National Association of Environmental Professionals
Be Connected

NAEP's Bi-Weekly
NATIONAL DESK

January 18, 2019

Lead NEPA Story: Shutdown hampers opponents of BLM changes to Obama-era plans

(Greenwire, 1/9/2019) **Scott Streater, E&E News Reporter**

Conservation groups are demanding the Interior Department give them more time to formally appeal proposed revisions to Obama-era greater sage grouse conservation plans, citing problems with the agency's website in the first days of the partial government shutdown that restricted access to online documents.

Adding confusion to the process is that it's not exactly clear when the 30-day period ends to file administrative protests of the controversial revisions covering management of millions of acres of sage grouse habitat in the West.

A *Federal Register* notice published last month on EPA's Register webpage listed the deadline to file protests as Monday, January 7.

But a formal notice published several days later on the Bureau of Land Management's *Federal Register* page listed the deadline to file protests as today, January 9.

Continued on page 9

Clean Water Act: Trump's rule threatens booming $4B 'restoration economy'

(Greenwire, 1/3/2019) **Ariel Wittenberg, E&E News Reporter**

As the Trump administration rolled out a proposal last month that would restrict the Clean Water Act's authority over isolated wetlands and waterways, the Army Corps of Engineers' chief boasted of the rule's economic impact.

"We've tried our best to come up with something that is fair not only to this nation, but to the individuals who try to work and make a living in this nation," R.D. James, the Army's assistant secretary for civil works, said of the administration's waters of the U.S. (WOTUS) rule.

But businesses that restore and protect wetlands say the proposal threatens their $4 billion industry.

David Groves, business director for a Maryland-based restoration company, The Earth Partners LP, said one thing is clear about the proposed water rule: "We are in big trouble."

Whether they build homes, energy projects or highways, developers are required by the Clean Water Act to offset or mitigate damage their projects do to federally regulated wetlands or streams by restoring and preserving similar resources nearby. Developers can do the work themselves — or pay somebody like The Earth Partners to do it for them.

So-called mitigation bankers like Groves invest millions of dollars in restoration upfront, essentially betting that developers will buy credits from them for their projects. Other restoration companies work on a for-contract basis, beginning work after they are paid by Clean Water Act permitholders.

Regulations mean business for the booming restoration industry.

But the Trump administration's WOTUS proposal would erase Clean Water Act protection for the more than 18 percent of streams and 51 percent of wetlands nationwide that don't have continuous surface water connections to larger waterways, according to U.S. Geological Survey data.

"The industry could shrink considerably," Groves said in an interview. "A lot of mitigation bank owners are going to see a lot of financial hardship."

Congress passed the Clean Water Act in 1972 with the intention of protecting swamps, salt marshes, bogs and other areas that provide wildlife habitat, buffer floodwaters and cleanse pollutants. But defining what resources are protected has been the focus of bitter legal and political debate for many years.

If the Trump administration's proposal takes effect, developers won't need to buy offsets for as many projects, and demand for mitigation — and for businesses like Groves' — would plummet.

Take, for example, the 3,300 acres of freshwater and tidal wetlands that The Earth Partners bought in 2017 in the greater Houston area. A large swath of those wetlands is vernal pools that lack surface connections to streams.

The Earth Partners had planned to sell the preserved tracts to developers as a customized mitigation project.

The Trump proposal "hits on both the supply and demand side" of that plan, Groves said.

Not only does WOTUS make it less likely that developers in Texas would need wetland mitigation, but Groves fears that even if he found a customer, the Army Corps would say the vernal pools on his property couldn't be used for mitigation anymore because they themselves wouldn't be covered by the Clean Water Act.

The area becomes "financially worthless to us" if the Trump proposal is finalized, he said.

Other mitigation providers might consider selling the parcel to developers, which could then destroy the wetlands without a permit. That's not an option for The Earth Partners, whose investors include environmentally minded private equity companies, pension funds and "high net-worth individuals."

"For a company with our ethos," Groves said, "we do not want to see the destruction of some of the last remaining vernal pools in the state."

'Preferential treatment'?

The mitigation industry has come to pack a quiet economic punch.

The nonprofit Forest Trends' Ecosystem Marketplace found that wetland mitigation banks alone sold an estimated $3.3 billion worth of credits in 2016.

And a University of North Carolina study published in the journal *PLOS ONE* estimated that public and private investment in mitigation banks for both wetlands and endangered species was $3.8 billion in 2014.

UNC researchers examined how mitigation banks fit within the larger "restoration economy," including habitat and wetland restoration and management.

Altogether, the sector produced $9.47 billion in direct economic output in 2014 and billions of dollars more in spinoff economic benefits over the long term.

Inside This Issue…

At the time, that translated into 126,000 jobs directly generated by the ecological restoration sector annually — nearly double the number of jobs in coal mining.

While the Trump administration has repeatedly attempted to bolster the coal industry, EPA and the Army Corps have so far ignored how their WOTUS proposal would affect mitigation bankers and others in the restoration business.

The agencies' economic analysis accompanying the rollback cites the UNC study, but doesn't use any of the report's findings about the industry's economic impact.

Instead, the administration uses the report to argue that assessing the WOTUS proposal's impacts on the sector is "problematic" because businesses within the industry fall under a number of different categories tracked by the Census Bureau.

While many mitigation banks qualify as small businesses, the Trump analysis ultimately concludes that its WOTUS rule "will relieve regulatory burden to small entities."

The author of the UNC paper, Todd BenDor, calls the Trump administration's conclusion "absolutely ridiculous."

"It basically means they just don't want to look at it," he said.

BenDor has written other papers that have identified federal laws and regulations as "far and away the biggest driver of private investment in mitigation."

The administration didn't cite those studies, either.

"I don't know how you look at my work and conclude there would be anything but a huge impact on the restoration industry from rewriting WOTUS," BenDor said.

He started studying the industry years ago, irked by policy discussions that often ignore businesses that benefit from regulations.

"The rhetoric is always 'Look at all this money we're saving people from flushing down the toilet,'" BenDor said. "But the reality in many cases, including with the Clean Water Act, is that the money goes somewhere and supports another industry. You have to consider that."

EPA and the Army Corps also relied on outdated information to calculate developers' cost of compliance with wetlands regulations when they proposed repealing Obama-era water protections last summer.

The agencies cited data from 1999 — nearly a decade before a crucial regulatory change helped boost the number of mitigation banks nationwide.

By restoring swaths of landscape at once, mitigation bankers benefit from economies of scale — a savings that's passed onto developers. Mitigation banks also cut developers' permit review times by an average of two to three months, saving them even more, according to a 2015 Army Corps analysis.

There are 1,900 mitigation banks today — 10 times the number in operation 20 years ago. By using data from 1999, the administration ignored any savings those business provided developers, according to Jason Schwartz, legal director at the New York University School of Law's Institute for Policy Integrity.

The lacking analysis underscores how the Trump administration's pro-industry rhetoric ignores the ecological restoration business, he said.

"There is preferential treatment for certain regulated parties at the expense of everybody else," Schwartz said.

Trade groups in a bind

The mitigation industry has two trade groups, each representing about 100 members. But neither has weighed in on questions of Clean Water Act jurisdiction.

Travis Hemmen, president of the Ecological Restoration Business Association, acknowledges that more Clean Water Act protections mean more business for mitigation bankers.

But mitigation bankers' clients are the ones spending thousands of dollars per project to comply with the Clean Water Act. Asking for stronger regulations isn't a good look.

"None of my clients who do business with me want to hear that I'm lobbying for stronger protections that could be difficult for them and cost them money," he said.

ERBA did send the Trump administration information about the sector and its economic impacts — including a copy of BenDor's study — but it didn't initially plan to comment on the new proposal.

Having seen the new proposal, ERBA is considering weighing in, and has asked members whether it should.

"We know a lot of members are concerned about the consequences of the rule and of us weighing in on it," Hemmen said.

The WOTUS proposal would change the way Hemmen does business as vice president of Alabama-based mitigation firm Westervelt Ecological Services, which has mitigation banks in multiple states.

Rather than proactively investing to form mitigation banks in states without strong wetlands regulations, he said, he would wait for developers to commission projects.

"I wouldn't be speculative," he said. "We'd wait to be driven by a specific need."

'Dead in the water'

Mitigation banking is a long-term business. It can take years of work after bankers raise enough capital to buy a property for the Army Corps to determine that wetlands or streams have been restored adequately to generate credits.

Bankers and their investors routinely wait more than a decade before they start turning a profit.

Regulatory certainty is key to planning ahead and keeping investors interested. So, even though it could take more than a year before the Trump proposal is finalized, and even though it could be tied up in litigation for years before taking effect, many in the industry are already worrying about how WOTUS will affect their bottom line.

Many banks will be "dead in the water," said Ben Guillon, a Colorado-based financial adviser who specializes in conservation investments.

Guillon's company, Conservation Investment Management, has put $30 million into wetlands mitigation projects over the past five years. Much of that money is raised from family trusts that want to bank eco-friendly businesses. Guillon was hoping to raise and deploy another $100 million over the next five years.

In addition to wetland banks, Guillon has invested in endangered species habitat mitigation and carbon trading.

Wetland banks have always been the safest bet, thanks to federal regulation.

It was wetland mitigation that brought Guillon a steady income during the financial crisis 10 years ago. Then, companies that would otherwise voluntarily buy carbon credits to offset their greenhouse gas emissions decided they couldn't afford it anymore.

"Our investments in carbon projects went to hell," he said. "But the wetlands projects continued to sell because companies had to comply with the rules and buy credits."

Companies that voluntarily buy carbon credits benefit from the public knowing they're doing something to limit their climate impacts.

Wetlands don't have the same cachet as climate change.

"No one is going to buy a wetland credit for fun," Guillon said. "As soon as you start playing with the rules, the business will go away."

Emphasis on state regs

The Trump WOTUS proposal isn't likely to harm mitigation banks in states with strong requirements for wetland offsets, like California and Florida.

But the restoration industry is entirely dependent on federal requirements in many other states without their own wetlands protections — including Texas, Wyoming and North Carolina, where Guillon has invested.

"This could be a death sentence for a lot of people," he said. "A lot of companies could go belly-up. Landowners with conservation easements would end up with land that is basically useless."

George Howard is hoping he won't be one of them.

A former staffer for North Carolina Republican Sen. Lauch Faircloth, Howard worked on limiting Clean Water Act protections for wetlands before deciding to start his own mitigation banking company in 1998.

His company, Restoration Systems LLC, owns projects in Louisiana, Texas and North Carolina, where he has made a name for himself by removing dams from rivers to restore their natural flows.

Howard knew going into the business that federal jurisdiction would always be debated.

A conservative Republican, he said he voted for President Trump knowing that the administration might try to roll back wetlands protections.

"I like to keep my finances separate from my politics," he said.

But he's been somewhat haunted by that choice after the administration proposed a rule excluding "even more wetlands than the ham-handed bill I worked on in the '90s."

Howard is optimistic that strong mitigation requirements in Louisiana will keep his business afloat in the Trump era.

Just in case, he has hired two lobbyists to convince the North Carolina Legislature to beef up mitigation requirements in a state where they are nearly nonexistent.

Howard believes states should be allowed to make their own rules. But he knows the money he's paying lobbyists could have been invested in more restoration projects were it not for the Trump administration's WOTUS proposal.

"I didn't hire lobbyists because I believe in federalism. I hired them because I'm worried about my business," he said. "My ideological preferences are proving painful at this point."

Clean Water Act: Greens see WOTUS as a gift to mountaintop mining

(Greenwire, 1/10/2019) **Ariel Wittenberg and Dylan Brown, E&E News reporters**

Environmental advocates fear the Trump administration's rollback of Clean Water Act protections is a handout to mountaintop-removal mining.

The Waters of the U.S., or WOTUS, rewrite would erase protections for the more than 18 percent of waterways nationwide that only flow after rain or snowfall. Those "ephemeral" streams are found at the upper reaches of watersheds — the places where mountaintop projects generally operate.

The EPA and Army Corps of Engineers proposal could make it easier for coal companies to get mountaintop mining permits and more difficult for environmental groups to sue them.

"There won't be as much scrutiny of projects during the permit process, and that will in turn make legal challenges more difficult," said Derek Teaney, a senior attorney with Appalachian Mountain Advocates, which has launched numerous cases against mining firms.

Companies would welcome fewer lawsuits, but the National Mining Association downplayed the weight of mountaintop removal to the industry's bottom line because the destructive extraction method produces less than 1 percent of the nation's coal.

NMA roundly praises the WOTUS changes as benefiting all mining by clarifying which waterways are safeguarded by the federal government.

"This proposal represents a good faith effort to draw some clear lines for the regulated public," said Amanda Aspatore, NMA vice president of water law and policy. "Rather than a case-by-case analysis involving multiple factors to determine whether you potentially need a federal permit, this proposal is definitely designed to be more straightforward."

Consistent definitions that allow companies to more quickly assess what their water impacts will be and avoid lawsuits will help NMA achieve its No. 1 policy priority: streamlining the often-lengthy approval process.

Undermining legal challenges

Eliminating review requirements for projects that would hurt ephemeral streams is the key reason the Trump administration's WOTUS plan would be a boon to mining.

While they are often completely dry, both the Obama and George W. Bush administrations protected at least some ephemeral streams because torrents of rain or snowmelt can carry significant pollution downstream into more consistently flowing waterways.

The new administration has justified erasing protections with a 2006 Supreme Court opinion from the late Justice Antonin Scalia. In *Rapanos v. U.S.*, Scalia wrote that the Clean Water Act should only protect streams with "relatively permanent" flow.

EPA under Trump has also asked for public comment on scratching protections for the 52 percent of intermittent streams nationwide that only flow when snowpack melts or the groundwater table rises to intersect with a streambed.

Studies have shown that "first order" streams at the upper reaches of watersheds, including those with ephemeral and intermittent flow, can cumulatively contribute 60 percent of water in large downstream rivers.

Mountaintop mining routinely buries streams as rock and earth are removed from mountains to expose coal seams and then placed in nearby valleys.

Those so-called valley fills affect waterways "to the point that they do not exist anymore," Teaney said. "It completely eliminates them."

All coal mines are subject to additional regulations under the Surface Mining Control and Reclamation Act (SMCRA). But the 1977 law includes language, known as the "savings clause," that courts have interpreted to mean protections cannot exceed those of the Clean Water Act.

That means if the final version of WOTUS erases protections for ephemeral or intermittent streams, SMCRA wouldn't protect them, either. And that would limit the potential for court challenges.

"A lot of our success in litigation against surface mining and mountaintop removal have been through the Clean Water Act and protections for ephemeral streams, both for discharges at the end of a mountain valley fill but also the filling of those streams, as well," Teaney said.

Eliminating ephemeral

Developers of projects that dump fill in federally protected wetlands and streams are required to offset the damage done by restoring or preserving nearby aquatic resources.

If ephemeral streams are no longer protected by the Clean Water Act, projects like a mountaintop-removal mine would not have to offset damage done to them.

Mountaintop-removal projects also wouldn't need permits to discharge wastewater into any ephemeral streams under the proposal.

"That cuts down on a substantial chunk of the permitting obligation," Earthjustice attorney Jennifer Chavez said.

Teaney agreed: "The permit wouldn't gauge the whole scope of impact."

He has also worked on lawsuits involving oil and gas pipelines. But while pipeline owners must often fork over money for mitigation, Teaney argues the damage simply isn't as intense as mining.

Developers can often drill under streams or avoid them altogether when laying pipe. Digging up a stream is sometimes necessary, but

sedimentation and other pollution issues are often temporary.

Because of that, Teaney said, pipeline cases are "usually won on impacts to the big-name rivers."

"In mountaintop removal ... you're impacting the tributaries to their tributaries," he said. "Our ability to get traction in the courts for those mining projects depends on ephemeral streams being protected by the Clean Water Act."

Industry experts are still analyzing how big the impact of the WOTUS rewrite would be, but NMA praised the attempt at concrete definitions for streams to the benefit of projects.

"A clearer WOTUS definition provides greater regulatory certainty and helps minimize future legal risks," Aspatore said. "When the agencies' regulations are overly subjective, that opens the door for outside parties to later come in and say, 'No, we're reading it differently' and for a court to potentially agree."

The Spruce mine example

One landmark example of ephemeral streams playing a key role in permitting was the Obama administration's controversial decision to reject permits for a West Virginia mountaintop-removal mine eight years ago.

The Army Corps had permitted the Spruce No. 1 mine in 2007, but EPA went back and "vetoed" those permits in 2011 based on water impacts.

Nearly a quarter of streams that would have been affected by the project — 10,630 linear feet — were ephemeral. The majority — 28,698 linear feet — were intermittent. Just 165 linear feet of streams at the Spruce site flowed all the time.

In the decision, the Obama EPA argued that filling intermittent and ephemeral streams would have "severely altered conditions in the stream courses that are not destroyed by valley fills," including water flow and chemical composition.

Ken Kopocis became EPA's water chief just after the politically retroactive veto was issued and was involved in the years of subsequent litigation. He said the Trump WOTUS proposal would have changed things.

"The outcome could be different because of the sheer volume of ephemeral streams that would no longer be considered jurisdictional," he said. "A big portion of that project never would have come before the agencies."

NMA praised the new WOTUS definition for limiting the potential, albeit not the power, for EPA to veto mining permits in the future.

"By making it more clear that when you're not going to have impacts to actual waters, you won't have potential Clean Water Act liabilities," Aspatore said, "this proposal would help take away that threat for projects that aren't going to impact waters."

CEQ and EPA: Agencies agree to policy changes after confirmations

(Greenwire, 1/7/2019) **Sean Reilly, E&E News reporter**

The Trump administration has committed to a variety of environmental policies as part of a deal to win eleventh-hour Senate confirmations last week of nominees for top environmental posts.

The policies include getting an outside review of EPA's methods for evaluating the safety of individual chemicals and improving climate-related federal resilience efforts, according to letters released today by Sen. Tom Carper (D-Del.).

The letters' release follows the Senate confirmation last week of three nominees for senior positions at EPA and the White House Council on Environmental Quality (CEQ). In a statement, Carper said he had raised "serious concerns" in recent months about the administration's "harmful environmental policies."

As a result, he said, "EPA and CEQ have made specific commitments to me with respect to some of the most egregious ones."

The letters are from acting EPA Administrator Andrew Wheeler; Mary Neumayr, who was confirmed last week to chair CEQ; and William "Chad" McIntosh, also confirmed last week to be assistant EPA administrator for international and tribal affairs.

In his statement, Carper, the ranking member of the Senate Environment and Public Works Committee, said he would hold all three to the commitments. Also winning Senate confirmation in the waning hours of the 115th Congress was Alexandra Dunn, to head EPA's Office of Chemical Safety and Pollution Prevention. The administration's commitments were first reported by The Hill.

In August, for example, Neumayr told Carper that, if confirmed, she would work with him on "improving the nation's preparedness and resilience to future risks, including climate-related risks, as well as on matters involving federal sustainability." Wheeler, in an undated letter, said EPA will "promptly submit" the agency's new methodology for deciding how to collect and evaluate research related to a chemical's safety to the National Academy of Sciences for "peer review and feedback."

Among steps to bolster EPA's work with American Indian tribes, McIntosh had previously pledged to hire a member of a federally recognized tribe to head the American Indian Environmental Office if confirmed to lead the agency's Office of International and Tribal Affairs.

NEPA: Waivers silence environmental laws in border wall fight

(Greenwire, 1/9/2019) **Michael Doyle, E&E News reporter**

President Trump could evade environmental laws as well as Congress — at least for a bit — if he invokes emergency powers to build a wall along the nation's border with Mexico.

Experts say Trump appears to have at least some unfettered construction authority, if he chooses to exercise it.

But in exempting border wall construction from the dictates of the Endangered Species Act, the National Environmental Policy Act and the like, Trump would also fan the flames of a broader fight over environmental waivers, stir legal challenges and potentially unsettle even Republican allies.

"I suspect that if [Trump] decides to use some emergency authority to get the funding and manpower to build that 'big, beautiful wall,' that action would be challenged ... on constitutional or appropriations grounds," said Susan Jane Brown, staff attorney with the Western Environmental Law Center.

If built, Trump's wall would leave the kind of lasting mark that usually triggers key environmental statutes.

A 2011 study by researchers at the University of Texas, University of California and Yale University, for instance, identified 57 amphibian, 178 reptilian and 134 mammalian species living within about 30 miles of the U.S.-Mexico boundary.

"It would require building walls through wildlife refuges and nature preserves, and would forever scar the landscape and ecosystem of the Southwest border in ways we cannot anticipate," Sen. Patrick Leahy of Vermont, the senior Democrat on the Senate Appropriations Committee, said yesterday.

With Trump set to tour the U.S.-Mexico border tomorrow, his allies seem split on the possibility

of the president declaring a national emergency and using the associated powers to greenlight border wall construction. Some who have the president's ear are urging him on.

"I'm guessing he's going to declare a national emergency," Fox News star Sean Hannity said Monday.

Others have counseled caution, with Rep. Mac Thornberry of Texas, the senior Republican on the House Armed Services Committee, telling reporters yesterday that he opposes an emergency declaration that would permit Trump to tap unobligated Pentagon funds.

"I am opposed to using defense dollars for non-defense purposes," Thornberry said, adding that it "seems to me that we need to fund border security needs on their own and not be taking it from other accounts."

The waiver of a host of environmental laws turns, in part, on eight power-packed words folded into a section of the U.S. Code concerning construction authority in the event of a declaration of war or national emergency.

The provision allows the Defense Department in a declared emergency to "undertake military construction projects, not otherwise authorized by law that are necessary to support ... use of the armed forces." In theory, that could include a border wall.

The provision further specifies that the construction projects may be undertaken "without regard to any other provision of law." Congress included the potentially sweeping provision in a 1982 military construction bill.

While it had much more to do with barracks and runways than with impeding immigrants, this waiver, in turn, foreshadowed even more detailed waivers dealing explicitly with border infrastructure.

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act, which authorized "additional physical barriers and roads ... in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States."

The 1996 law further allowed waiver of the ESA and NEPA if the government determined the waiver "was necessary to ensure expeditious construction of the barriers and roads." As part of the REAL ID Act, Congress in 2005 expanded the waiver to cover "all legal requirements."

"That waiver provision has been challenged in court, unsuccessfully," the Western Environmental Law Center's Brown noted.

Last February, notably, Judge Gonzalo Curiel of the U.S. District Court for the Southern District of California dismissed a lawsuit that challenged the waivers of environmental laws for construction of the wall.

The Department of Homeland Security had waived myriad laws for a prototype border wall along a 15-mile segment of the border near San Diego, as well as other activities near El Centro, Calif.

"Congress enacted a law which attempts to avoid delays caused by lawsuits challenging the construction of barriers by allowing [DHS] to waive the application and enforcement of federal, state and local laws during the construction of a border barrier as necessary," Curiel wrote.

Though environmental groups have argued the REAL ID Act waivers were limited in scope and duration, Earthjustice senior legislative counsel Raul Garcia acknowledged today that those arguments have not gained courtroom traction.

This means, Garcia said, that "Trump doesn't need to declare an emergency to waive environmental laws, unfortunately."

"We're trying to think of environmental grounds on which to [challenge] this, because the environment is definitely taking a hit," Garcia said. "We're trying to think of something that would have legs."

Lead NEPA Story* (*continued from page 1)

Press materials on the plan revisions on BLM's website state that protests must be filed by the close of business on January 8, which was yesterday.

The Western Watersheds Project filed protests against the plan revisions Monday on behalf of WWP and six other groups: the Prairie Hills Audubon Society, the Center for Biological Diversity, Defenders of Wildlife, the Sierra Club, WildEarth Guardians and the American Bird Conservancy.

Greta Anderson, deputy director of the Western Watersheds Project, said they filed a protest Monday out of an abundance of caution, noting that BLM's formal protest regulations states that protests should be filed within 30 days "of the date the EPA published the notice of receipt of the final environmental impact statement containing the plan or amendment in the *Federal Register*."

If true, that means the deadline to appeal was Monday, January 7.

Other groups believe that's not the case in this instance.

The Wilderness Society plans to file a formal protest before the close of business today, believing Interior will honor the January 9 deadline in BLM's notice, said Nada Culver, senior counsel and director of the group's BLM Action Center in Denver.

Culver and Anderson said they have not been able to get clarification from BLM during the shutdown. The partial government shutdown does not affect the 30-day protest period deadline.

"The shutdown has put a pretty substantial burden on people trying to engage in this process on multiple plans, and it would be nice to have BLM acknowledge that," Culver said in an email to *E&E News*.

"They seem to have time to hold meetings on making more lands available to leasing in Alaska, so maybe they could take a minute to let us know we're entitled to some additional time to prepare our protests on these plans," she added.

The Wilderness Society, WWP and other groups have asked Interior and BLM to extend the protest deadline period.

But with the partial government shutdown now in its third week, and many Interior and BLM employees on unpaid furlough, the groups say they have not received any response to their requests.

Representatives with Interior and BLM did not respond to requests to comment on this story in time for publication.

"Western Watersheds Project and our colleagues worked diligently to comply with the BLM's confusing deadlines despite the lack of availability of key documents during the protest period," Anderson said. "The agency and this administration clearly aren't concerned with the input of the public so long as they are accommodating the special interests who seek increased access to our public lands."

Culver said shortly after the shutdown began, on December 21, the webpages with BLM's proposed revisions as well as copies of the Obama-era plans and other documents were offline for at least five days and parts of a sixth day.

"Having all of the related documents offline meant the public couldn't review the current amendments, the drafts that they refer to or the previous 2015 documents that they incorporate by reference, for most of 6 days out of a 30-day period," Culver said.

The confusion comes a month after BLM released final drafts of proposed revisions to Obama-era grouse conservation plans that suggest removing hundreds of thousands of acres of federally protected habitat in Utah and easing restrictions on energy development and other activities in Colorado, Idaho and Wyoming.

BLM released six final EISs and proposed resource management plan amendments: one each for parts of Colorado, Idaho, Nevada/Northern California, Oregon, Utah and Wyoming.

Conservation groups and other critics have bashed the revisions, saying they are unnecessary and will ultimately drive the bird

toward extinction to benefit a few states and special interest groups.

BLM has said the proposed changes to the original plans finalized in September 2015 give the bureau and individual states "flexibility" to allow for increased activity in grouse habitat management areas while still protecting the bird.

Most of the governors in the seven states covered by the revised plans have expressed support for the changes.

BLM has already pushed back the protest deadline to January 23 for the proposed revisions in Wyoming, which is home to a third of the bird's remaining population, and where BLM manages nearly 18 million acres of grouse habitat. That was due to the release of "incorrect versions of appendices" accompanying the release of the final EIS last month.

A former senior Interior official who asked not to be identified said BLM has extended protest deadlines in the past and that he would advise the agency to do so in this case just to "take this issue off the table as a litigation point."

He added: "There will be plenty of other points to litigate on this new plan(s)."

The NAEP *National Desk* is published every two weeks using content originally published in *Greenwire*. The NAEP *National Desk* is emailed directly to approximately 1,000 NAEP General, Associate, Student, and Senior members, and indirectly to more than 3,100 chapter-affiliate members through 17 state or regional affiliate chapters. News articles are provided through a licensing agreement with Environment and Energy (E&E) Publishing, LLC (www.eenews.net). E&E's five daily online publications are ClimateWire, EnergyWire, E&E Daily, Greenwire and E&E News PM. ***Subscription discounts are available to NAEP members. Sign up for a subscription by sending an email to cchinyata@eenews.net***.

This edition of the National Desk was compiled by Harold Draper. For more information on NAEP, please contact the NAEP office at office@naep.org.
