer told the press that the travel ban which both he and the president had referred to previously as a "ban" was not, in fact, a ban. His attempted explanation would later be mocked on "Saturday Night Live."

**Wisconsin trip nixed:** Trump's planned trip to the Harley-Davidson factory in Milwaukee was canceled in part over concerns about protests, CNN reported. Trump ended up hosting Harley-Davidson executives at the White House later, instead.

### **Day 13, Feb. 1**

#### **According to plan:**

**Tillerson gets in:** Rex Tillerson, among the more controversial of Trump's Cabinet picks due to allegations of excessive coziness with the Putin regime, was confirmed as secretary of state by the Senate in a 56-43 vote.

**Saber rattling:** Trump ran on taking a tougher stance against Iran, and his White House made good on the pledge. National security adviser Michael Flynn announced the White House was officially putting Iran "on notice" for recent provocative behavior, and senior officials later would not rule out military action in response.

**Getting to know you:** Paul Ryan and Trump's son-in-law/senior adviser Jared Kushner dined together at the Capitol Hill Club.

#### **Off the Rails:**

**DeVos by a thread:** Two Republican senators, Lisa Murkowski of Alaska and Susan Collins of Maine, announced they would oppose Trump's pick to lead the Education Department, Betsy DeVos. With Democrats unanimously opposed to the Michigan billionaire, that left DeVos headed for a 50-50 vote if the status quo held. The White House voiced confidence that she would be confirmed, which she later was with Pence casting the tie-breaking vote.

### **Day 14, Feb. 2**

#### **According to plan:**

**On message:** Trump told the National Prayer Breakfast that he would "totally destroy" the Johnson Amendment, which restricts political activity by religious groups. The message was one he and Pence trumpeted often on the campaign trail, and it went over well with the Prayer Breakfast crowd.



### **Off the Rails:**

**Bowling Green outrage:** Trump counselor Kellyanne Conway cites a fictitious "Bowling Green massacre" in an interview on MSNBC's "Hardball" as she presses the case for Trump's immigration ban, an attack she said "most people" weren't aware of "because it didn't get covered." The next day, after the Internet had a lot to say about it, Conway apologized saying she got her facts scrambled.

**Talking Arnold:** In a move that struck some as tone deaf, Trump used a speech at the National Prayer Breakfast to mock the ratings of *The Celebrity Apprentice* ratings with its new host, Arnold Schwarzenegger.

**Uber out:** Uber CEO Travis Kalanick quit Trump's business council after some questioned whether his presence with the group represented an endorsement of Trump's policies.

### **Day 15, Feb. 3**

#### **According to plan:**

**Dodd-Frank pull back:** Trump signed an executive order that backed sweeping changes to U.S. financial regulations, in what was viewed as a first step toward undoing Obama's signature financial regulatory reforms. Trump also moved to revamp a controversial conflict-of-interest rule for financial advisers.

**Court victory:** Trump's travel ban won a legal battle — albeit a fleeting one. A 21-page decision from U.S. District Court Judge Nathaniel Gorton offered preliminary backup for the ban, concluding that Trump's executive order was legally sound.

#### **Off the Rails:**

**Judge halts ban:** Late Friday, U.S. District Judge James Robart, a George W. Bush appointee, granted a temporary restraining order that halted Trump's travel ban and restrictions on a nationwide basis, setting up a protracted legal fight. Robart rejected arguments from Justice Department attorneys who said the ban was within the president's national-security powers.

**Viola drops out:** Vincent Viola, Trump's pick to serve as Army secretary abruptly quit, saying he was concerned he couldn't disentangle extensive financial ties. Viola, who had been nominated in mid-December, said he concluded he couldn't clear all of his conflicts. He is the founder of trading firm Virtu Financial and owner of the National Hockey League's Florida Panthers.

### **Day 16, Feb. 4**

#### **According to plan:**

**Ukraine promise:** In a call with Ukrainian President Petro Poroshenko, Trump promised that the U.S. would work to restore peace on the border between the Ukraine and Russia, according to a readout released by the White House. "We will work with Ukraine, Russia, and all other parties involved to help them restore peace along the border," Trump said during the 5 p.m. call, which was described by the White House as "a very good call."

#### **Off the Rails:**

**Judge assault:** Reacting to a court ruling late on Friday night, Trump assailed a federal judge who issued a broad block on his executive order restricting immigration from seven Muslim-majority countries. In a series of tweets, Trump called the ruling from Robart "ridiculous" and lashed out at him. "The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!" Trump tweeted.

**'Saturday Night Live' hits:** A pair of skits that focused on the Trump White House quickly went viral with their scathing portrayals of Trump's relationship with world leaders (and top

aide Steve Bannon) and White House press secretary Sean Spicer. Spicer, played by Melissa McCarthy, is lampooned as a combative, inarticulate press basher. In another skit, Trump, portrayed by Alec Baldwin, calls world leaders as Steve Bannon, dressed as the Grim Reaper, coaches him before relegating Trump to a child's desk.

### **Day 17, Feb. 5**

#### **Off the Rails:**

**Putin problem:** Trump shook up an otherwise quiet day when, in an interview with Fox News' Bill O'Reilly, he seemed to equate Russian President Vladimir Putin with American leadership. O'Reilly said to Trump: "Putin's a killer." And Trump responded, "A lot of killers. We got a lot of killers. What, you think our country's so innocent?" Critics, including GOP Sen. Marco Rubio, pounced on Trump's apparent moral equivalence.

**More judge attacks:** Trump took to Twitter on Sunday afternoon to rip a federal judge and warn that he would be at fault if the U.S. was attacked. "Just cannot believe a judge would put our country in such peril. If something happens blame him and court system. People pouring in. Bad!"

### **Day 18, Feb. 6**

#### **According to plan:**

**Hearing set:** The 9th Circuit Court of Appeals gave the Trump administration hope ultimately short-lived that the travel ban could resume. The court agreed to hear arguments for and against a stay on Trump's executive action that temporarily halted entry by refugees, including those from Syria, and banned travel from seven Muslim-majority nations.

#### **Off the Rails:**

**Media cover-up speech:** Speaking to U.S. troops at Central Command in Tampa, Florida, Trump delivered an overtly political address that accused the news media of covering up terrorist attacks. Later, Spicer told reporters on a flight back to Washington that Trump was merely suggesting some attacks don't receive the coverage they deserve, and that things like protests receive too much coverage.

**Terror pushback:** The White House released a list of 78 terrorist attacks later that night that it said had been underreported by the U.S. media. The list was riddled with misspellings and typos, and included dozens of attacks that received significant, in some cases, blanket U.S. media coverage. Among the "under covered" attacks cited: A shooting at an Orlando, Florida, nightclub that left dozens dead; an attack in San Bernardino, California, and large-scale attacks in Paris and Brussels.

**Bowling Green continued:** White House counselor Kellyanne Conway came under fire after news emerged she cited the fictitious "Bowling Green massacre" in at least two previous interviews. In interviews with Cosmopolitan and "TMZ" Conway made reference to fictitious events in Bowling Green.

**Melania lawsuit:** A lawyer for first lady Melania Trump argued in a lawsuit filed Monday that an article falsely alleging she once worked for an escort service hurt her chance to establish "multimillion dollar business relationships" during the years in which she would be "one of the most photographed women in the world."

### **Day 19, Feb. 7**

#### **According to plan:**

**DeVos confirmed:** Education Secretary Betsy DeVos won Senate confirmation by the

narrowest possible margin, with Vice President Mike Pence casting the deciding vote. Two Republican senators, Lisa Murkowski of Alaska and Susan Collins of Maine voted against DeVos, who faced criticism for past comments and lack of background in public education, and had a rocky confirmation hearing. Pence's vote was the first time a vice president was called upon to help confirm a member of the Cabinet.

**Off the Rails:**

**Teleconference in court:** The Trump administration was able to argue the merits of the travel ban on a teleconference with the 9th Circuit Court of Appeals. A Justice Department lawyer argued that presidents have broad authority when it comes to decisions involving national security.

**Murder claims:** Trump held two listening sessions at the White House to kick off the day, one with county sheriffs and one with veterans' advocates. But the message was stepped on by Trump's false claim that the U.S. murder rate is at its highest level in more than four decades and by his offer to help "destroy" the career of a Texas state lawmaker who opposes asset forfeiture.

**Kelly regrets:** Testifying on Capitol Hill, Homeland Security Secretary John Kelly said he should have delayed the implementation of the travel ban.

**Yemen fallout:** Yemen withdrew permission for American special operations forces to conduct ground operations in the country, The New York Times reported. The move came in the aftermath of a U.S. raid — the first commando raid ordered by Trump — that resulted in the death of one U.S. service member and significant civilian casualties.

**Faux pas avec la France:** Word leaked of a rocky phone call between Trump and French President Francois Hollande, with Trump veering into **rants** about the U.S. getting shaken down by other countries.

My daughter Ivanka has been treated so unfairly by [@Nordstrom](#). She is a great person -- always pushing me to do the right thing! Terrible!

Donald J. Trump ([@realDonaldTrump](#)) [February 8, 2017](#)

**Day 20, Feb. 8**

**According to plan:**

**Sessions in:** Trump's pick for attorney general, Jeff Sessions, won confirmation by a 52-47 vote.

**Off the Rails:**

**Nevertheless, she persisted:** In another galvanizing event for Democratic critics of Trump and Republicans, Sen. Elizabeth Warren was reprimanded and told to sit down and be quiet during debate on Sessions after reading a letter critical of sessions written by Coretta Scott King. Mitch McConnell said that Warren was warned but "nevertheless, she persisted," a phrase that spawned thousands of Facebook posts and tweets, T-shirts and more.

**Supreme discontent:** In a meeting with Sen. Richard Blumenthal, Supreme Court nominee Neil Gorsuch lambasted the president's pointed criticisms of a federal judge who put a stay on his travel ban. Gorsuch said Trump's remarks were "disheartening" and "demoralizing." The comments marked an extraordinary break between a top White House nominee and the president.

**Nordstrom attack:** President Trump used Twitter to blast luxury retail store Nordstrom for

dropping the clothing line of his daughter Ivanka Trump from its stores. Ethics experts and others immediately criticized Trump for using his Twitter account (and the bully pulpit) to attack an individual business. Nordstrom had previously announced it was dropping Ivanka Trump's clothing line due to poor sales numbers.

### **Day 21, Feb. 9**

#### **Off the Rails:**

**Flynn in free fall:** The Washington Post published a report citing nine sources stating Flynn had discussed U.S. sanctions in a phone call with the Russian ambassador, contrary to Flynn's and the administration's statements about the call.

**Ban on ban upheld:** A federal appeals court unanimously rejected the Trump administration's request to reinstate a travel ban that blocked refugees from entering the U.S. as well as citizens of seven Muslim-majority countries. Trump responded to the ruling by tweeting, in all caps, "SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!"

**Nordstrom problems:** House adviser Kellyanne Conway came under fire for encouraging people to buy Ivanka Trump's clothing line, a likely violation of ethics rules that bar such advocacy from White House officials.

### **Day 22, Feb. 10**

#### **According to plan:**

**Diplomatic display:** Trump held a joint news conference and met with Japanese Prime Minister Shinzo Abe.

**Keeping options open:** After legal setbacks for his travel and refugee ban, Trump alluded to future action on the issue: Twice during the day, Trump suggested that the White House would try to redraft the order in order to strengthen it against legal challenges.

#### **Off the Rails:**

**Flynn fallout:** Vice President Mike Pence became entangled in reports that national security adviser Mike Flynn discussed sanctions with Russia before President Trump was sworn in. Pence had denied on national television that sanctions had been discussed. The Pence camp insists Pence was speaking based on what Flynn told him — raising the possibility that Flynn had lied to the vice president.

**Abrams tanked:** President Trump blocked Elliott Abrams' appointment to a top post at the State Department because of his criticisms of Trump during the campaign. Newly sworn-in Secretary of State Rex Tillerson had favored Abrams, a veteran Republican foreign policy hand, for the role because of his breadth of knowledge.

**Conspiracy theorist:** Reports emerged that Trump once again espoused conspiracy theories about illegal voters — with no evidence. In a closed-door meeting with congressional leaders, Trump asserted that he, and former Sen. Kelly Ayotte, would have won in New Hampshire without illegal votes.

### **Day 23, Feb. 11**

#### **According to plan:**

**Getting in a round:** Trump continued a diplomatic visit with Japanese Prime Minister Shinzo Abe by hitting the links with him in Palm Beach, Florida.

**Diplomatic partnership:** Trump and Abe showcased a tight, on-message partnership in the face of an apparent missile test by North Korea. The two worked closely together to craft a denunciation of the launch. Appearing with Trump at a hastily called news conference at in

Florida, Abe called the attack "intolerable."

#### **Off the Rails:**

**North Korea problem:** North Korea's decision to test the missile is another implicit challenge to Trump and seemed designed to rattle Trump and Abe's otherwise feel-good meeting.

**Public diplomacy:** Trump and Abe came under fire for apparently reacting to the launch in public view at Mar-a-Lago. Members took pictures of the two world leaders, huddled over documents lit by cellphone flashlights, in plain view of diners at the Trump-owned property. Rep. Jason Chaffetz, chairman of the House Oversight and Government Reform Committee, called for a review of the security protocols at Mar-a-Lago after images popped up on Facebook and elsewhere.

#### **Day 24, Feb. 12**

##### **According to plan:**

**Quiet-ish day:** After a day of golf and a night of diplomatic crisis the night before, Trump avoided much spectacle. He met with his Treasury nominee, Steve Mnuchin, and casino magnate Steve Wynn at Mar-a-Lago before flying back to Washington.

**Miller impresses the boss:** White House senior policy adviser Stephen Miller did a round of Sunday shows which Trump cheered on, via Twitter.

##### **Off the Rails:**

**But Miller fails with others:** Miller was ripped as shaky and dissembling on Twitter and faced sharp questions from his Sunday-morning show inquisitors, including this back-and-forth with NBC's Chuck Todd about national security adviser Michael Flynn: **TODD:** "Let me ask you this, if you were caught misleading the vice president of the United States, would that be considered a fireable offense in the Trump White House?" **MILLER:** "It's not for me to answer hypothetical. It wouldn't be responsible. It's a sensitive matter." But Trump was satisfied with the performance.

**Tweeting the morning away:** Trump started his Sunday with a rapid-fire string of tweets targeting critics and got into a back and forth with fellow billionaire Mark Cuban. "I know Mark Cuban well," Trump tweeted. "He backed me big-time but I wasn't interested in taking all of his calls. He's not smart enough to run for president!" Notably, Cuban campaigned for former Secretary of State Hillary Clinton and aided her campaign.

#### **Day 25, Feb. 13**

##### **According to plan:**

**Welcome, neighbor:** Trump and Canadian Prime Minister Justin Trudeau had a productive meeting, reaffirming the warm relations between the U.S. and Canada. Trudeau talked about the two nations' common ground and avoided talk of Trump's controversial travel ban. Trump said that U.S. trade issues with Canada are less egregious than those with Mexico.

**Growing Cabinet:** Trump's pick for Veterans Affairs secretary, David Shulkin, was unanimously confirmed by the Senate. His pick to lead the Treasury Department, Steven Mnuchin, was confirmed in a 53-47 vote.

##### **Off the Rails:**

**Out like Flynn:** As night fell in Washington, so did the ax on Flynn, who resigned over reports he misled Pence about his discussions of sanctions with the Russian ambassador to the United States.

**Lingering questions:** Flynn's ouster didn't end the story. There were an array of questions: Who knew what, and when? Why did Trump wait weeks after he learned about his calls with

the Russian ambassador to relieve him of his post? And will Flynn eventually be asked to testify to Congress about his tenure?

**Puzder problems:** Problems continued to emerge for Trump's embattled Labor nominee, Andy Puzder. Talk show host Oprah Winfrey gave the Senate committee considering his nomination a 1990 tape of a show in which Puzder's wife, in disguise, discussing allegations of domestic violence.

#### **Day 26, Feb. 14**

##### **According to plan:**

**Regulatory blow:** In a tangible strike at regulations, Trump signed a bill that killed SEC regulations requiring companies to disclose payments made to foreign governments.

##### **Off the Rails:**

**Bombshells:** The New York Times reported that members of Trump's campaign staff had regular contacts with Russian security officials. About an hour later, CNN largely matches the development. The stories come hours after Spicer denied that Trump's campaign had any contact with Russians.

**Conway conflict:** The Office of Government Ethics said it wanted White House lawyers to investigate Conway after she called on people to buy Ivanka Trump's clothing line during a television appearance.

#### **Day 27, Feb. 15**

##### **According to plan:**

**Netanyahu's visit:** Trump and Israeli Prime Minister Benjamin Netanyahu had an amiable meeting and a joint news conference. Trump also seemed to affirm his commitment to the Jewish State's conservative governing coalition by abandoning the U.S. commitment to the two-state solution.

**Shifting the conversation:** Trump took to Twitter in response to allegations his associates had been in contact with the Russians during the campaign, writing: "The real scandal here is that classified information is illegally given out by 'intelligence' like candy. Very un-American!" Conservative media outlets added their voice to the argument, slamming leakers within the government.

##### **Off the Rails:**

**Puzder pulls out:** Andy Puzder, Trump's pick for Labor secretary, withdrew from consideration after POLITICO published a tape of his ex-wife discussing abuse allegations on "Oprah" and a number of Senate Republicans urged his withdrawal.

#### **Day 28, Feb. 16**

##### **According to plan:**

**The accomplishment-touting part of the presser:** At his first solo news conference as president, Trump ticked through his accomplishments so far, touting his first four weeks in the White House as the most productive of any presidency.

**The media-bashing part of the presser:** Trump's base loves when he attacks the media, and he served up the red meat at his news conference, deploying his favorite insults for the press: "fake news" and "dishonest people."

**Signing a bill into law:** Trump signed into law a bill nullifying a Department of Interior rule, much loathed by Republicans, aimed at protecting streams.

## **Off the Rails:**

**The rest of the presser:** Trump warned about the dangers of "nuclear holocaust." He asked a black reporter if she was "friends" with the Congressional Black Caucus, and if she could set up a meeting with its members. He bragged, falsely, about the historic margin of his election win, only to be corrected on the spot then blamed his staff for giving him bad information. And he said never instructed Flynn to talk about sanctions with the Russian ambassador but said that he would have.

At one point in the presser, Trump said he didn't think "there's ever been a president who in a short period of time has done what we've done."

*Zach Montellaro and Diana D'Abruzzo contributed to this report.*

[Back](#)

## **GOP strategist Dubke to run White House communications [Back](#)**

By Annie Karni, Eli Stokols and Alex Isenstadt | 02/17/2017 10:46 AM EDT

Republican strategist Mike Dubke has been picked to serve as White House communications director, a position the Trump administration has struggled to fill since entering office a month ago, multiple sources confirmed to POLITICO.

The hire highlights the competing factions inhabiting the White House together. Dubke had not previously been a Trump supporter, which riled longtime loyalists to the president. Those people interpreted the move as a power play by chief of staff Reince Priebus, who is seen as stocking the White House with members of the mainstream establishment wing of the Republican party.

In his new position, typically one of the most sought-after posts in a presidential administration, Dubke will focus on long-term messaging strategy and work in concert with White House Press Secretary Sean Spicer, who had been juggling his responsibilities and the job of communications director. Spicer will continue to handle the daily press briefings.

The founder of a company called Crossroads Media, which served Karl Rove's super PAC American Crossroads, Dubke has also served as a consultant for a handful of GOP senate candidates over the last two election cycles. He was on hand in the East Room of the White House Thursday for Trump's freewheeling press conference that ran nearly 80 minutes, and he met with Trump privately before he was offered the position, a source familiar with the hire said. CNN first reported the pick Thursday night.

Nervous about joining an administration that has struggled out of the gate, a number of Republican communications strategists had turned down the job in recent weeks.

The communications director position has been vacant since Jason Miller, the Trump campaign's communications director who was initially tapped to fill the post, backed out due to a personal situation. Miller has since joined the consulting firm Teneo Strategies, which was founded by a longtime Clinton insider, Doug Band.

Spicer, who oversaw communications strategy during five years at the RNC, pushed for the more prominent role of press secretary, securing the job only after Trump had considered a handful of flashier options including conservative radio host Laura Ingraham and Fox News personality Kimberly Guilfoyle. Since Miller left Trump's operation in December, the White House struggled to fill the position. Many of Washington's most seasoned and respected conservative communicators made it known they weren't interested; and a handful of lesser-known candidates, including Brian Jones at Black Rock Group, were offered the position and turned it down.

It has been extraordinary for a White House to function during such a critical month without a communications director setting the broader, long-term press strategy.

But the job is a different beast under Trump, an instinctual player and voracious consumer of tabloid newspapers and cable TV, who has served as his own press shop and messaging guru since the beginning of his career — even at one point in the 1990s, making up a pseudonym, "John Miller," and posing as his own spokesman.

Trump's desire to run his own press strategy continues on today. On Thursday morning, Trump surprised his own senior staffers by telling them he wanted to conduct his own press conference, according to a source familiar with his thinking. There, he took questions and jostled with the press during a free-for-all 77 minutes. The press conference, where Trump got to inhabit his campaign self, appeared to cheer up the president, whose White House has been careening between crises since entering office — and with the resignation of National Security Adviser Michael Flynn, has had two critical posts sitting unfilled. On Friday morning, Trump tweeted, "thank you all for the nice statements on the Press Conference yesterday. Rush Limbaugh said one of greatest ever. Fake media not happy!"

Trump's satisfaction with how Thursday's press conference is likely to lead to more of them in the coming weeks, according to a White House source. Some Republican senators, however, are quietly urging the administration to think through whether such freewheeling exchanges with the press advance the GOP's long-term strategy.

But Trump insiders, as well as former Hillary Clinton campaign officials, were skeptical of how much influence an outsider could have on Trump's media strategy.

"They may be giving someone the title of communications director," said former Clinton campaign press secretary Brian Fallon, "but there will only ever be one person setting the message for this White House and he does it every morning through Twitter."

And among longtime Trump supporters, there was mounting concern that the high-profile post was being filled with someone who doesn't understand the president, and will have no idea what the president is going to say. "Where was this guy three months ago? Where was he a year ago?" said one longtime Trump loyalist. "Why would you bring someone in that wasn't loyal?"

A Dubke defender familiar with the hire, however, noted that Dubke did not work for any candidate in the 2016 presidential race -- and most of his clients last year were supporters of Trump's campaign.



A former campaign aide interpreted the hire of a Rove-connected Washington insider like Dubke as a sign that the White House, under Priebus, is moving in a direction away from the base of people who elected him.

A White House spokeswoman said the administration does not comment on personnel decisions.

[Back](#)

**The dizzying, mesmerizing Trump show** [Back](#)

By Todd S. Purdum | 02/16/2017 07:08 PM EDT

In nearly 90 rambling minutes in the East Room of the White House on Thursday, Donald Trump distilled the breakneck first month of his presidency into a dizzying microcosm of political performance art. In the process, he demolished any lingering doubt about whether he'd bend the presidency to his will, or vice versa.

He dissembled, claiming he'd won the largest Electoral College victory since Ronald Reagan, and when a reporter pointed out the inaccuracy of the claim, breezed on, "Well, I don't know, I was given that information."

He denounced, attacking a press whose "level of dishonesty is out of control." He charmed, and condescended, praising April Ryan, the White House correspondent of American Urban Radio Networks, who is African-American, for a "very professional and very good" question about inner cities, and asking if she could arrange a meeting with the Congressional Black Caucus.

He spluttered, dismissing questions about his campaign's contact with Russian intelligence officials with an airy, alliterative wave, "Russia is a ruse."

And he made at least one bold, ironclad claim that seems incontrovertible: "I don't think there's ever been a president elected who in this short period of time has done what we've done."

Indeed, the first four weeks of the Trump administration have sent the Washington political and media establishment off on a bender seldom, if ever, seen in American history. The new president has now made clear that any effort at rehabilitation — which, in one sense, his rollicking news conference surely was — will be handled strictly on his own terms.

There was a time in American politics — and not so long ago — when a presidential encounter like Trump's with the White House press corps would have been dissected for days, if not years, for its shimmering accumulation of id, ego, grievance and self-pity ("I'm really not a bad person, by the way," he insisted at one point), and might even have prompted a close reading of the 25th Amendment's provisions on presidential disability.

After all, Trump made a breathtaking batch of demonstrably false claims, and gave full voice to the kinds of resentments that the most press-sensitive of modern presidents — Lyndon Johnson, Richard Nixon, Bill Clinton — only unevenly voiced in public, usually at their peril.

But he did so with a kind of gleeful abandon, even a sly playfulness at times ("Now, that's what I call a nice question," he said when someone asked a softball about his wife, Melania) that suggested he himself was in on the act. The sheer concentration of the performance not only probably played well with his core supporters, but seemed just another iteration of the new normal that is Trump's Washington.

Trump has set a land-speed record for creation of turmoil in the White House, the capital and the wider world. In his hyper-paced universe, every hour feels like a day, every day like a week, every week like a month. And you can be sure that by tomorrow, we'll all be on to something else.

Rocky transitions are far from unheard of. James Buchanan's was a doozy: In short order, he pre-emptively endorsed the Supreme Court's pending Dred Scott decision finding blacks had no right of personhood; appointed an all-Southern cabinet that scotched any hope of support from Northern Democrats; and sparked the financial panic of 1857.

Eleven days into Bill Clinton's first term in 1993, The Washington Post reported that old hands were complaining that his White House was "incredibly inept" with the "common sense of a goat," and his first two nominees for attorney general withdrew because they had employed illegal aliens as household help. It took until June for a Time magazine cover story to call Clinton, "The Incredible Shrinking President," and for Newsweek to ask, "What's Wrong?"

But Trump's first month is in a class by itself.

He has sparked global chaos with a ban on travel to the United States from seven Muslim-majority countries and fired his acting attorney general for refusing to defend it. He has fixated on the size of his inaugural crowds; floated baseless claims that millions of illegal voters let Hillary Clinton win the popular vote; launched Twitter fusillades against the federal judiciary, the city of Chicago, Senator John McCain, Nordstrom, the media and "low-life leakers" in his own government.

He has hung up on the Australian prime minister, canceled a summit with the Mexican president and complained to the French president that Washington is being shaken down by entities as varied as China and NATO. Even Trump's official proclamation on the occasion of his own inauguration, declaring it a "National Day of Patriotic Devotion," abandoned the note of humility and reconciliation that had prevailed since George H.W. Bush began the tradition in 1989.

"This is the worst start to a presidency in modern times," said the historian Robert Dallek.

Antony Blinken, the former deputy secretary of state in Barack Obama's second term, put it a bit differently: "I thought the presidency was supposed to exhaust the president, not the American people," he said.

But even when the normal institutional forces of gravity bring Trump up short — the courts block his travel ban; his national security adviser resigns for lying to the vice president about a pre-inaugural talk with the Russian ambassador; his nominee for labor secretary withdraws over controversies about his business practices and personal behavior — he presses ahead,

defying conventional political physics on matters within his sole purview. With a stroke, he drops his country's decades-long stance on a two state solution to the Israeli-Palestinian dispute; renews his war with the American intelligence establishment and, according to The New York Times, plans an independent review of its operations. And just to cap his rockiest week yet, he's headed to a campaign-style rally with the faithful in Florida.

For the new president and his allies, the shattering of convention is precisely the point. That's the precise inverse of most previous transitions, when the imperatives and customs of the office upended novice incumbents, brought them to heel and forced them to change their ways. Trump's determination to shape the institution of the presidency in his own image remains unflagging.

"It is the natural state of the Trump clique to create turbulence like this, and when you have a White House staff that is long on incompetence and sycophancy and short on people trained as grownups, it can go on for a while," said the veteran Republican consultant Mike Murphy, who ran Jeb Bush's campaign super-PAC. "It's totally uncharted territory. What we have is the incompetence of the Carter White house magnified, and the paranoia and loyalty fetish of the second term of the Nixon White House, combined and transmitted in real time through digital media. There are a few things that look historically familiar, but it's all happening on steroids."

Just how long Trump can sustain the current pace is another question. Some of his own supporters have taken to Twitter to remind the president that not every passing thought needs expressing. "I voted for you but this is embarrassing," one of them, Stephen Ross, wrote last week after Trump attacked Nordstrom for dropping his daughter Ivanka's fashion line. "How do you have time to worry about this and not our country?" The Senate majority leader, Mitch McConnell, told The Wall Street Journal, "It would be, I think, easier for us to succeed were there fewer daily tweets."

Indeed, Trump's preferred method of direct communication with the public — Twitter — has already become so numbingly familiar that it is easy to forget just how novel it is. He is far from the first president to be a world-class whiner. But imagine if Johnson, instead of threatening an adversary in telephone conversations that only he knew were being secretly recorded, had broadcast his complaints on live television. Or if Clinton, instead of hollering at his long-suffering aide George Stephanopoulos in private, had sent a fiery blast-fax to every media outlet in the world.

Clinton's adventures in avoiding traditional media filters — playing his saxophone on the Arsenio Hall show, confessing his underwear preferences on MTV — were semi-scandalous 25 years ago, but they look as quaint as an old lace valentine today.

For his part, Trump promised the swift issuance of a new executive order on travel (and a continuing legal appeal of the old one) and action next month on overhauling the health insurance system and cutting taxes. But at the moment, his ambitious agenda is stalled on Capitol Hill, a victim of White House infighting, empty sub-Cabinet positions and mixed signals from the president himself. If weeks turn to months without concrete action on those campaign promises, Trump might pine for his current troubles.

But on Thursday, the president sounded as brassily confident as Candide.

"We're going to take care of it all," Trump insisted at the outset of his appearance. "I just want you to know I inherited a mess."

[Back](#)

### **Inside Trump's freewheeling vetting operation** [Back](#)

By Nancy Cook and Andrew Restuccia | 11/23/2016 05:01 AM EDT

Donald Trump's process for picking top political appointees is "pretty simple," says Rep. [Devin Nunes](#), a senior member of the president-elect's transition team.

When Trump's aides were scouting for names for a CIA chief, Nunes suggested his colleague, Kansas Republican Rep. [Mike Pompeo](#). Those aides got back to Nunes after the election and asked if he still thought Pompeo was the right guy. Roughly five days later following an interview in Trump Tower the president-elect nominated Pompeo to the powerful post.

Nunes added that he isn't aware of any lengthy questionnaire that Pompeo filled out, as is standard with major nominees.

"They asked me who would be the person for the agency, and I said without a doubt that Pompeo would be a great pick," Nunes, chairman of the House Permanent Select Committee on Intelligence, told POLITICO.

That's the way that much of the selection and vetting for top political appointments is unfolding in Trump Tower, the de-facto nerve center of the incoming administration. There, the president-elect meets with friends, politicians, statesmen, donors and lawyers to map out his future Cabinet and agenda. Final decisions on appointees are made with his tiny cadre of top advisers, including incoming chief of staff Reince Priebus, senior adviser Steve Bannon, son-in-law Jared Kushner and Vice President-elect Mike Pence.

Trump's freewheeling approach is in marked contrast with that of past presidential transition teams, who have subjected nominees to weeks and sometimes months of vetting that includes deep dives into their finances, taxes, previous employment and personal relationships.

Barack Obama's transition operation began contacting potential nominees months before he won the presidency in the summer of 2008. After the election, the team tapped dozens of lawyers many working on a volunteer basis to help vet nominees and process their paperwork, according to former members of the team.

"Any delay in getting the technical vetting completed could create risk to the nominees," said Robert Rizzi, a partner at the firm Steptoe & Johnson who has represented Republican and Democratic nominees. "The nomination packages take some time to prepare and to run through the appropriate ethics review, and that review is for their protection, since the ethics rules involve criminal statutes."

New Jersey Gov. Chris Christie, the former head of the Trump transition, had one of his teams

develop lists of potential nominees and conduct initial vetting that included reviews of candidates' public statements.

But since Christie's demotion and Trump's decision to play a more central role it's unclear if that team's work has kept pace with the growing number of nominees meeting with the president-elect in Trump Tower. And the locus of power now resides with Trump in New York, not with the D.C.-based transition operation.

"I think the Trump transition is still pretty fluid. They're adding layers onto the vetting as it goes on," said one Republican close to the transition, adding the team is "behind" in building a team of lawyers charged with vetting nominees and walking them through the complicated confirmation process.

The Trump campaign did not respond to requests for comment, including written questions about the vetting process.

Few of D.C.'s top political lawyers, typically hired to shepherd appointees through the process, have seen a copy of the Trump transition team's vetting questionnaire, an internal document that past transition teams have used to uncover potentially embarrassing details of nominees' past. Obama's vetting document included 63 detailed questions about financial interests, past writings, professional experience and even social media posts.

"Campaigns and transition organizations in the past have gotten down to the business of governing more quickly," says Caleb Burns, a partner at the Republican leaning firm, Wiley Rein, who was not involved in the Trump campaign or transition. "It does not mean they cannot make up for lost time, now that they are singularly focused on it."

The Trump transition team's vetting process is being led by election lawyer Donald McGahn, who served as Trump's campaign lawyer and who is first pick for [White House counsel](#), with the help of lawyers at O'Melveny & Myers, people close to the transition told POLITICO.

Christine Ciccone, who helped President George W. Bush get his Cabinet confirmed, is also assisting with vetting, one person said. Neither McGahn nor Ciccone responded to requests for comment.

Nominees face a daunting pile of paperwork that has been known to trip up even seasoned government officials. They must complete a 127-page government questionnaire, known as [form 86](#), and pass an FBI background check. They are required to fill out a detailed financial disclosure form that is reviewed by the Office of Government Ethics, which works with transition teams to review nominees' financial disclosure forms. And they have to answer written questions from the Senate committee overseeing their nomination

Past transitions teams have tried to uncover potential nomination-killers long before nominations were announced. But Trump's transition team is relying heavily on the federal government to do much of its vetting, including the FBI and the Office of Government Ethics.

"OGE was like an appellate court [during Obama's transition]. It sounds like now they're more like a trial court," said a lawyer closely tracking the transition, suggesting the office is now the

first line of defense. "I think it's been a big burden on OGE."

Trump's allies take comfort from the Republicans' Senate majority, anticipating the GOP will green-light his nominees without much resistance. [Jeff Sessions](#), who has served in the Senate since 1997, is likely to sail through the chamber.

But Democrat and Republican veterans of the notoriously thorny Senate confirmation process warn that surprises can occur.

Perhaps no nominee offers a better cautionary tale about that than Bernard Kerik, who served as New York City police commissioner under Mayor Rudy Giuliani. Soon after being tapped to lead Homeland Security by President George W. Bush in 2004, Kerik withdrew his nomination when he discovered that a former nanny was an undocumented immigrant. Investigations into Kerik's past uncovered more damning information and he was sentenced to four years in jail in 2010 after being found guilty of tax fraud and making false statements to the government.

Still, some Republican lawyers and operatives have argued that Trump's transition team does not need to heavily vet its picks so far, given their current high-profile jobs.

"Priebus has been in the public eye ever since he became chairman of the RNC," said one Republican lawyer about Trump's selection of Republican National Committee Chairman Reince Priebus as chief of staff. "I don't think there is much to him that's not already known."

A former Pence staffer who knows Pompeo defended the swift nature of that nomination as well, saying Pompeo was already vetted. "[Pompeo] would have already had top secret clearance for the intel committees so that is part of the reason they were able to make that pick quickly," said David Kensinger, a Kansas-based lobbyist who worked on Pence's 2012 campaign.

Trump's team also knew Pompeo, a West Point grad and vocal critic of Hillary Clinton's, since he had helped Pence prep for his debate and even attended the debate itself.

But even the nominations of well-known public figures can collapse under scrutiny. In 1989, the Senate rejected President George H. W. Bush's nominee for defense secretary, John Tower, amid allegations of heavy drinking and inappropriate conduct toward women. Tower served as a senator for more than 20 years before his nomination.

"You would think that these people have been in public life and under scrutiny for so long that there wouldn't be anything to find," said a person who served on George W. Bush's transition team. "But sometimes there are surprises."

It's unclear whether the Trump transition has signed a memorandum of understanding with the FBI that would allow the agency to begin conducting background checks on its nominees. A spokesman for the FBI declined comment.

People who have already served in the government can move through the FBI check quickly, with one person tracking the issue saying there is precedent for completing the process in less

than a week. But it can also stretch on for months, especially for people who have not previously been approved for a government security clearance like Steve Bannon, Trump's incoming White House chief strategist.

"If you don't get the names in now, there won't be any names to put forward by January," said one Republican veteran of the presidential transition process.

[Back](#)

### **Judge orders Pruitt to release emails by Tuesday** [Back](#)

By Alex Guillén | 02/16/2017 05:48 PM EDT

A state judge in Oklahoma today ordered Scott Pruitt to release by Tuesday potentially thousands of emails he exchanged with fossil fuel interests in his job as state attorney general, according to the watchdog groups that sued seeking the communications.

That deadline will come after the vote in the Senate on Friday that is expected to confirm Pruitt as the next administrator of the Environmental Protection Agency.

The lawsuit was brought last week by the Center for Media and Democracy, a left-leaning group that has several outstanding records requests before Pruitt's office dating back to January 2015. They argued Pruitt was slow-walking the releases and improperly withholding emails to and from oil, gas and coal companies, and conservative organizations. Pruitt's office says it is answering requests in the order in which they are received.

The order from Judge Aletia Haynes Timmons of the District Court in Oklahoma County does not necessarily mean all 2,600 emails sought by the CMD will be released, as Pruitt's office can still withhold certain documents that are subject to exemptions in the state's records law.

Pruitt's office released more than 400 documents to CMD last Friday, after the lawsuit was filed.

Senate Democrats have latched onto the court case in a last-ditch attempt to delay Friday afternoon's expected vote.

"Sometime a week from now, maybe days from now my fear is that a number of members, especially on the other side, will have been put in a very bad position and asked to vote for a nominee that they otherwise may not have supported had they known," Sen. Tom Carper (D-Del.) said on Thursday.

[Back](#)

### **Democrats: GOP will 'rue the day' it pushed Pruitt vote for EPA** [Back](#)

By Alex Guillén | 02/17/2017 11:16 AM EDT

The Senate confirmed Oklahoma Attorney General Scott Pruitt as the head of the

Environmental Protection Agency Friday, installing one of the agency's fiercest critics as the nation's leading environmental regulator just hours after an Oklahoma judge ordered the release of his email conversations with oil, gas and coal groups.

On the eve of his confirmation, the state judge ordered Pruitt's office release the potentially thousands of emails relating to the energy companies he will soon be regulating but not until Tuesday, days after his confirmation vote.

Pruitt is among the group of President Donald Trump's most controversial nominees, including Education Secretary Betsy DeVos, Health and Human Services Secretary Tom Price and Attorney General Jeff Sessions. And like those others tapped by Trump, Pruitt's nomination is likely to narrowly pass in the Senate with the help of a pair of Democrats.

The controversy around Pruitt's contacts with oil, natural gas and coal companies has given Democrats a rallying point to call for a delay of his final vote on the Senate floor, but which Majority Leader Mitch McConnell has insisted will take place Friday.

"This is an egregious cover-up that must not stand," said Sen. Jeff Merkley (D-Ore.), who is planning to ask for another 10 days of debate on Pruitt a move that's almost certain to be rejected.

It's not clear whether Pruitt's unreleased emails contain any damaging surprises, particularly since his ties to the oil and gas industry are well known. But Democrats already incensed that Pruitt had told them to go through the public records request process if they wanted his emails or other documents from his time as attorney general were apoplectic Thursday night when GOP leaders said Pruitt's vote would take place Friday as scheduled.

Sen. Sheldon Whitehouse (D-R.I.) called the Pruitt vote "an epic ram job," and said Pruitt himself is "the tool and the minion of the fossil fuel industry."

Given Pruitt's industry ties, "I don't see any way his tenure at the Environmental Protection Agency ends well," Whitehouse said. "Time will tell and facts will [come] out, but I believe our Republican friends will rue the day that they had this nomination rammed through the Senate on the very day that the emails were being litigated in Oklahoma, in order to get ahead of any counterpressure."

Sen. Tom Carper (D-Del.), who led a boycott of Pruitt earlier this month before the Environment and Public Works Committee, warned that Republicans could be tying themselves to a time bomb.

"Sometime a week from now, maybe days from now my fear is that a number of members, especially on the other side, will have been put in a very bad position and asked to vote for a nominee that they otherwise may not have supported had they known," Carper told reporters shortly before the judge ordered the emails released.

Republican leadership, with 52 votes secured to approve Pruitt, including Democratic Sens. Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota, have no plans to change course on confirming him.



"Despite Democrat efforts to delay his confirmation vote, we need to be responsible and move forward to confirm Attorney General Pruitt," Sen. Jim Inhofe (R-Okla.) said on the Senate floor shortly before the judge's order came down. "The longer we postpone this vote, the longer it is going to take for things to get done at the EPA, which will not help anyone."

Speaking on the floor Friday morning, McConnell said Democrats have engaged in "truly historic, unprecedented and harmful obstruction" over Pruitt and other candidates.

"Democrats' obstruction has just kept many of our nation's most critical agencies without a leader for too long needlessly delaying the president from fully standing up this new administration," he said.

Whitehouse argued that prior to the election, Republicans "had a fixation with emails," particularly Hillary Clinton's, National Oceanic and Atmospheric Administration scientists' message on climate change and the Obama administration's EPA administrators.

"They were desperate for emails. But now, suddenly emails between a nominee's office and the major players in the industry that he will be regulating as EPA administrator, all they do is look at the ceiling tiles," he said.

The judge who ordered the emails released, Aletia Haynes Timmons, said the two-year delay in releasing emails sought by the left-leaning watchdog Center for Media and Democracy was an "abject failure to provide prompt and reasonable access to documents" by Pruitt's office. Pruitt's lawyers had argued that his office processes requests in the order they are filed, indicating at least a two-year backlog.

She ordered Pruitt's office turn over up to 2,500 emails that are in dispute in CMD's oldest request, and said any documents thought to be privileged be brought to her for review by close of business Tuesday.

Timmons also ordered Pruitt's office to release emails responsive to five more records requests filed by CMD before Pruitt was nominated to run EPA within 10 days.

"The Office of Attorney General remains committed to following the letter and spirit of the Open Records Act," Pruitt spokesman Lincoln Ferguson said in a statement. "In light of that, we are reviewing all of our options in order to ensure fairness to all requestors rather than elevating the importance of some requests over others."

Pruitt's coordination with oil and gas companies is already well known since a 2014 New York Times [story](#) that detailed his "secretive alliance" with fossil fuel interests to combat Obama administration rules. Pruitt [defended that alliance](#) as in the best interest of Oklahomans who live in one of the biggest oil- and gas-producing states.

He also belonged to groups, including the Republican Attorneys General Association, that received major contributions from energy interests, although Pruitt [denied](#) ever soliciting the donations himself.

[Back](#)

## Ryan struggles to sell tax reform plan to fellow Republicans [Back](#)

By Rachael Bade, Burgess Everett and Eliana Johnson | 02/16/2017 07:38 PM EDT

Paul Ryan showed up to Senate Republicans' weekly lunch on Tuesday hoping to salvage a controversial pillar of his tax reform plan that would change how imports and exports are taxed. "Keep your powder dry," the House speaker pleaded.

The next day, Sen. Tom Cotton took to the Senate floor to slam Ryan's so-called border adjustment tax, saying "some ideas are so stupid only an intellectual could believe them."

"Many other senators share these concerns and we most certainly will not 'keep our powder dry,'" Cotton went on, without naming the speaker in his speech.

The sequence was an ominous sign for a linchpin of Ryan's tax plan and perhaps for the prospects of tax reform happening at all. The border adjustment tax would generate more than a trillion dollars over a decade; there's no obvious way to replace that money, which is needed to help pay for a steep cut in corporate and income taxes.

In meetings with administration officials and Senate leaders, Ryan has framed his proposal as a compromise between a tariff, which the president wants, and conservative orthodoxy against border taxes. He has suggested it's in keeping with President Donald Trump's "America first" mantra, since it would reward American manufacturers that make products here and sell it abroad.

But the idea is sharply dividing Republicans even within the White House.

Trump's chief strategist Steve Bannon likes it, but the president's chief economic adviser, Gary Cohn, is opposed, according to people who have talked with them. Trump himself has acknowledged he doesn't think much of the proposal, though he has said he will keep an open mind.

Many Republican senators say privately they detest the concept, fretting that it will hurt their in-state retailers like Walmart, which is headquartered in Cotton's state of Arkansas. Senate Finance Chairman Orrin Hatch (R-Utah), sources said, has warned Trump and Ryan that border adjustment won't likely have the support needed to clear the Senate.

Hatch, in an interview after Ryan's presentation, said the speaker "didn't cover [the border adjustment proposal] as specifically as I would have liked." And Sen. Roy Blunt of Missouri, the fifth-ranking GOP senator, said the Finance Committee will likely go a "different way."

Others were more unequivocal.

"It's beyond a complication. It's a bad economic proposition," said Sen. David Perdue (R-Ga.).

That's not to mention Ryan's issue in his own chamber. A handful of Ways and Means Republicans including some with close ties to Trump are fretting that retailers slapped with an import tax will ultimately pass the cost onto consumers. One member of the tax-

writing Ways and Means Committee, Rep. Jim Renacci (R-Ohio), asked his chairman Wednesday to hold hearings on the proposal.

The clock is ticking for Ryan. Senior House Republican sources told POLITICO that if the border adjustment proposal is not included in Trump's tax blueprint, set to be unveiled in the coming weeks, it could be even tougher to rally Republicans to the idea. Supporters of Ryan's proposal are crossing their fingers that Trump doesn't introduce a detailed tax plan at all, worried it could complicate their work.

A source familiar with the White House's thinking said it's unlikely Trump would try to push through the border-adjustment tax if key administration officials and senators are still divided over it.

"It's fair to say there's a lot of questions about how it would work and the assumptions on which it's based," said Senate Majority Whip John Cornyn (R-Texas).

During a news conference Thursday, Ryan downplayed questions about opposition to the border adjustment tax and argued some people simply don't understand how it works. Holding up reporters' tape recorders as props, he explained how an American-made recorder is taxed much more than a Japanese product. His idea, he added, would make American businesses more competitive worldwide.

Senior House Republican sources who back him say the House has been working on tax reform for years and has already considered numerous financing mechanisms. But all of them have set off firestorms within various industries. A border adjustment tax, they say, is the best option on a limited menu.

Without it, they contend, tax reform will die.

Ryan has made the same pitch to his colleagues privately, according to one source close with the speaker who heard it.

"Ryan is impressing on his fellow Republicans that any tax reform proposal is bound to contain controversial measures — which is precisely why it hasn't gotten done," the source said. If the new Republican majority is going to clear the hurdle, he has told colleagues, it is going to have to be with this plan.

Ryan spent at least a half-hour explaining why the border adjustment is essential. But multiple GOP senators told POLITICO they felt his talk was too wonkish and hard to follow. Some bristled at being told to keep their "powder dry" while Ryan is aggressively campaigning for the tax.

"I heard 'keep your powder dry' as, 'Don't articulate your cogent arguments against our bad idea,'" one senator said. "I have not yet talked to a single senator who's enthusiastic about it. Ryan and [Ways and Means Chairman Kevin] Brady seem to have a near-theological commitment to it."

At the Senate GOP lunch a week earlier, former Sen. Phil Gramm of Texas blasted the border

adjustment tax idea. His arguments were easier to follow and resonated with many of his ex-colleagues, attendees said.

"To me he made more sense," said Sen. Jim Inhofe (R-Okla.), contrasting Gramm's presentation with Ryan's.

Not all Senate Republicans are panning Ryan's idea. Sen. John Thune of South Dakota, the No. 3 GOP leader, said "they've got a bold proposal out there" and said "at least conceptually, there are a lot of things in it to like."

However, "I think the border adjustability is the hard thing to sell," he added.

Ironically, the speaker seems to have a strong ally in Bannon, the ex-boss of Breitbart News, which attacked the speaker mercilessly during the campaign. A senior House Republican source, however, said it would depend on who most has the ear of the president when he decides whether or not to support the proposal. In other words: Bannon's support doesn't necessarily mean Trump will follow suit.

Ryan is hoping he can also win the support of Trump's influential son-in-law, Jared Kushner, Commerce Secretary Wilbur Ross, Treasury Secretary pick Steven Mnuchin and senior adviser Stephen Miller.

While a host of conservative groups led by the Koch brothers and the Club for Growth have lined up in opposition, other outside groups with close Senate contacts are set to begin a campaign to pressure the chamber to take a closer look. It's led by former National Republican Senatorial Committee Executive Director Ward Baker at a firm run by Josh Holmes, Senate Majority Leader Mitch McConnell's former chief of staff well-connected former ex-Senate staffers who could help Ryan tremendously.

But the prospects in the Senate, at this point, appear grim.

Sen. Tim Scott (R-S.C.) called Ryan a "brilliant man" and parroted Ryan's talking point said he's keeping his "proverbial powder dry." Yet Scott said Ryan needs to be aware that he might not have the votes to get his way in the chamber.

"It's not what we think about border adjustability. It's what we do think about having 51 of 52 senators saying yes to border adjustability," Scott said. "I'm not yet sold."

[Back](#)

**McConnell pleads with Trump one more time: Stay on message** [Back](#)

By Burgess Everett | 02/17/2017 11:58 AM EDT

As Donald Trump heads to Florida this weekend to give a campaign-style rally, Mitch McConnell made one more plea to the Republican president: Try to stay on message.

The Senate majority has been trying for months unsuccessfully to convince Trump to

adapt McConnell's own disciplined style. The Kentucky Republican says that Trump's White House is pursuing many of the policy goals that the Capitol Hill GOP prefers, but that Trump's style is at odds with McConnell's own methodical style.

"Well, I've been pretty candid with him and all of you that I'm not a great fan of daily tweets. What I am a fan of is what he's been actually doing," McConnell told reporters on Friday before the weeklong Presidents Day recess. "I've not been a fan of the extra discussions that he likes to engage in. But we're going to soldier on."

The canny GOP leader has been directly challenging Trump to change his messaging approach. McConnell this week advised Trump to lay off Twitter and told the Weekly Standard Trump would be "10 to 15 points higher if he allowed himself to stay on message."

Trump has ignored the advice. On Thursday he gave winding, nearly 80-minute press conference that included false statements about the election and and unrelenting attacks on the "fake news" media. But McConnell is learning to live with it: He said that Trump's actual policy proposals and staff appointments aren't that different from what a theoretical President Mitt Romney, Jeb Bush or Marco Rubio would have pursued.

"I can't see much difference between what President Trump is doing than what they have done. I think the Cabinet has been truly outstanding: It's the most conservative Cabinet certainly in the time I've been here," McConnell said. "I like what he's doing."

[Back](#)

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[Back](#)

### **Trump promises Shuster 'some money' [Back](#)**

By Kathryn A. Wolfe | 02/16/2017 01:05 PM EDT

At a White House meeting with early campaign supporters, President Donald Trump promised Rep. [Bill Shuster](#) "some money" to fund transportation.

During the meeting, Shuster reminded Trump that he's head of the House Transportation Committee, prompting Trump to respond: "That's right, I'm going to give you some money for transportation."

How much money for transportation, where the funds will come from, and how it will be spent, is still up in the air.

[Back](#)

### **Trump signs bill killing SEC rule on foreign payments [Back](#)**

By Alex Guillén | 02/14/2017 03:11 PM EDT

President Donald Trump Tuesday signed the first in a series of congressional regulatory rollback bills, revoking an Obama-era regulation that required oil and mining companies to disclose their payments to foreign governments.

That regulation, part of the Dodd-Frank Wall Street reforms, was strongly opposed by the oil and gas industry including Trump's Secretary of State, Rex Tillerson, who as head of Exxon Mobil [personally lobbied](#) to kill the Securities and Exchange Commission's rule that he said would make it difficult to do business in Russia.

"It's a big deal," Trump said at the signing. "The energy jobs are coming back. Lots of people going back to work now."

Today's signing in the Oval Office marked the first time in 16 years that the Congressional Review Act has been successfully used to roll back a regulation, and Congress is queuing up several others to send to the president's desk.

The American Petroleum Institute had challenged the SEC's first version of that rule, known as the 1504 rule after the relevant section of the 2010 Dodd-Frank Wall Street reform bill, forcing the agency back to the drawing board in 2013. In 2015, a federal judge said the SEC was dragging its feet on issuing a new version, and the SEC was ordered to finish the new rule by late June 2016 putting it just within reach of the CRA's timeframe.

Congress has already passed another resolution gutting the Interior Department's stream protection rule that has been criticized by the coal industry. Trump was reportedly scheduled to sign that one at an event in Ohio on Thursday, but that trip has been scrubbed, and it remains unclear when he will sign the measure.

The Senate is also teeing up votes this week for several others that have already been passed by the House.

[Back](#)

### **Trump steamrolls stream rule** [Back](#)

By Alex Guillén | 02/16/2017 03:58 PM EDT

President Donald Trump today signed a bill repealing an Interior Department rule meant to protect streams from mountaintop removal coal mining.

The Obama administration said the rule, issued in December after more than seven years of work, would have a minimal effect on jobs, even netting an employment increase from new clean-up requirements. But Republicans and industry argue it would wipe out a majority of the ailing coal industry's jobs.

Repealing it "will eliminate another terrible job-killing rule, saving many thousands of American jobs, especially in the mines, which I have been promising you," Trump said at the White House signing ceremony, pointing to coal miners in the room. "The mines are a big deal. I've had support from some of you folks right from the very beginning and I won't forget it."

Trump "made a major down payment on his campaign pledge to revive the coal industry," said National Mining Association President and CEO Hal Quinn.

This is the second time Trump has given his approval to a Congressional Review Act resolution, following his Tuesday [signing](#) of a similar bill killing a Securities and Exchange Act rule requiring oil and mining companies to reveal their payments to foreign governments.

It is also only the third-ever successful use of that obscure law that requires only a simple majority in Congress to kill so-called midnight regulations. The first was in 2001, when Republicans used it to nullify a Clinton ergonomics rule.

With the stream rule nullified, Interior reverts back to the original 1983 regulation that Obama's Interior said was out of date and inadequate to protecting waterways and aquatic life.

Congress is preparing to send even more CRA resolutions to Trump's desk in the coming weeks. The Senate this week passed a House bill blocking a rule aimed at stopping mentally ill people from buying guns. And the House has already passed a bevy of other resolutions that await Senate action and target rules on methane waste, Planned Parenthood funding, land use planning, Alaskan hunting, state-run retirement savings programs and unemployment drug testing.

[Back](#)

**Trump flees Washington as he seeks a reset** [Back](#)

By Josh Dawsey | 02/17/2017 05:09 AM EDT

Since Donald Trump became president last month, Robert Rabon says his company selling mobile homes in Conway, South Carolina, is booming and he credits Trump. "I've sold 50 mobile homes since the beginning of the year because the people feel good about the country, they feel excited about it again."

He expects to pay less for insurance when the Affordable Care Act is repealed and says his friends are hurting because of high fees and deductibles; the owner of a local barbecue restaurant is paying \$3,200 per month because he has diabetes, Rabon said. He thinks taxes will drop because he won't have to "pay for all these other people who have never worked and sit on their butts for their whole lives," even though Trump has resisted some calls to rein in entitlement spending.

"If Hillary Clinton had won, I was going to shut down my business. I really was," Rabon said. "We just had to have a change after the last eight years. We have a president who's pro-America, not anti-America. I just thought Barack Obama hated America. He wanted to do everything he could do to destroy America."

Trump travels to South Carolina Friday, ostensibly for the rollout of Boeing's new 787-10 Dreamliner jet, but it will probably be just as much an ego boost for a president pummeled by Washington.

Not only will Trump likely hear rapturous applause as he crows about American-made products, but it will also give him a chance to revel in his victory one of his favorite topics. He won 55 percent of South Carolina's vote to Clinton's 41 percent in the general election, and about 32 percent of the primary tally, besting his nearest rival by 10 points.

It will be a welcome respite for Trump, who has largely been holed up in the White House, careening from one controversy to the next during his first month in office. In a stunning sign of his frustration, Trump unloaded on the "dishonest media" during an hour-plus-long news conference on Thursday for not giving him the credit his administration deserves. And while Trump cited a recent Rasmussen poll during the news conference that shows his approval rating at 55 percent, the average has hovered more around 46 percent a historic low for a new president.

But in South Carolina, he's getting rave reviews.



Interviews with lawmakers, activists and political observers in the state indicate they aren't nearly as concerned about his erratic phone calls with foreign leaders, his Twitter attacks on senators, celebrities and others, his shifting and sometimes uninformed opinions on issues, his campaign's questionable ties to Russia, and his administration's struggles to fill the government and effectively implement his policy ideas.

The biggest problem, Republicans here say, is the Charleston event is private and they all can't get in. "The people who supported him support him more than ever," said Joel Sawyer, a Columbia consultant with deep ties across the state.

Trump has told allies it is important to be among "my people" and that the "dishonest" news media needed to see his support. After South Carolina, he will head to Florida for a campaign rally, even though his reelection bid is four years away.

That workers at the Boeing plant Trump is visiting overwhelmingly rejected an attempt this week to unionize has further energized Trump's supporters, say Cindy Costa, a Lowcountry Republican and national committeewoman. "Unions have served their purpose and are no longer needed," she said. "They protect lazy people and keep them hired when they need to be fired. You have these union bosses and criminal elements that run unions, and I think the president would agree with me." Trump recently met with unions in the Oval Office and often dealt with them as a New York real estate mogul.

During the campaign, religious conservatives, which dominate the state, were skeptical about Trump, a thrice-married, philandering billionaire. Now, they believe he will stand up against abortion and for the rights of churches.

South Carolina Republicans have also learned to love the unilateral power of the presidency. Republicans, Sawyer said, hated President Obama's executive orders and called them "overreach" but now embrace Trump's orders. Consistency, he joked recently on Twitter, is so 2012. While Trump's executive orders were widely derided in Washington for being vague, symbolic and ill-crafted, supporters saw them as proof he would get to work immediately.

While South Carolina Republicans derided Obama for playing golf, Trump's trips to the course don't seem to bother them. "He is working his butt off," Rabon, a lifelong Republican who had never attended an inauguration before Trump's, said. "He will figure it out but he is getting battered at every turn."

Supporters also say they liked his Cabinet choices, which they deemed conservative. Asked about various allegations that have swirled around nominees, from not paying taxes to domestic abuse allegations, supporters shrugged and in some cases, blamed the media. "These are people who know the world, not the academics that Obama appointed. None of these people were based on identity politics. They were just the best people for the jobs," said Larry Kobrovsky, chairman of the Charleston County Republican Party. "In the media, you have this relentless over-the-top hysteria. No matter what he does, the media says he's terrible. Every time he opens his mouth, he's the worst in the world. You just learn to discount it."

Allegations about Russia are largely overblown, too, his supporters say, and are an attempt to delegitimize his victory. They largely agree with Trump on the executive order travel ban that

has since been frozen by the courts. "He was smacked down by an activist judge," Sawyer said, of how Trump's supporters see it.

And whereas many inside the Beltway are cringing at Trump's rhetoric, his impolitic or unpolished remarks are expected in South Carolina. "You hear people saying they wish he wouldn't tweet, but I think 98 percent of the people here think he's doing great," Costa said. "I wish some of his tweets were better crafted and had a better message, but I'm in politics. They're not being written for me."

Streets remain lined with Trump signs in Horry County, a conservative bastion on the northeast coast of the state. Billboards have kept his face along the interstate. While some in Washington joke about his impeachment, many here say they are looking forward to Trump's second term.

"They basically say, we sent him to shake things up in Washington; is he doing that?" said Rep. Mark Sanford, a Charleston Republican who has criticized the president. "And they basically think yes. A lot of the things that are causing grave concern among some in Washington are not noticed by supporters at home. They don't care about the ins and outs."

He is not without his opponents or problems here. In some of the state's bigger cities like Charleston and Greenville an influx of Fortune 500 companies have brought an influx of Democrats who want to mount protests against Trump in South Carolina, said Jaime Harrison, chairman of the Democratic state party. He says Trump is alienating every Democrat in the state and even some who voted for him, and he is heartened by polls in other states that show Trump's popularity declining. "He's in the 30s in Michigan now," Harrison said.

Harrison also said Republicans would be howling if accusations swirled that Clinton's campaign worked covertly with Russian officials during the election. The double standard is infuriating, he said, and watching Republicans defend Trump amid chaos is difficult to swallow. "I have never seen anything like this," he said.

Trump could have other issues, Sanford and some critics say. Sanford expects protests at his town hall this weekend. They worry about Trump's anti-free trade policies hurting the state, particularly the large port in Charleston near where Trump is appearing. If the economy doesn't turn around, and he can't bring jobs back to the faded mill towns that dot the interstate between booming cities, people could tire of him. "The anti-trade talk could be a real double-edge sword if some of that stuff took hold and trade barriers begin to go up around the world and it hurts companies like Boeing, that will have a consequence," Sanford said. "People are really expecting the economy to boom."

And if it was ever substantiated that Russians were paid to help him win the presidency, Sanford said that would hurt Trump. Still, Harrison seemed unsure of how many people would actually show up to the protests in a nearby parking lot given that South Carolina ain't Michigan. "I think there will be a number of people," he said.

Protests may bother Trump, who has grown privately upset when detractors greet him. But they won't bother many of his supporters, who universally say the protests make them like him more. Kobrovsky, the Charleston Republican, said watching the protests against Betsy DeVos,

the new education secretary, and the "crazies in Wisconsin and Michigan" made him glad Trump is in office and "those people were not." Rabon said the protesters were paid by George Soros — an unsubstantiated claim.

"Republicans work and raise families. They aren't going to be out in the streets or at rallies during the day," Kobrovsky said. "If you see people on the other side, they don't. They've never had so much fun in their life doing these protests."

Costa said Democrats are acting wildly inappropriate when it comes to Trump. "He's being obstructed by the Democrats. They are hateful. They are mean-spirited. They are just made that way. I don't even understand how their brains work. I don't see how they can't understand the obvious. Their minds are much different than ours," she said.

Sawyer and other longtime political observers in South Carolina say the partisan division worries them because Trump's supporters and detractors don't seem to care about the facts. Both Democrats and Republicans should keep an open mind to Trump, he said, and be willing to change positions from he is "the greatest president ever" to the "end of Western civilization as we know it."

"Regardless what you think of Donald Trump, we should as human beings hold open the possibility that our minds could be changed," he said. "If we're determined as an electorate to think what we think, facts be damned, our country is screwed."

Costa said there is a way Trump could lose support in South Carolina. "If he goes out and mass murders people, I think he'd lose support. But that's not going to happen," she said.

[Back](#)

**Trump anti-leak drive could prompt prosecutions** [Back](#)

By Josh Gerstein and Bryan Bender | 02/17/2017 05:16 AM EDT

President Donald Trump's threats of criminal prosecution over the flood of leaks that has plagued the early weeks of his administration may turn out to be far from empty talk.

By far, the most potentially serious disclosures in the view of attorneys who've handled such cases are the leaks of details about phone calls the U.S. government intercepted between Russian Ambassador Sergei Kislyak and just-fired National Security Adviser Mike Flynn.

"If somebody disclosed the contents of intercepted phone conversations to a reporter, I could see a prosecution, for sure," said Ed MacMahon, a northern Virginia defense attorney. "That is plainly a felony."

Leaks of intelligence-related intercepts are typically treated more seriously than disclosures of other classified information, experts say. There's also a criminal statute directly aimed at that issue, imposing a potential prison term of up to ten years for each violation.

The idea of jailing someone who leaks transcripts of conversations intercepted at foreign embassies is not theoretical. In 2009, a Hebrew contract translator for the FBI, Shamai Leibowitz, was charged with disclosing classified communications intelligence to a blogger.

Leibowitz was sentenced to 20 months in prison at a somewhat bizarre proceeding where the Maryland-based federal judge said he was "in the dark" about just what was disclosed and the defendant said he acted because he thought some things he saw were illegal.

The blogger involved, Richard Silverstein, later confirmed that the records he received from Leibowitz were about 200 pages of transcripts of conversations involving Israeli embassy officials. Silverstein told the New York Times he burned the records in his backyard after Leibowitz came under investigation.

Trump was on a tear Thursday over the recent flurry of leaks, using Twitter to denounce "low-life leakers."

"They will be caught!" Trump vowed. Later, at a press conference, he said he'd asked the Justice Department and other agencies to investigate.

"I've gone to all of the folks in charge of the various agencies ... I've actually called the Justice Department to look into the leaks. Those are criminal leaks," Trump said, repeatedly calling the leaks illegal and blaming some of them on partisan supporters of former Democratic nominee Hillary Clinton.

Spokespeople for the Justice Department and the FBI declined to comment on whether any leak investigations were ongoing, but Trump indicated they were.

"We are looking into that very seriously," he said.

Intelligence officials said little about the leaks, but moved aggressively to knock down reports that distrust of Trump and his team was so intense that analysts and briefers were holding back details from the White House.

"It is CIA's mission to provide the President with the best intelligence possible and to explain the basis for that intelligence," CIA Director Mike Pompeo said in a blunt statement Thursday evening calling one prominent report to the contrary "dead wrong."

"The CIA does not, has not, and will never hide intelligence from the President, period ... We are not aware of any instance when that has occurred," Pompeo added.

Several former officials called the Flynn-related leaks illegal and deplorable, although there were differences about how unusual the current wave of disclosures really is.

Many veterans of Washington and the secret intelligence world doubt that the current trend is abnormal by Washington standards, given the leakage of highly classified information on eavesdropping programs, intelligence in the lead-up to the 2003 invasion of Iraq, and many other examples.

"I don't have reason to believe there is a peculiarity here that indicates something exceptional," said retired Army Lt. Gen. Patrick Hughes, a former director of the Defense Intelligence Agency who also served as assistant secretary of Homeland Security for information analysis. "The circumstantial timing is suspect. We just had this contentious election and we have a new president trying to get his feet under him, which makes it seem like it may be something different. But in totality this problem has been going on for many, many years in Washington."

"I deplore it," said retired Adm. James Stavridis, a former NATO commander who was vetted as a possible vice presidential running mate by Clinton and interviewed by Trump to be secretary of state. "It is illegal."

But Stavridis, too, who served six tours in Washington during his military career, said so far nothing in the content of the information shared with the media strikes him as out of the historical norm.

For example, he said when he was the military assistant to then-Secretary of Defense Donald Rumsfeld the content of private phone calls was routinely leaked to the press.

"I don't see an unusual level of leaks," he said. "I have yet to see anything that really shocks me."

What would be jarring, in his view, would be leaks that divulged the ways the intelligence was collected. "As far as I can tell no sources and methods, no cryptographic tools have been revealed."

"Snowden was shocking," he added, in reference to Edward Snowden, the former National Security Agency contractor who in 2013 leaked hundreds of thousands of documents that included details of how intelligence agencies gathered sensitive information.

A former senior CIA official who served during multiple administrations said the series of leaks "has to be disturbing to everyone."

The former official, who spoke on condition of anonymity, theorized that in the wake of the Snowden disclosures some who have security clearances may be de-sensitized to how serious it is for closely held national security information to be so widely and egregiously shared.

"Maybe it is because of Snowden," he said.

But the former official also believes it is "too early to say whether it is ahistorical or that this leaking is out of the ordinary."

Some Democratic lawmakers said Trump appeared to be using the leak issue to divert attention from more serious questions about contacts with the Russians by Flynn and other Trump aides.

"It's very Trump-esque that he loved leaks during the campaign and now he thinks leaks are the problem," said Sen. Claire McCaskill (D-Mo.) "Certainly, we don't want anyone leaking

sensitive information. On the other hand, if everyone would have just focused on 'Deep Throat' in Watergate, I'm not sure we ever would have gotten to the bottom of Watergate. I think the same analogy would hold here. We need to look at the underlying behavior -- not just the fact that we found out about it."

"Having the [Defense Intelligence Agency] take away [Flynn's] security clearance is not the result of some media leak. It is frankly remarkable that anyone even would make that claim. We need to see the transcript of that conversation," said Sen. Mark Warner of Virginia, the ranking Democrat on the Senate Intelligence Committee.

But Sen. Mike Rounds (R-S.D.) decried the leaks.

"If the intelligence agency employees are leaking classified information, that is a serious issue and it will have to be dealt with," Rounds said. "There is no reason why anybody in the intelligence agencies should be leaking information ... It doesn't matter what the classified information is. It's not their responsibility to make a decision that, 'I will release this.'"

In his epic press conference Thursday, Trump acknowledged that not all leaks are equal. He told reporters Thursday that he was not as troubled by the substance of leaks about his conversations with leaders of Mexico and Australia as by the possibility more sensitive diplomatic talks might be publicly disclosed in the future.

"I said that's terrible that it was leaked, but it wasn't that important. But then I said to myself: what happens when I'm dealing with the problem of North Korea?" Trump said. "What happens when I'm dealing with the problems in the Middle East? Are you folks going to be reporting all of that very, very confidential information ... I mean at the highest level? Are you going to be reporting about that too?"

Experts said it was not clear that the leaks of details on Trump's calls with the Mexican president or the Australian prime minister violated federal felony statutes, like the Espionage Act. The main anti-leak provisions in that statute cover not all classified information, but solely that related to the "national defense."

Disclosure of a broader category of classified information is covered by a misdemeanor statute, but that is rarely invoked except in plea deals where prosecutors believe they could pursue a more serious charge.

"There'll be no prosecution over any of that stuff," MacMahon said, referring to the awkward Trump talks with the Mexican and Australian leaders.

Still, any individuals determined to have leaked classified information about Trump's calls could be fired and stripped of their security clearances.

"They are risking their career, their livelihood and their future employment," said Steven Aftergood, who studies government secrecy policy for the Federation of American Scientists. "I doubt they're risking jail, but they are almost certainly putting their own career in jeopardy."

Even if Trump and others are convinced crimes were committed, there are many potential obstacles to any prosecution, including finding sufficient evidence to finger the leakers.

In that respect, a policy change President Barack Obama ordered just before leaving office could complicate investigators' work in the Flynn case or other cases.

Transcripts of intercepted calls have historically been "minimized" to remove the identities of U.S. citizens and residents before those transcripts are passed to other agencies. However, Obama's directive late last year allowed more raw intercepts to be passed to more people at more agencies.

One of the key questions agencies reporting leaks to the Justice Department must answer is; "What is the extent of official circulation of the information?" If information was distributed widely within the government, even if considered "Top Secret," extended investigations are rare and prosecutions even rarer.

"By saying unminimized records can circulate more broadly, you're creating a new hurdle for investigators to locate the leaks," Aftergood said.

Prosecutors also tend to take some account of a leaker's motivations in considering whether to file charges. Judges have refused to allow defendants to argue that their conduct should be excused because the disclosures were in the public interest.

Former Justice Department lawyer Thomas Tamm appeared on the cover of Newsweek in 2008, confirming that he was a source for the New York Times in its disclosure of President George W. Bush's warrantless wiretapping program. Tamm was never charged, although the decision to drop the matter came under the Obama administration, which also viewed Bush's effort as legally suspect.

In prosecuting leakers, the Trump administration could cite the aggressive treatment of leakers under Obama. Such cases were a rarity in prior years, with only three filed in the course of nearly a century. However, at least eight were brought during Obama's time in office, leading to criticism from First Amendment and whistleblower advocates.

Still, there is the question of whether a jury likely in Washington or northern Virginia would convict someone who appeared to be motivated by genuine concern that Trump aides were too close to Russian government officials.

"You could try a jury nullification defense, but you're never going to get a judge to formally allow it," MacMahon said. "Leak prosecutions just depend on whose ox is being gored ... The government can destroy somebody's life in one of these cases. It just comes down to whether the government wants to prosecute the case."

*Austin Wright and Josh Meyer contributed to this report.*

[Back](#)

**'I'm a Dead Man Walking'** [Back](#)

By Tim Alberta | 02/17/2017 05:11 AM EDT

None of this feels normal. The congressman greets me inside his Washington office wearing a wrinkly collared shirt with its top two buttons undone, faded denim jeans and grungy, navy blue Crocs that expose his leather-textured feet. Nearing the end of our 30-minute interview, he cancels other appointments and extends our conversation by an hour. He repeatedly brings up his extramarital affair, unsolicited, pointing to the lessons learned and relationships lost. He acknowledges and embraces his own vulnerability—political, emotional and otherwise. He veers on and off the record, asking himself rhetorical questions, occasionally growing teary-eyed, and twice referring to our session as "my Catholic confessional."

And then he does the strangest thing of all: He lays waste to the president of his own party.

Most Republicans in Washington are biting their tongues when it comes to Donald Trump, fearful that any candid criticisms of the new president could invite a backlash from their constituents or, potentially worse, provoke retribution from the commander in chief himself.

Mark Sanford is not like most Republicans in Washington.

His policy résumé is beyond reproach to those on the right: He was D.C.'s dashing fiscal hawk during his first stint in the House, and then, after term-limiting himself and returning home to South Carolina, he won the governorship, vetoed hundreds of measures from his Republican-led Legislature and gained fame by refusing to accept President Barack Obama's stimulus funding in 2009. His political instincts are razor sharp: Sanford has never lost a campaign, which, joined with his ideological mooring, once made him a conservative favorite for the presidency. And his personal failings—namely, the infamous 2009 affair with Argentinian television journalist María Belén Chapur—appear to have been forgiven by the people of South Carolina's 1st Congressional District, who sent him back to Congress in a 2013 special election before re-electing him in 2014 and 2016.

All this gives Sanford a unique sense of liberation to speak his mind about a president whose substance and style he considers a danger to democracy. "I'm a dead man walking," he tells me, smiling. "If you've already been dead, you don't fear it as much. I've been dead politically."

His digs at Trump cover the spectrum. The president, Sanford says, "has fanned the flames of intolerance." He has repeatedly misled the public, most recently about the national murder rate and the media's coverage of terrorist attacks. He showed a lack of humility by using the National Prayer Breakfast to ridicule Arnold Schwarzenegger's ratings on "The Celebrity Apprentice." Most worrisome, Sanford says, Trump is unprepared for the presidency.

"Is he an honest man?" I ask.

**If you've already been dead, you don't  
fear it as much. I've been dead**



# politically."

For the first time, Sanford begins to measure his words. "I've got to be careful," he says. "Because people who live in glass houses can't throw stones."

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**Sanford has always been different** "odd," "eccentric," "a character," to cite common descriptions by colleagues and he is simultaneously something of a crusader for his causes of debt, deficits, spending and government transparency. "The thing you have to understand about Mark is that he's both quirky and professorial about his beliefs a lot like how Ron Paul was," says Tom Davis, a state senator who is Sanford's former chief of staff and among his closest friends.

Sanford's opposition to Trump, then, was somewhat inevitable. When a chorus of House conservatives took turns fawning over the GOP nominee after a meeting with him last June, Sanford made a point of mocking Trump's constitutional knowledge. ("Somebody asked about Article I powers and what he would do to protect them," Sanford told reporters. "I think his response was, 'I want to protect Article I, Article II, Article XII,' going down the list. Of course, there is no Article XII.") When party officials began marginalizing the issue of tax returns after the convention, Sanford wrote a *New York Times op-ed* calling Trump's unprecedented lack of transparency "something our country cannot afford." And when his colleagues returned to D.C. infused with optimism after the Republican ticket's November 8 victory, Sanford privately warned them to brace for disappointment.

To understand Sanford's irreverence toward the 45th president, his friends say, you have to understand two things about him. One is his disdain for expensive clothing. "He didn't wear a suit to his inauguration as governor," says Carl Blackstone, who worked for Sanford as both congressman and governor, and today is CEO of the Columbia Chamber of Commerce. "He would come into the governor's office in jeans and a ripped shirt. We would entertain legislators at the governor's mansion, and he would ... show up all sweaty having just finished running."

The other is Sanford's upbringing. His father, a prominent heart surgeon, "taught his kids that everyone is the same no matter where they're from or what they wear, and Mark took it to heart," Blackstone says. "So he's not impressed by Trump or by anyone else. And that gives him the freedom to say what he wants."

I ask Sanford, in our early February interview, whether it's fair to say Trump doesn't impress him. "Yeah, that's accurate," he tells me. "Because at some level he represents the antithesis, or the undoing, of everything I thought I knew about politics, preparation and life."

Sanford, an Eagle Scout, has long been renowned for a work ethic that straddles the line between tireless and maniacal. Famously brutal on staff members his former speechwriter wrote a book documenting his workplace misery Sanford recalls holding marathon meetings as a congressman and as governor to review every intricate detail of budgets, bills and other

proposals that came across his desk.

"And all of a sudden a guy comes along where facts don't matter?" Sanford asks aloud. "It's somewhat befuddling. It's the undoing of that which you base a large part of your life on."

Sanford says he's spoken with Trump only once, and the interaction was brief, backstage at a primary debate in South Carolina. "I've watched you. You're a winner," Trump told him, as Sanford recalls. He rolls his eyes. "It's like, *OK*." Sanford swears he has nothing personal against the new president; in fact, he's heard good things about him personally from several mutual acquaintances. But, he says, he can't "look the other way" as Trump peddles false information to suit his political aims.

"I believe in a war of ideas ... and I tell the staff all the time: Look, we're in the business of crafting and refining our arguments that are hopefully based on the truth," he adds. "Truth matters. Not hyperbole, not wild suggestion, but actual truth."

There's no shortage of irony in Sanford — who claimed to be hiking the Appalachian Trail while he was actually cavorting intercontinentally with someone not named Jenny Sanford — lecturing on "actual truth." And yet his willingness to do so, undergirded by a history of hard-core fiscal conservatism and internecine conflict, has elevated the South Carolina congressman's influence behind the scenes in Washington. He worked for weeks alongside Sen. Rand Paul to prepare a House companion bill to replace Obamacare, and introduced it this month as the conservatives' legislative vehicle of choice. And from a tactical and ideological standpoint, he is already viewed as a leader of the GOP resistance: In conversations since Election Day with leaders of the congressional right, Sanford is universally mentioned as one of the few House Republicans who looks forward to future confrontations with Trump. "Sanford will never back down," Justin Amash, his colleague and fellow Tea Party troublemaker, tells me.

What concerns Sanford on a fundamental level — "the danger" of Trump's presidency, he says — is that "historically there's incredible deference to the presidency from the party in power." He understands the reluctance of rank-and-file Republicans to criticize a president who "has a proven record of taking people down." But, he says, there must be a muscular check on Trump from somewhere inside the GOP. He was encouraged to see Speaker Paul Ryan push back on him throughout 2016, but equally disheartened to see him willingly subjugated after the election results came in. "I admired his conviction in the campaign," Sanford says of Ryan. However, he adds, "at the end of the day, radio silence is not sustainable in being true to yourself."

**At the end of the day, radio silence is not sustainable in being true to yourself," Sanford says of Speaker Paul Ryan.**

And so Sanford finds himself, against the longest of odds, not just back in Congress but back in the spotlight not as a rising star or future presidential contender, but as a lonely, lucky-just-to-be-here voice of dissent in a party hijacked by Donald Trump.

"You want to give anybody the benefit of the doubt. I mean, I've learned that through my own trials and tribulations," Sanford says, one of numerous nods to the Appalachian Trail episode. "But if you see a pattern of over and over and over again, wherein facts don't matter and you can just make up anything ... " He stops himself. "Our republic was based on reason. The Founding Fathers were wed to this notion of reason. It was a reason-based system. And if you go to a point wherein it doesn't matter, I mean, that has huge implications in terms of where we go next as a society."

He is the unlikeliest enforcer of honesty in politics. He knows it. And so do those in South Carolina and Washington who dream of finishing off Sanford once and for all. A crippling sex scandal ought to ruin any politician's career. Crossing Trump can be treacherous. But as he braces for a blockbuster primary challenge in 2018 while quietly eyeing other potential electoral conquests it's his self-awareness that makes Mark Sanford the most elusive target in the Republican Party.

"Mark is like Houdini," says Matt Moore, chairman of the South Carolina GOP and a former Sanford staffer. "He just keeps finding ways to escape."

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### **He refers to it, simply, as "2009."**

This is Sanford's way of acknowledging everything that transpired the sudden six-day disappearance from South Carolina in late June; the global convergence of curiosity as to his whereabouts; the rapidly disseminated lie that he was hiking the Appalachian Trail; the cringe-worthy 20-minute news conference in which he admitted to the affair; and the ensuing divorce from his wife in a relatively painless and pedestrian manner. When he deploys the phrase "2009" more than a dozen times in our interview, he does so casually and without any apparent emotional correlation to having been the butt of endless late-night TV jokes and the subject of international satire. It's merely a mechanism for summarizing the dissolution of his marriage and what appeared to be the demolition of his political career.

Befitting a man who discusses his downfall in the terms of a Greek tragedy, 2009 was also when Sanford's star shone brightest. After six years in the governor's office, most of which were spent battling GOP legislators over allegedly profligate spending, Sanford had begun to forge a national profile and attract the interest of prominent conservatives looking ahead to the next presidential race. He had already been named chairman of the Republican Governors Association, a highly coveted post for would-be presidents from which he could cultivate a national financial network. When he refused to accept Obama's stimulus money in March a position he was eventually forced to abandon Sanford became a household name on the right.

He quickly became the most sought-after Republican in the country. Everyone donors, strategists, activists, party officials, religious leaders wanted a piece of the handsome, 49-

year-old family man. "Mark Sanford was in a good place. I always contend that it was that very place that got him so wound up," says Katon Dawson, a former chairman of the South Carolina Republican Party. "I think it was on his mind on a consistent basis and it wore him down, thinking about running for president. I saw the donors coming and going through the mansion."

When I ask Sanford this whether the pressure of an imminent presidential campaign led to his moral lapse a pained expression spreads across his face. The incident is less than eight years old, but Sanford looks to have aged significantly more since his news conference in June 2009. His visage, still tanned and relatively lean, is weathered by deep wrinkles along his brow and generous amounts of gray at his temples. The fresh-faced governor is gone; in his place, a congressman with permanent bags beneath his eyes and a perpetual wariness within them. He emphasizes that there is no excuse and says he takes full responsibility for his actions. But that doesn't stop him from revisiting the period and pondering what went wrong.

"I look back," he begins quietly. "So, you're a governor, which is a busy enough job. You're the father of four boys, which is a busy enough job. You're a husband. But you are also, you know, you're the chairman of the Republican Governors Association. You're increasingly being asked to move around the country, raising money at different, you know, GOP kinds of things. You had a contract to write a book. I was still in the Air Force Reserves, so one weekend a month you're pulling drill. And then you develop a relationship with somebody on a different continent. I mean, I could go down just a laundry list of different things ..." He thinks for a moment. "I was stupidly busy."

There's a theory among some of Sanford's friends and associates. It goes like this: He never really wanted to run for president. He didn't enjoy the coast-to-coast fundraising, or the Beltway glad-handing, or the legions of consultants and pollsters and opinion makers descending on his family property in the Lowcountry of South Carolina. But the expectations had already grown beyond his control. There was one way, the theory goes, for him to escape: continue with the extramarital affair and get caught. It's not exactly far-fetched; disappearing for six days, without any rehearsed alibi or advance warning, was hardly the work of someone desperate to avoid detection.

Before I can raise this question, Sanford offers an extraordinary thought. "I've oftentimes wondered, was there some weird subconscious element that just wanted to derail the train and get off the train?" he asks aloud. "Because your life is just getting sucked up in a certain direction? I don't know. I don't know."

Whether he intended it or not, Sanford was indeed caught and the train was most definitely derailed. The political obituaries didn't take long to write. "He was banished to the hinterlands forever by his party and by the media," says Chip Felkel, a longtime South Carolina strategist and veteran of campaigns around the state. Suddenly, none of Sanford's enviable attributes his ability to connect one-on-one in retail settings; his total mastery of policy details; his open-book approach to fielding questions from voters and reporters alike; his fierce independent streak seemed to matter anymore. He was finished. And everyone knew it.

Sanford hadn't just destroyed his marriage; he had split the nucleus of his political operation. Jenny Sanford, a millionaire heiress to the Skil Corp. power-tool dynasty, had served as her husband's campaign manager since 1994, when the little-known real estate developer worked his way into a runoff against a former state party chairman for the 1st Congressional District's GOP nomination. The husband-wife team executed an upset that sent Sanford to Congress and put the Palmetto State on notice about the emergence of a formidable power couple.

"I will never underestimate Mark's ability to get elected. We used to call him the Tiger Woods of South Carolina politics," Dawson tells me. "But you know, he had a gal named Jenny Sanford working for him, and she's as good at winning elections as Mark is. He would have been nothing without her in that first congressional race—her and her family's money and connections."

With no supportive wife, no campaign manager and no political capital, Sanford finished his second term quietly in January 2011 and, in his words, went into "a hermitage phase." The former governor had become toxic, and he was stung by how quickly his supposed allies had abandoned him. "At the beginning of the crash and burn," Sanford recalls of 2009, "one buddy turned to me and said, 'Well, the good news here is that you won't have to wait until your funeral to find out who your friends are.'" He adds, moments later, "Now I consider myself blessed to have a number of good friends that, frankly, I can count on one hand."

Sanford took to solitary retreats at Coosaw Plantation, his family's 1,400-acre private farm southwest of Charleston, where he worked on construction projects and conducted virtual Bible studies with his four sons. Sanford swears that politics, at that point, was a distant memory; he got engaged to Chapur, his "soul mate," in August 2012 and prepared to build a new life with her.

Everything changed in December of that year when Jim DeMint, South Carolina's junior senator, resigned to become president of The Heritage Foundation. Sanford's successor, then-Governor Nikki Haley, appointed Rep. Tim Scott to fill DeMint's Senate seat. That left an all-too-inviting vacancy in the 1st District. "I thought politics was absolutely forever over for me," Sanford says. When friends approached him to run, he recalls, his response was, "No way. I've been through the fire. I don't want to reopen the wounds. Not a chance." But nobody bought it: Sanford was itching to redeem his legacy, and a special election in his old district offered the friendliest possible opportunity to mount the unlikeliest of comebacks.

Riding sky-high name identification among his former constituents and benefiting from a fractured, 16-way Republican primary field—Sanford sailed into the runoff election, won the GOP nomination and in May toppled the Democratic nominee to reclaim his seat in Congress. It required a bottomless supply of soul-bearing mea culpas, and at times the restoration project appeared futile: National Republican Congressional Committee Chairman Greg Walden, who had approved funds to help Sanford as the party's nominee, cut off assistance when news broke that Sanford had trespassed on Jenny's property to watch the Super Bowl with their 14-year-old son. "You're feeling pretty lonely at that point," Sanford says of the NRCC's decision to drop him.

Sanford has not forgotten the slight. "You know, Greg Walden is telling the conference because I've heard several people validate this 'there is no possible route to victory for this guy. We're pulling out of this race, and, you know, we'll go back two years from now to try to win it,'" he tells me. After Sanford won, he says, he approached Walden and asked him for a temporary reprieve from paying his NRCC dues because the special election had drained his coffers. Walden shut him down.

At that point, Sanford made a decision: He would hoard as much campaign cash as possible and spend none unless absolutely necessary. The strategy has been successful and is fueling rampant speculation in South Carolina about what he'll do next.

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**Despite burning through money** and being at his most vulnerable in 2014, Sanford won reelection entirely unopposed. Jenny Horne, a Republican state lawmaker, was dumbfounded and decided to run against him in 2016. She had little money raising less than \$150,000 total and low name recognition, yet somehow internal polls showed her within striking distance weeks before the June 14 primary. The reason: Sanford spent barely a dime on the race. "He didn't think I could beat him," Horne tells me. "He didn't think I could come close." She actually did, taking 44 percent and losing to the incumbent by roughly 4,300 votes. The unnecessarily tight margin irked state party elders, who warned Sanford he was inviting a bigger challenger in 2018.

Why did he refuse to take this one seriously? "That might be a better question for a health care professional," Horne says. "He brought two pigs to the statehouse and one of them crapped on the floor of the General Assembly. Who brings pigs into the state Capitol of South Carolina? It's a complete disregard for the institution and it's also just bizarre. There's a long list of bizarre things he's done, and I can't explain them."

Swine aside the governor brought them to the statehouse in an unconventional show of opposition to pork-barrel spending the explanation for Sanford not spending money to defeat Horne is due equally to two defining traits: cheapness and confidence. Sanford, whose colleagues rib him for wearing ratty shoes, and who eschews D.C. steakhouses for "cheap Mexican food," wasn't going to waste campaign resources against someone he was certain couldn't beat him. The same guy who's betting he can censure Trump without suffering electoral consequences also gambled that he could defeat Horne without spending money he'd need later on.

"I thought it was more prudent, in terms of being prepared for down the line, just to build cash," Sanford tells me. "If you look at my cash on hand number, I'm ahead by multiples I mean, like double what anybody in the entire South Carolina delegation has."

That's the good news for Sanford: He ended 2016 with north of \$1 million in his federal campaign account.

The bad news: He's going to have to start spending it.

"Anyone who rules anything out does so at their own peril," says Davis, a close friend. "There are chapters left in Mark Sanford's political story."

South Carolina's political class is salivating over rumors that Ted Fienning, a Harvard-educated entrepreneur who, in addition to being young, wealthy and telegenic, flew fighter jets in the Marine Corps will give Sanford the toughest test of his career in 2018. When I reach Fienning by phone, he confirms his intention to run against Sanford in the primary, and says he recently met with the congressman in Charleston to tell him so. "What was his reaction?" I ask him. "Shock," Fienning replies. ("[I] learned long ago not to try and discourage someone from something they think they might want to do," Sanford tells me via email, "so [I] simply wished him well.")

Fienning tells me his campaign won't focus on Sanford's affair, but in the course of two phone conversations he makes repeated references to "integrity" and "honor" while taking several direct shots at the incumbent's personal struggles. "This guy has made international news for terrible reasons," Fienning says. "I've had international news follow me around when I was a United States Marine in Bangladesh, Japan and all kinds of other crazy places but that's the kind of news you want."

Fienning, a co-founder of a popular children's eyewear company, says he'll self-fund up to \$250,000 in the primary. The question won't be whether he'll have the resources, but rather where he'll find the ideological space to attack his opponent. "He's a solid fiscal conservative, but you just never know," Fienning says of Sanford. "People watch NASCAR for the crashes sometimes. You never know what's going to come next with him." Sanford's broadsides against Trump could provide an opening for his primary opponent, but then again, the president is hardly an imposing force in the district: He won fewer votes there in November than Mitt Romney in 2012, according to data provided by the state party.

If there's a potential weakness on his right flank, conservatives say, it's that Sanford a longtime enemy of government incentives for big retailers such as Cabela's and Bass Pro Shops has taken a softer stance on subsidizing other entities. He is known to be cozy with Boeing, a government-bankrolled behemoth that employs nearly 10,000 people in his district, and is currently pushing Congress to appropriate \$180 million for the South Carolina Ports Authority harbor deepening project in Charleston. Here again, though, it's hard to envision how this hurts Sanford at home. "Mark at his core is a libertarian," Felkel says, but "South Carolina is a state that can't afford to be libertarian. ... His district benefits greatly from the federal government."

Considering Sanford's unbeaten streak, and his deep ties to the 1st Congressional District, many friends and foes alike in South Carolina believe he'll hold that seat as long as he wants

to. But Sanford could have other ideas. In addition to more than \$1 million in federal campaign funds, he's sitting on another \$1 million in a state-level account. This has fueled speculation that Sanford might run for governor in 2018 against Henry McMaster, a Trump loyalist who was promoted from lieutenant governor when Haley was nominated as the new U.N. ambassador. It's an intriguing story line — Sanford coming full circle and winning redemption from voters statewide, the same way he did in his district — but he swears he's not interested.

"The fact that I'm sitting here talking to you represents a redemption story. I mean, I've lived redemption. I've felt it, I've seen it, and I'm grateful for it," he tells me. As for running for governor, he says, "I don't have the itch. What I have the itch on is trying to carve out a niche on impacting the government spending."

Of course, there's another place he could carve out that niche: the U.S. Senate. The scenario of Sanford challenging Lindsey Graham in a 2020 Republican primary has been the subject of excited whispers in Columbia and Washington since Trump's inauguration. Blackstone, Sanford's longtime friend, former staffer and the current Chamber of Commerce chief, brings it up unsolicited when I ask about the possibility of Sanford running for governor. "Deep down he's an adventurer, he likes to try different things. So quite frankly you've got to look at other races," Blackstone tells me. "Lindsey is always going to be vulnerable to his right. And Sanford's got the conservative credentials. He's got baggage as well."

"A Lindsey-Mark race would be a *race*," Dawson, the former state party chairman, tells me.

There would be no shortage of drama: The two Republicans arrived in Congress together in 1994 and forged a close friendship. Graham went on *Meet the Press* four days after Sanford's confessional news conference and supported him staying on as governor; four years later, when the national party abandoned Sanford during the special election, the senator came out forcefully behind him. Graham also happens to be the godfather of Mark and Jenny Sanford's youngest son.

When I ask whether he'll rule out running against Graham, Sanford is less than equivocal. "I don't know where life goes," he says. "All I know is that I believe I'm supposed to try and be the greatest House member that I can be for the 1st Congressional District, and that's where I'm focused."

Sanford's marriage collapsed in front of a global audience. The relationship with his ex-wife is beyond repair. And he broke off the engagement to Chapur, prioritizing the relationship with his youngest son, who this spring will graduate high school. Despite all of this, those who know Sanford best say he's at peace; that he's enjoying his time in the House and discovering a role for himself there. But they also observe a restless ambition still dwelling within the man who in their minds should have been president.

"He's only 56 years old. He's got a wealth of experience, he's got a keen and inquisitive mind, and he wants to be part of the public policy debate. When you combine those things in one individual, and couple it with the innate drive that he has, you're going to see new chapters ahead," Davis, his close friend, says. "I wouldn't rule anything out. And anyone who rules



anything out does so at their own peril. There are chapters left in Mark Sanford's political story."

Will they be written in the context of his opposition to Trump? There's a potentially significant future electoral upside for those Republicans who prove willing to hold the president accountable when it isn't easy. Sanford swears he's not thinking about that. He doesn't mind being a "pariah" in the party anymore, because he's already been one. But he's not trying to gain anything from it.

"Everybody wants to have a reasonably good day in politics, talk about some ideas they believe in, and leave it at that," Sanford says.

[Back](#)

### **Donald Trump: 28 Days Later** [Back](#)

By Matthew Nussbaum and Henry C. Jackson | 02/17/2017 05:05 AM EDT

Donald Trump will hit the four-week-mark Friday on a presidency that has begun like no other — full of big promises, constant controversy, the ever-present encroaching of major scandal, and zero regard for the previous norms of American politics.

Beneath the noise, however, there has been a march, however halting and disorganized, toward Trump's promised radical remaking of American policy, foreign and domestic. The border wall his critics said he'd never build has been ordered, his promised rollback of regulations is in full swing, his Supreme Court pick that will likely sit on the bench for decades, and even the "Muslim ban" he promised during the Republican primary was put in place, however briefly, in altered form.

The dual track is familiar to those who watched his campaign, during which a series of controversies and scandals garnered mass attention while few foresaw Trump's success in building a winning coalition. But a presidency is a longer race than even the campaign, and it remains to be seen whether Trump can outrun his missteps the way he did last fall.

So far, Trump has signed at least 23 executive actions, signed five bills into law, seen 12 members of his Cabinet confirmed, nominated one justice to the Supreme Court, sent 168 (undeleted) tweets, fired one acting attorney general and demanded one resignation: that of his own national security adviser.

It has been 28 days. Here they are.

#### **Inauguration Day: Jan. 20**

##### **Where things went according to plan:**

**The speech:** In a [short address](#), Trump stuck to the themes that won him the election, painting a scene of current "American carnage" — claims of economic decay and rising crime that are contradicted by a considerable volume of statistical evidence — as well as his own promise to usher in a new American glory.

**First executive actions:** Trump signed an executive order that allowed for the delay or waiver

of certain Affordable Care Act provisions, and another that froze pending regulations until they won approval from the White House or a newly appointed agency head — early moves toward core promises of his campaign.

**Cabinet confirmations kick off:** Two of Trump's best-received Cabinet picks, retired Marine Gens. James Mattis for Defense Secretary and John Kelly for Homeland Security, both won easy confirmation in the Senate. Vice President Mike Pence swore them in that evening.

**Where things went off the rails:**

**The crowd size:** The crowds for the inauguration and ensuing parade were bested by the audience that attended former President Barack Obama's first inauguration, a disparity unveiled both by Metro rail ridership numbers and, more immediately, by aerial photographs.

## **Day 2: Jan. 21**

**According to plan:**

**First foreign leader visit is announced:** Press secretary Sean Spicer announced the first visit from a foreign leader, with the Prime Minister Theresa May of the United Kingdom scheduled to visit Trump at the White House during his first week in office.

**Off the rails:**

**The Women's March:** Hundreds of thousands of protesters descended on Washington and cities around the nation (as well as internationally) in massive numbers to demonstrate against the new president, opening questions about whether his election would galvanize progressives into a more politically effective resistance.

**The CIA speech:** Trump visited the CIA headquarters to show his support for their work, but while standing before the Agency's wall honoring the 117 CIA officers who died in service, he delivered a campaign-style address that stepped on his message.

**Sean Spicer:** The new press secretary called a news conference, but instead of taking questions, he offered a searing critique of the news media's accuracy while delivering no fewer than five demonstrably (at times even obviously) false statements in five minutes. The appearance won Spicer widespread mockery as his inaccuracy became the subject of a short-lived but widely shared meme.

## **Day 3: Jan. 22**

**According to plan:**

**Conversation with Netanyahu:** Trump spoke by phone with Israeli Prime Minister Benjamin Netanyahu, extending the invitation for him to visit the United States in February and taking an early step toward a promise of warmer U.S.-Israeli relations.

**Trump's second response to the Women's March:** After initially complaining about the protests (see below), Trump took a more measured tone in a follow-up tweet : "Peaceful protests are a hallmark of our democracy. Even if I don't always agree, I recognize the rights of people to express their views."

**Off the Rails:**

**"Alternative facts":** White House counselor Kellyanne Conway defended Spicer's Saturday night falsehoods by telling NBC's Chuck Todd that Spicer was simply presenting "alternative facts." The phrase was widely mocked and cast further doubt on White House credibility just days into the administration.

**The beginning of the end of Flynn:** Sunday night, The Wall Street Journal published an article with an eyebrow-raising lede: "U.S. counterintelligence agents have investigated communications that President Donald Trump's national security adviser had with Russian

officials, according to people familiar with the matter." The problem would not go away quietly.

#### **Day 4: Jan. 23**

##### **According to plan:**

**More executive actions:** Trump signed three more executive actions aimed at fulfilling campaign promises on what the White House billed as the first work day of the administration. The orders officially withdrew the U.S. from negotiations over the Trans-Pacific Partnership, froze federal hiring (except for the military and in certain security situations) and barred federal funds from going to international groups that provide abortions. The move on trade was the final nail in the coffin for U.S. participation in TPP, which had been slowly careening toward doom during the presidential campaign in which Trump and Clinton both voiced opposition to it. The hiring and abortion orders represented two more boxes checked on the conservative wish list.

**Spicer, take 2:** Spicer's much-anticipated Monday briefing was mostly drama-free, and the press secretary pledged the administration's "intention is never to lie to you."

**Tillerson on the move:** Rex Tillerson won a party line vote in the Senate Foreign Relations Committee to advance his nomination for secretary of state. His prospects were uncertain after a rocky confirmation hearing and doubts voiced by Sen. Marco Rubio (R-Fla.), who ended up supporting the former ExxonMobil CEO nonetheless.

##### **Off the Rails:**

**Trump's meeting with lawmakers:** In a meeting with bipartisan congressional leadership at the White House, Trump repeated his false claim that widespread voter fraud cost him the popular vote in the general election.

**Conway on tax returns:** Conway walked back a claim she made Sunday in which she seemed to indicate Trump never had any intention of releasing his tax returns and returned to the line repeated throughout the campaign, that his returns would be released after the completion of an audit.

#### **Day 5: Jan. 24**

##### **According to plan:**

**More executive orders:** Trump signed five more executive actions: Two encouraged the construction of pipelines, one sought to expedite the approval of infrastructure projects, one called for material used to build pipelines to be made in America "to the maximum extent possible," and another called for swifter permitting for domestic manufacturers.

**Nikki Haley:** Trump's pick for ambassador to the United Nations, former South Carolina Gov. Nikki Haley, was confirmed by the Senate 96-4.

##### **Off the Rails:**

**Spicer on voter fraud:** Spicer defended Trump's voter fraud claims by incorrectly citing a widely debunked study. He did not say whether he agreed with Trump's claim, though he claimed that Trump had based his belief on "studies and evidence."

I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and....

Donald J. Trump (@realDonaldTrump) [January 25, 2017](#)

## **Day 6: Jan. 25**

### **According to plan:**

**Immigration orders, Part 1:** Trump signed two orders on immigration. One included a call for the beginning of planning and construction of the border wall and the hiring of 5,000 more border patrol agents, another pushed for the hiring of 10,000 additional Immigration and Customs Enforcement officers and aimed to cut off federal funding to "sanctuary cities."

**Paul Ryan's Philly speech:** In a speech at congressional Republicans' retreat in Philadelphia, House Speaker Paul Ryan said the Republican-led Congress would replace Obamacare, cut taxes and fund Trump's border wall by August. It's usually the White House making grand predictions and Congress coming in with the cold water, but Ryan's statements represented a show of unity.

### **Off the Rails:**

**Voter fraud tweet:** While his administration worked to steer the conversation toward Trump's policy, the president himself possibly still upset over focus on his loss in the popular vote couldn't resist relitigating the election. "I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and... even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!"

## **Day 7: Jan. 26**

### **According to plan:**

**Bannon bashes the press:** From the campaign trail into the White House, Trump and his team have grown fond of attacking the news media a move that seems always to rile up their base. Trump's chief strategist Steve Bannon added his voice to the chorus, telling *The New York Times* that the media is "the opposition party" and that the press should "keep its mouth shut and just listen for awhile." Trump would later repeat the "opposition party" phrase to describe the press.

### **Off the Rails:**

**Spicer, again:** On a flight back from Philadelphia, where Trump addressed the Republican congressional retreat, Spicer suggested a 20 percent tax on imports from countries "like Mexico" could be used to pay for the border wall. But Spicer quickly walked back the proposal, saying it was not a policy proposal but rather "one idea" for how the wall could be paid for. The idea was out there long enough to get panned by some Republicans, including Sens. Ben Sasse and Lindsey Graham.

**Mexico responds:** Mexican President Enrique Peña Nieto canceled a planned visit to the U.S. in response to Trump's Jan. 25 executive actions.

## **Day 8: Jan. 27**

### **According to plan:**

**March for Life:** The March for Life came to Washington with anti-abortion activists feeling a sense of renewed vigor now that Trump has been elected. Pence, in particular, won plaudits by being the first sitting vice president to address the annual event a hometown crowd for him if there ever was one.

**First presidential presser:** Donald Trump welcomed British Prime Minister Theresa May, an event that went smoothly and showcased a tight partnership between the two nations. Trump answered his first questions from reporters as president.

## **Off the Rails:**

**Refugee executive order stumbles out of the gate:** Trump signed a far-reaching executive order that temporarily halted the admission of new refugees into the United States, imposed an indefinite ban on the entry of refugees from Syria, and suspended the entry of citizens of seven Muslim-majority countries. The executive order, signed late on a Friday afternoon, prompted immediate confusion about its enforcement, including chaos at points of U.S. entry. And, within hours, it met resistance in court, including legal challenges that would eventually succeed in putting the order on ice.

**Holocaust Remembrance Day statement:** The White House released a statement to honor International Holocaust Remembrance Day, but made no explicit mention Jewish people. Later in the weekend, two Republican groups joined in criticism of the statement. The White House later called criticism of its statement "pathetic."

**Senate pushback:** Senate Majority Leader Mitch McConnell felt compelled to warn Donald Trump not to lift sanctions on Russia, ahead of a scheduled Saturday morning call between Trump and Russian President Vladimir Putin.

## **Day 9, Jan. 28**

### **According to plan:**

**Executive orders:** Trump signed three executive actions — a reorganization of the National Security Council; a five-year ban on lobbying for administration appointees and a lifetime ban on lobbying the government for other countries; and an order tasking the Department of Defense with coming up with a plan to defeat the Islamic State within 30 days. The NSC order proved the most significant, as it moved Trump's chief strategist, Steve Bannon, onto the principals committee of the National Security Council.

**Putin on the line:** Trump's first phone call with Russian President Vladimir Putin was "positive," the White House said, and involved discussions of how the nations could cooperate to combat terrorism. The White House made no announcement regarding election interference-related sanctions after the call, assuaging the fears of some who worried Trump would roll back the sanctions.

### **Off the Rails:**

**Travel ban fallout rulings:** A series of rulings from federal courts Saturday night significantly curtailed Trump's order. A judge in Brooklyn suspended deportations, a Boston judge issued a temporary restraining order on the action and a Virginia judge blocked the deportation of green-card holders.

**Travel ban fallout optics:** As some travelers from the seven affected countries found themselves detained at American airports — even if they had valid visas — and government officials scrambled to make sense of the order, civil liberties lawyers, protesters and Democratic politicians descended on airports. The backlash marked a spontaneous rebuke to Trump's order and raised questions about how much planning went into the sweeping action.

**Australia calling:** Trump's phone call with Australian Prime Minister Malcolm Turnbull went off the rails after Trump bragged about his election win, expressed anger over a deal to take refugees from Australia and told Turnbull it was his "worst call by far" of the day. Details of the contentious conversation emerged in a Washington Post report a few days later.

## **Day 10, Jan. 29**

### **According to plan:**

**Order rewrite:** The Department of Homeland Security attempted to modify the travel order by

saying it no longer applied to green-card holders from the seven targeted countries. That portion of the ban had been especially troubling to the courts.

**Clarification:** Trump posted a statement on Facebook defending his travel ban, saying the order was "not a Muslim ban," and stressing the temporary nature of it.

#### **Off the Rails:**

**Yemen raid:** A special operations raid ordered by Trump in Yemen resulted in the death of a U.S. service member, Chief Petty Officer William "Ryan" Owens, the wounding of three others and significant civilian casualties. The White House argued that the raid, which targeted fighters from a branch of Al Qaeda, was successful because 14 militants were killed and intelligence was gathered.

**Continued protests:** Protesters continued to rally against the travel ban with protests in cities and at airports around the country, and at a large, impromptu march from the White House to the Capitol.

**ACLU money haul:** The American Civil Liberties Union, a nonprofit spearheading legal challenges to Trump's immigration ban, raised more than \$24 million in online donations over the weekend — about six times what they typically receive annually in online donations.

#### **Day 11, Jan. 30**

##### **According to plan:**

**One in, two out:** Rolling ahead with executive orders to fulfill campaign promises, Trump signed an order decreeing that for every new federal regulation, two existing regulations must be repealed. Conservative groups cheered the move.

**You're fired:** Trump took authoritative action Monday night in defense of his travel ban, firing acting Attorney General Sally Yates for refusing to defend it. Trump also swiftly replaced Yates, an Obama administration appointee, with Dana Boente, the U.S. attorney in Alexandria, Virginia, ensuring essential functions of the Justice Department remained intact.

##### **Off the Rails:**

**'Betrayal' attack:** The White House statement on Yates' firing was inflected with personal attacks and sounded less like a presidential statement than a piece of campaign rhetoric. "The acting Attorney General, Sally Yates, has betrayed the Department of Justice by refusing to enforce a legal order designed to protect the citizens of the United States. This order was approved as to form and legality by the Department of Justice Office of Legal Counsel. Ms. Yates is an Obama Administration appointee who is weak on borders and very weak on illegal immigration."

**Spicer vs. State:** As State Department employees registered dissent with the travel ban, Spicer announced from the White House that career employees who disagree with the new administration "can go."

**Behind the scenes:** A Monday night report revealed Hill staffers had aided the drafting of the controversial immigration order — but without informing party leadership, explaining some of the initial confusion and crossed wires after the order dropped.

#### **Day 12, Jan. 31**

##### **According to plan:**

**LGBT order:** Making good on another campaign theme, Trump pledged to keep in place an Obama order barring federal contractors from discriminating on the basis of sexual orientation. Trump ran as the most outspoken supporter of LGBT rights to win the Republican nomination.

**Gorsuch for SCOTUS:** In a crowning moment for Trump and the conservative movement not to mention Sen. Mitch McConnell, who made it possible the president announced Neil Gorsuch as his pick for the Supreme Court in a prime-time unveiling from the White House. For many Republicans who disliked Trump but voted for him anyway with the Supreme Court in mind, this was a moment of vindication. The announcement went off without a hitch, and Gorsuch was quickly the recipient of praise, at least some of it bipartisan.

**Off the Rails:**

**A ban, or not a ban?:** Spicer told the press that the travel ban which both he and the president had referred to previously as a "ban" was not, in fact, a ban. His attempted explanation would later be mocked on "Saturday Night Live."

**Wisconsin trip nixed:** Trump's planned trip to the Harley-Davidson factory in Milwaukee was canceled in part over concerns about protests, CNN reported. Trump ended up hosting Harley-Davidson executives at the White House later, instead.

**Day 13, Feb. 1**

**According to plan:**

**Tillerson gets in:** Rex Tillerson, among the more controversial of Trump's Cabinet picks due to allegations of excessive coziness with the Putin regime, was confirmed as secretary of state by the Senate in a 56-43 vote.

**Saber rattling:** Trump ran on taking a tougher stance against Iran, and his White House made good on the pledge. National security adviser Michael Flynn announced the White House was officially putting Iran "on notice" for recent provocative behavior, and senior officials later would not rule out military action in response.

**Getting to know you:** Paul Ryan and Trump's son-in-law/senior adviser Jared Kushner dined together at the Capitol Hill Club.

**Off the Rails:**

**DeVos by a thread:** Two Republican senators, Lisa Murkowski of Alaska and Susan Collins of Maine, announced they would oppose Trump's pick to lead the Education Department, Betsy DeVos. With Democrats unanimously opposed to the Michigan billionaire, that left DeVos headed for a 50-50 vote if the status quo held. The White House voiced confidence that she would be confirmed, which she later was with Pence casting the tie-breaking vote.

**Day 14, Feb. 2**

**According to plan:**

**On message:** Trump told the National Prayer Breakfast that he would "totally destroy" the Johnson Amendment, which restricts political activity by religious groups. The message was one he and Pence trumpeted often on the campaign trail, and it went over well with the Prayer Breakfast crowd.

**Off the Rails:**

**Bowling Green outrage:** Trump counselor Kellyanne Conway cites a fictitious "Bowling Green massacre" in an interview on on MSNBC's "Hardball" as she presses the case for Trump's immigration ban, an attack she said "most people" weren't aware of "because it didn't get covered." The next day, after the Internet had a lot to say about it, Conway apologized saying she got her facts scrambled.

**Talking Arnold:** In a move that struck some as tone deaf, Trump used a speech at the National Prayer Breakfast to mock the ratings of *The Celebrity Apprentice* ratings with its new host, Arnold Schwarzenegger.

**Uber out:** Uber CEO Travis Kalanick quit Trump's business council after some questioned whether his presence with the group represented an endorsement of Trump's policies.

### **Day 15, Feb. 3**

#### **According to plan:**

**Dodd-Frank pull back:** Trump signed an executive order that backed sweeping changes to U.S. financial regulations, in what was viewed as a first step toward undoing Obama's signature financial regulatory reforms. Trump also moved to revamp a controversial conflict-of-interest rule for financial advisers.

**Court victory:** Trump's travel ban won a legal battle — albeit a fleeting one. A 21-page decision from U.S. District Court Judge Nathaniel Gorton offered preliminary backup for the ban, concluding that Trump's executive order was legally sound.

#### **Off the Rails:**

**Judge halts ban:** Late Friday, U.S. District Judge James Robart, a George W. Bush appointee, granted a temporary restraining order that halted Trump's travel ban and restrictions on a nationwide basis, setting up a protracted legal fight. Robart rejected arguments from Justice Department attorneys who said the ban was within the president's national-security powers.

**Viola drops out:** Vincent Viola, Trump's pick to serve as Army secretary abruptly quit, saying he was concerned he couldn't disentangle extensive financial ties. Viola, who had been nominated in mid-December, said he concluded he couldn't clear all of his conflicts. He is the founder of trading firm Virtu Financial and owner of the National Hockey League's Florida Panthers.

### **Day 16, Feb. 4**

#### **According to plan:**

**Ukraine promise:** In a call with Ukrainian President Petro Poroshenko, Trump promised that the U.S. would work to restore peace on the border between the Ukraine and Russia, according to a readout released by the White House. "We will work with Ukraine, Russia, and all other parties involved to help them restore peace along the border," Trump said during the 5 p.m. call, which was described by the White House as "a very good call."

#### **Off the Rails:**

**Judge assault:** Reacting to a court ruling late on Friday night, Trump assailed a federal judge who issued a broad block on his executive order restricting immigration from seven Muslim-majority countries. In a series of tweets, Trump called the ruling from Robart "ridiculous" and lashed out at him. "The opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!" Trump tweeted.

**'Saturday Night Live' hits:** A pair of skits that focused on the Trump White House quickly went viral with their scathing portrayals of Trump's relationship with world leaders (and top aide Steve Bannon) and White House press secretary Sean Spicer. Spicer, played by Melissa McCarthy, is lampooned as a combative, inarticulate press basher. In another skit, Trump, portrayed by Alec Baldwin, calls world leaders as Steve Bannon, dressed as the Grim Reaper, coaches him — before relegating Trump to a child's desk.

### **Day 17, Feb. 5**

#### **Off the Rails:**

**Putin problem:** Trump shook up an otherwise quiet day when, in an interview with Fox News' Bill O'Reilly, he seemed to equate Russian President Vladimir Putin with American



leadership. O'Reilly said to Trump: "Putin's a killer." And Trump responded, "A lot of killers. We got a lot of killers. What, you think our country's so innocent?" Critics, including GOP Sen. Marco Rubio, pounced on Trump's apparent moral equivalence.

**More judge attacks:** Trump took to Twitter on Sunday afternoon to rip a federal judge and warn that he would be at fault if the U.S. was attacked. "Just cannot believe a judge would put our country in such peril. If something happens blame him and court system. People pouring in. Bad!"

## **Day 18, Feb. 6**

### **According to plan:**

**Hearing set:** The 9th Circuit Court of Appeals gave the Trump administration hope ultimately short-lived that the travel ban could resume. The court agreed to hear arguments for and against a stay on Trump's executive action that temporarily halted entry by refugees, including those from Syria, and banned travel from seven Muslim-majority nations.

### **Off the Rails:**

**Media cover-up speech:** Speaking to U.S. troops at Central Command in Tampa, Florida, Trump delivered an overtly political address that accused the news media of covering up terrorist attacks. Later, Spicer told reporters on a flight back to Washington that Trump was merely suggesting some attacks don't receive the coverage they deserve, and that things like protests receive too much coverage.

**Terror pushback:** The White House released a list of 78 terrorist attacks later that night that it said had been underreported by the U.S. media. The list was riddled with misspellings and typos, and included dozens of attacks that received significant, in some cases, blanket U.S. media coverage. Among the "under covered" attacks cited: A shooting at an Orlando, Florida, nightclub that left dozens dead; an attack in San Bernardino, California, and large-scale attacks in Paris and Brussels.

**Bowling Green continued:** White House counselor Kellyanne Conway came under fire after news emerged she cited the fictitious "Bowling Green massacre" in at least two previous interviews. In interviews with Cosmopolitan and "TMZ" Conway made reference to fictitious events in Bowling Green.

**Melania lawsuit:** A lawyer for first lady Melania Trump argued in a lawsuit filed Monday that an article falsely alleging she once worked for an escort service hurt her chance to establish "multimillion dollar business relationships" during the years in which she would be "one of the most photographed women in the world."

## **Day 19, Feb. 7**

### **According to plan:**

**DeVos confirmed:** Education Secretary Betsy DeVos won Senate confirmation by the narrowest possible margin, with Vice President Mike Pence casting the deciding vote. Two Republican senators, Lisa Murkowski of Alaska and Susan Collins of Maine voted against DeVos, who faced criticism for past comments and lack of background in public education, and had a rocky confirmation hearing. Pence's vote was the first time a vice president was called upon to help confirm a member of the Cabinet.

### **Off the Rails:**

**Teleconference in court:** The Trump administration was able to argue the merits of the travel ban on a teleconference with the 9th Circuit Court of Appeals. A Justice Department lawyer argued that presidents have broad authority when it comes to decisions involving national

security.

**Murder claims:** Trump held two listening sessions at the White House to kick off the day, one with county sheriffs and one with veterans' advocates. But the message was stepped on by Trump's false claim that the U.S. murder rate is at its highest level in more than four decades and by his offer to help "destroy" the career of a Texas state lawmaker who opposes asset forfeiture.

**Kelly regrets:** Testifying on Capitol Hill, Homeland Security Secretary John Kelly said he should have delayed the implementation of the travel ban.

**Yemen fallout:** Yemen withdrew permission for American special operations forces to conduct ground operations in the country, The New York Times reported. The move came in the aftermath of a U.S. raid the first commando raid ordered by Trump that resulted in the death of one U.S. service member and significant civilian casualties.

**Faux pas avec la France:** Word leaked of a rocky phone call between Trump and French President Francois Hollande, with Trump veering into **rants** about the U.S. getting shaken down by other countries.

My daughter Ivanka has been treated so unfairly by [@Nordstrom](#). She is a great person -- always pushing me to do the right thing! Terrible!

Donald J. Trump (@realDonaldTrump) [February 8, 2017](#)

### **Day 20, Feb. 8**

#### **According to plan:**

**Sessions in:** Trump's pick for attorney general, Jeff Sessions, won confirmation by a 52-47 vote.

#### **Off the Rails:**

**Nevertheless, she persisted:** In another galvanizing event for Democratic critics of Trump and Republicans, Sen. Elizabeth Warren was reprimanded and told to sit down and be quiet during debate on Sessions after reading a letter critical of sessions written by Coretta Scott King. Mitch McConnell said that Warren was warned but "nevertheless, she persisted," a phrase that spawned thousands of Facebook posts and tweets, T-shirts and more.

**Supreme discontent:** In a meeting with Sen. Richard Blumenthal, Supreme Court nominee Neil Gorsuch lambasted the president's pointed criticisms of a federal judge who put a stay on his travel ban. Gorsuch said Trump's remarks were "disheartening" and "demoralizing." The comments marked an extraordinary break between a top White House nominee and the president.

**Nordstrom attack:** President Trump used Twitter to blast luxury retail store Nordstrom for dropping the clothing line of his daughter Ivanka Trump from its stores. Ethics experts and others immediately criticized Trump for using his Twitter account (and the bully pulpit) to attack an individual business. Nordstrom had previously announced it was dropping Ivanka Trump's clothing line due to poor sales numbers.

### **Day 21, Feb. 9**

#### **Off the Rails:**

**Flynn in free fall:** The Washington Post published a report citing nine sources stating Flynn had discussed U.S. sanctions in a phone call with the Russian ambassador, contrary to Flynn's

and the administration's statements about the call.

**Ban on ban upheld:** A federal appeals court unanimously rejected the Trump administration's request to reinstate a travel ban that blocked refugees from entering the U.S. as well as citizens of seven Muslim-majority countries. Trump responded to the ruling by tweeting, in all caps, "SEE YOU IN COURT, THE SECURITY OF OUR NATION IS AT STAKE!"

**Nordstrom problems:** House adviser Kellyanne Conway came under fire for encouraging people to buy Ivanka Trump's clothing line, a likely violation of ethics rules that bar such advocacy from White House officials.

## **Day 22, Feb. 10**

### **According to plan:**

**Diplomatic display:** Trump held a joint news conference and met with Japanese Prime Minister Shinzo Abe.

**Keeping options open:** After legal setbacks for his travel and refugee ban, Trump alluded to future action on the issue: Twice during the day, Trump suggested that the White House would try to redraft the order in order to strengthen it against legal challenges.

### **Off the Rails:**

**Flynn fallout:** Vice President Mike Pence became entangled in reports that national security adviser Mike Flynn discussed sanctions with Russia before President Trump was sworn in. Pence had denied on national television that sanctions had been discussed. The Pence camp insists Pence was speaking based on what Flynn told him — raising the possibility that Flynn had lied to the vice president.

**Abrams tanked:** President Trump blocked Elliott Abrams' appointment to a top post at the State Department because of his criticisms of Trump during the campaign. Newly sworn-in Secretary of State Rex Tillerson had favored Abrams, a veteran Republican foreign policy hand, for the role because of his breadth of knowledge.

**Conspiracy theorist:** Reports emerged that Trump once again espoused conspiracy theories about illegal voters — with no evidence. In a closed-door meeting with congressional leaders, Trump asserted that he, and former Sen. Kelly Ayotte, would have won in New Hampshire without illegal votes.

## **Day 23, Feb. 11**

### **According to plan:**

**Getting in a round:** Trump continued a diplomatic visit with Japanese Prime Minister Shinzo Abe by hitting the links with him in Palm Beach, Florida.

**Diplomatic partnership:** Trump and Abe showcased a tight, on-message partnership in the face of an apparent missile test by North Korea. The two worked closely together to craft a denunciation of the launch. Appearing with Trump at a hastily called news conference at in Florida, Abe called the attack "intolerable."

### **Off the Rails:**

**North Korea problem:** North Korea's decision to test the missile is another implicit challenge to Trump — and seemed designed to rattle Trump and Abe's otherwise feel-good meeting.

**Public diplomacy:** Trump and Abe came under fire for apparently reacting to the launch in public view at Mar-a-Lago. Members took pictures of the two world leaders, huddled over documents lit by cellphone flashlights, in plain view of diners at the Trump-owned property. Rep. Jason Chaffetz, chairman of the House Oversight and Government Reform Committee, called for a review of the security protocols at Mar-a-Lago after images popped up on

Facebook and elsewhere.

### **Day 24, Feb. 12**

#### **According to plan:**

**Quiet-ish day:** After a day of golf and a night of diplomatic crisis the night before, Trump avoided much spectacle. He met with his Treasury nominee, Steve Mnuchin, and casino magnate Steve Wynn at Mar-a-Lago before flying back to Washington.

**Miller impresses the boss:** White House senior policy adviser Stephen Miller did a round of Sunday shows which Trump cheered on, via Twitter.

#### **Off the Rails:**

**But Miller fails with others:** Miller was ripped as shaky and dissembling on Twitter and faced sharp questions from his Sunday-morning show inquisitors, including this back-and-forth with NBC's Chuck Todd about national security adviser Michael Flynn: **TODD:** "Let me ask you this, if you were caught misleading the vice president of the United States, would that be considered a fireable offense in the Trump White House?" **MILLER:** "It's not for me to answer hypothetical. It wouldn't be responsible. It's a sensitive matter." But Trump was satisfied with the performance.

**Tweeting the morning away:** Trump started his Sunday with a rapid-fire string of tweets targeting critics and got into a back and forth with fellow billionaire Mark Cuban. "I know Mark Cuban well," Trump tweeted. "He backed me big-time but I wasn't interested in taking all of his calls. He's not smart enough to run for president!" Notably, Cuban campaigned for former Secretary of State Hillary Clinton and aided her campaign.

### **Day 25, Feb. 13**

#### **According to plan:**

**Welcome, neighbor:** Trump and Canadian Prime Minister Justin Trudeau had a productive meeting, reaffirming the warm relations between the U.S. and Canada. Trudeau talked about the two nations' common ground and avoided talk of Trump's controversial travel ban. Trump said that U.S. trade issues with Canada are less egregious than those with Mexico.

**Growing Cabinet:** Trump's pick for Veterans Affairs secretary, David Shulkin, was unanimously confirmed by the Senate. His pick to lead the Treasury Department, Steven Mnuchin, was confirmed in a 53-47 vote.

#### **Off the Rails:**

**Out like Flynn:** As night fell in Washington, so did the ax on Flynn, who resigned over reports he misled Pence about his discussions of sanctions with the Russian ambassador to the United States.

**Lingering questions:** Flynn's ouster didn't end the story. There were an array of questions: Who knew what, and when? Why did Trump wait weeks after he learned about his calls with the Russian ambassador to relieve him of his post? And will Flynn eventually be asked to testify to Congress about his tenure?

**Pudzer problems:** Problems continued to emerge for Trump's embattled Labor nominee, Andy Pudzer. Talk show host Oprah Winfrey gave the Senate committee considering his nomination a 1990 tape of a show in which Pudzer's wife, in disguise, discussing allegations of domestic violence.

### **Day 26, Feb. 14**

#### **According to plan:**

**Regulatory blow:** In a tangible strike at regulations, Trump signed a bill that killed SEC regulations requiring companies to disclose payments made to foreign governments.

**Off the Rails:**

**Bombshells:** The New York Times reported that members of Trump's campaign staff had regular contacts with Russian security officials. About an hour later, CNN largely matches the development. The stories come hours after Spicer denied that Trump's campaign had any contact with Russians.

**Conway conflict:** The Office of Government Ethics said it wanted White House lawyers to investigate Conway after she called on people to buy Ivanka Trump's clothing line during a television appearance.

**Day 27, Feb. 15**

**According to plan:**

**Netanyahu's visit:** Trump and Israeli Prime Minister Benjamin Netanyahu had an amiable meeting and a joint news conference. Trump also seemed to affirm his commitment to the Jewish State's conservative governing coalition by abandoning the U.S. commitment to the two-state solution.

**Shifting the conversation:** Trump took to Twitter in response to allegations his associates had been in contact with the Russians during the campaign, writing: "The real scandal here is that classified information is illegally given out by 'intelligence' like candy. Very un-American!" Conservative media outlets added their voice to the argument, slamming leakers within the government.

**Off the Rails:**

**Puzder pulls out:** Andy Puzder, Trump's pick for Labor secretary, withdrew from consideration after POLITICO published a tape of his ex-wife discussing abuse allegations on "Oprah" and a number of Senate Republicans urged his withdrawal.

**Day 28, Feb. 16**

**According to plan:**

**The accomplishment-touting part of the presser:** At his first solo news conference as president, Trump ticked through his accomplishments so far, touting his first four weeks in the White House as the most productive of any presidency.

**The media-bashing part of the presser:** Trump's base loves when he attacks the media, and he served up the red meat at his news conference, deploying his favorite insults for the press: "fake news" and "dishonest people."

**Signing a bill into law:** Trump signed into law a bill nullifying a Department of Interior rule, much loathed by Republicans, aimed at protecting streams.

**Off the Rails:**

**The rest of the presser:** Trump warned about the dangers of "nuclear holocaust." He asked a black reporter if she was "friends" with the Congressional Black Caucus, and if she could set up a meeting with its members. He bragged, falsely, about the historic margin of his election win, only to be corrected on the spot then blamed his staff for giving him bad information. And he said never instructed Flynn to talk about sanctions with the Russian ambassador but said that he would have.

At one point in the presser, Trump said he didn't think "there's ever been a president who in a

short period of time has done what we've done."

*Zach Montellaro and Diana D'Abruzzo contributed to this report.*

[Back](#)

## **Priebus: Reports of Trump campaign-Russia contact 'exaggerated'** [Back](#)

By Madeline Conway | 02/17/2017 09:41 AM EDT

White House Chief of Staff Reince Priebus held the party line on news coverage of President Donald Trump on Friday, dismissing reports about scrutiny into the Trump campaign's relationship with Russia as exaggerated without saying, definitively, that none of the president's associates contacted the country before the election.

In an interview with Fox News, Priebus echoed his boss in responding to a couple unflattering stories about the administration that ran this week. In a long-winded news-conference on Thursday, Trump complained that the news media is unfair to him and repeatedly referred to its aggressive coverage of his administration as "fake news."

Priebus, speaking to Fox, described a Wall Street Journal story about some intelligence officials withholding information from the president as "totally fake" and "totally false"; the New York Times story reporting that some Trump campaign associates had repeated contact with Russia before the election, he asserted, is "also fake."

Both publications have stood by the stories (in the Times' case, CNN reported the same thing). When a Fox host noted that the newspapers were not making up the reports, and that they had to be getting the stories from somewhere, Priebus acknowledged that some government sources may be behind them — people he described as "some bad actors within the intelligence community or some holdovers, nobody knows."

Priebus insisted, though, that he had spoken with high-level intelligence officials who told him that the Times story about the campaign contact with Russia was "grossly overstated and inaccurate."

"I wouldn't come on your show and say something like that if I didn't have a green light and approval to say it," Priebus added.

Asked if he could say for sure that there were no contacts between the Trump campaign and Russia, Priebus couldn't, instead offering, "I don't represent the campaign," before repeating that the reports are exaggerated.

[Back](#)

## **Trump says he's considering Kellogg and three others for NSA** [Back](#)

By Madeline Conway | 02/17/2017 08:52 AM EDT

President Donald Trump said Friday that he is considering keeping Keith Kellogg on as his permanent national security adviser, but there are also three other names "in play" to succeed Michael Flynn, who was ousted from the job on Monday.

Trump signaled his interest in Kellogg, a retired Army lieutenant general, in a tweet: "General Keith Kellogg, who I have known for a long time, is very much in play for NSA - as are three others," he said.

The president tapped Kellogg to fill the national security adviser role on an interim basis after the unceremonious departure of Flynn, who was asked to resign in the wake of reports that he had improperly discussed sanctions on Russia with the country's ambassador and then misled the public and Vice President Mike Pence about it.

The administration asked retired Vice Admiral Robert Harward to succeed Flynn, but he turned down the offer. Harward released a statement Thursday saying that he could not commit the time necessary to the position, but an individual familiar with his thinking told POLITICO that he said no because of concerns about staffing and his autonomy in the job.

White House chief of staff Reince Priebus acknowledged Harward's decision in an interview with Fox News on Friday morning, but he, too, insisted that he chose not to take the job for personal reasons. His family wasn't fully on board, Priebus said.

The president may meet with new candidates this weekend at his Palm Beach resort, Mar-a-Lago, a White House official said, according to a pool report.

Some national security figures previously said they doubted that Kellogg would fill the NSA job permanently. One retired general who has known Kellogg for decades, Barry McCaffrey, told POLITICO early Tuesday that Kellogg is a "good man" but predicted that "he won't be the selection."

One name thrown around has been former CIA director David Petraeus, who was scheduled to meet with Trump this week. Two White House officials told POLITICO on Monday night that his higher profile and personal baggage hurt his initial chances, though.

The vacancy on the National Security Council is not the only problem Flynn's ouster has created for the administration. It has also renewed scrutiny into Trump's relationship with Russia, particularly in light of other reports that his campaign associates were in contact with the country prior to the election.

Trump said Thursday that he is not aware of any contact between Russia and his campaign before the election, though he did not definitively rule it out.

[Back](#)

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**To:** Bolen, Brittany (RPC)[Brittany\_Bolen@rpc.senate.gov]  
**From:** Magallanes, Downey  
**Sent:** 2017-02-15T13:54:18-05:00  
**Importance:** Normal  
**Subject:** Re: FW: H.J. Res. 36, Resolution of disapproval regarding BLM's methane rule  
**Received:** 2017-02-15T13:54:27-05:00

THANK YOU

On Wed, Feb 15, 2017 at 1:26 PM, Bolen, Brittany (RPC) <[Brittany\\_Bolen@rpc.senate.gov](mailto:Brittany_Bolen@rpc.senate.gov)> wrote:

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**From:** Bolen, Brittany (RPC)  
**Sent:** Monday, February 13, 2017 9:34 AM  
**Subject:** H.J. Res. 36, Resolution of disapproval regarding BLM's methane rule

The Senate is expected to consider H.J. Res. 36, a resolution of disapproval under the Congressional Review Act regarding the Bureau of Land Management's final "Waste Prevention, Production Subject to Royalties, and Resource Conservation" rule.

## **H.J. Res. 36, Resolution of disapproval regarding BLM's methane rule**

### **Summary**

The [resolution](#) provides for congressional disapproval under the CRA of the BLM's final "Waste Prevention, Production Subject to Royalties, and Resource Conservation" rule.

On February 3, the House [passed](#) H.J. Res. 36 by a bipartisan vote of 221 to 191. Senate consideration is expected to follow.

### **Background**

On November 18, 2016, the BLM rule was published in the Federal Register, and it went into effect on January 17. BLM is an office in the Department of the Interior. The rule regulates methane emissions from and establishes new royalty rates for oil and natural gas production on federal and Indian lands. BLM estimated the rule would cost up to \$279 million each year over a 10-year period (2017-2026) and impose an annual burden of 82,170 paperwork hours.

On January 30, Sen. John Barrasso, introduced S.J. Res. 11, and Rep. Rob Bishop introduced H.J. Res. 36, which provide for congressional disapproval of the rule under the Congressional Review Act. Currently, S.J. Res. 11 has 14 co-sponsors.

Congress and the new administration can repeal midnight rules finalized after June 13, 2016, through a resolution of disapproval under the 1996 Congressional Review Act. H. J. Res. 36 deems that BLM's final rule shall have no force or effect and prohibits the agency from issuing any future rule that is "substantially the same" form.

On February 1, the Trump administration issued a Statement of Administration Policy that "strongly supports" H.J. Res. 36 and indicated the president would sign it into law.

## **Considerations**

Methane is the primary component of natural gas. During the course of oil and natural gas production, methane may be emitted. Because it is a valuable commodity, oil and natural gas producers have an incentive to capture and process methane to provide energy to American consumers. In its proposed rule, BLM itself acknowledged that "operators do not want to waste gas." However, in the interest of worker safety, producers and operators will at times find it necessary to let methane escape (i.e. vent) or combust it (i.e. flare). Flaring also occurs in areas that lack gas-gathering infrastructure, which consists of small pipelines that ship natural gas from oil and gas wells to processing plants. BLM's proposed rule admitted that flaring takes place in areas: (1) "where capture and processing infrastructure has not yet been built out"; and (2) "with existing capture infrastructure, but where the rate of new-well construction is outpacing the infrastructure capacity."

Last year, BLM issued a proposed methane rule, which was published in the Federal

Register on February 8, 2016. Days after the election, on November 15, 2016, BLM released a 337-page prepublication version of the final rule, which unusually specified an effective date of January 17, 2017. The final rule has already been affecting oil and natural gas operations. Since January 17, the venting prohibition and new royalty rates have been in effect, and operators have been required to submit a plan to comply with BLM's waste-prevention controls with any new application for a permit to develop a well.

### Exceeds BLM's authority

BLM promulgated the rule under Mineral Leasing Act of 1920, which provides BLM authority to address undue waste on federal and Indian lands. Rather than abide by this authority, BLM designed the rule to address air quality by imposing specific requirements to curb methane emissions. Under the Clean Air Act, Congress vested the authority to regulate air quality with the Environmental Protection Agency in partnership with the states. Concerns over BLM's lack of authority have been expressed by several state and tribal officials, including:

- New Mexico's Energy, Minerals, and Natural Resources Department commented: "It appears as though BLM is attempting to promulgate Clean Air Act rules under the guise of a waste rule. Certainly, [the EPA] and its state counterpart, the Environment Department, have the statutory authority to regulate air quality matters."
  
- The Wyoming Department of Environmental Quality, Air Quality Division, commented: "Congress knew that the complicated nature of air emissions would be best understood and managed by the states and the ... EPA, not the BLM."
  
- The Attorney General of the state of Montana, stated: "the Rule, as written, impermissibly intrudes upon the sovereign authority of state oil and gas conservation commissions to define and control oil and gas waste, and it unnecessarily creates jurisdictional confusion over the specific regulatory standards that Operators of wells must meet."
  
- The chairman of the Southern Ute Indian tribe, located in southwest Colorado, stated: "the BLM lacks legal authority under the Clean Air Act to impose air quality control

aspects of the rule and, even if it had authority, the rule creates a regulatory conflict between the BLM and the U.S. EPA.”

A federal district court judge also expressed significant concerns with the rule’s overlap with EPA and state regulation. In a January 16 order, Judge Scott Skavdahl wrote: “It appears the asserted cost benefits of the Rule are predominantly based upon emission reductions, which is outside of BLM’s expertise, and not attributed to the purported waste prevention purpose of the Rule.”

### Duplicative of state and EPA regulation

The rule is duplicative of existing state and EPA regulation of oil and natural gas facilities. The BLM’s rule is based on Wyoming and Colorado regulations. Nearly all energy-producing states have issued similar emission control requirements. BLM’s fact sheet on the final rule even stated, “[s]everal states, including North Dakota, Colorado, Wyoming, Utah and most recently Pennsylvania, as well as the U.S. Environmental Protection Agency (EPA), have also taken steps to limit venting, flaring and/or leaks.” Since 2012, EPA has issued two regulations addressing emissions from oil and gas facilities nationwide, including one last May that specifically targets methane from new and modified existing oil and natural gas facilities. Many sources of methane emissions within oil and natural gas facilities are covered by both BLM and EPA’s rules. Moreover, days after the election and before BLM issued its final rule, the EPA submitted an immense information collection request to the oil and natural gas industry in order to develop a rule to regulate unmodified existing oil and gas sources.

While BLM’s final rule said it “seeks to minimize regulatory overlap,” the rule creates greater confusion for and burden on producers as well as state and federal regulators. For instance, the North Dakota Industrial Commission, which includes the governor, attorney general, and agriculture commissioner of the state, commented: “The highly detailed leak detection and repair requirements in the [BLM’s] proposed rule may be consistent with EPA [regulation] initially, but will likely result in conflicting requirements when either agency makes changes or issues guidance.”

### Ignores commonsense solutions

BLM claims the rule is necessary to capture more methane in order to garner increased royalty revenue; yet the rule may actually decrease production and royalties. The rule's costly and burdensome requirements could result in the shut-in of a number of producing wells on federal and Indian lands. This would not only reduce the royalty revenue assumed in the rule but would reduce American consumers' access to affordable energy. While BLM estimates the rule would provide \$23 million more in annual royalties, additional [economic analyses](#) have reported that based on current market prices of natural gas the rule would create no more than \$3.68 million in additional royalties and would reduce federal and state tax revenue by an annual \$114 million.

The oil and gas industry has already taken voluntary steps to capture methane that has generated revenue for the U.S. Treasury absent federal regulation. In 2012 alone, voluntary measures to reduce methane emission by the oil and gas industry generated \$264 million in revenue. In a state such as [Wyoming](#), which already regulates methane emissions, Gov. Matt Mead reported last year that only 0.26 percent of produced gas is flared. In June 2016, the U.S. Energy Information Administration [reported](#) that flaring in North Dakota declined more than 20 percent in the two years following state regulation of methane emissions.

Nationwide, as natural gas production rose 47 percent from 1990 to 2014, EPA's greenhouse gas [inventory](#) reported natural gas systems have reduced methane emissions by roughly 15 percent during the same period of time. This figure almost certainly underestimates the reduction, as EPA dramatically altered its methodology for estimating methane emissions from oil and gas production last year. The agency started applying emission levels from larger facilities to small facilities that are not included in EPA's greenhouse gas reporting program.

Rather than impede this progress, BLM should embrace a common-sense solution to capture more methane and increase production royalties on federal lands by providing increased access to pipelines and gathering lines to process and transport methane to market. By fixing permitting and pipeline delays, natural gas can reach consumers more quickly. In a [letter](#) to House Speaker Paul Ryan supporting congressional repeal of BLM's rule, New Mexico Gov. Susana Martinez further explained: "Insufficient pipeline capacity and gas processing capacity make it difficult for producers to capture and sell as much of their product as possible. The Department of Interior can correct the root causes of venting and flaring events by approving pipeline right-of-ways more efficiently, which will increase pipeline capacity."

Even BLM has admitted that unnecessary venting and flaring takes place in areas with a lack of pipelines or pipeline capacity. A bipartisan majority of senators voted last year in favor of expediting permitting process for natural gas gathering lines on federal and Indian lands. At his nomination hearing to be secretary of the interior, Rep. Ryan Zinke also expressed support for repealing BLM's rule and agreed that a better network of pipelines and gathering lines would provide greater capture and transport of natural gas for sale.

### Provides no meaningful environmental benefits

BLM also asserts the rule is needed to fulfill President Obama's climate action plan and strategy to reduce methane. However, BLM's rule produces no meaningful climate benefits. As a practical matter, by causing producers to shut-in wells, BLM's rule could have the effect of increasing energy production in other countries with weaker environmental standards and greater global methane emissions.

Moreover, absent the flawed royalty assumptions, BLM's only other asserted monetized benefits of the rule are attributed to the novel, so-called social cost of methane metric. This metric has nothing to do with BLM's authority to capture undue waste and has been widely challenged for failing to follow information quality and peer review guidelines. Had BLM conducted a proper cost-benefit analysis, the costs of the rule would overwhelmingly exceed the benefits.

Methane emissions addressed by BLM's rule also pose no significant contribution to global climate change. EPA reported the most recent estimates of global methane emissions at 8,375 million metric tons of carbon dioxide equivalents per year. EPA's 2016 GHG Inventory reported that U.S. methane emissions are estimated at 730.8 million metric tons of CO2 equivalents per year. BLM estimates its final rule would reduce roughly 4.4-4.5 million metric tons of CO2 equivalents per year. In other words, BLM's rule would address 0.61 percent of domestic methane emissions and 0.053 percent of global methane emissions.

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U.S. Senate Republican Policy Committee

Chairman John Barrasso



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