



Lead NEPA Story: Coming soon: Trump's order on pipeline permits

(Greenwire, 3/29/2019) Hannah Northey, E&E News Reporter

President Trump could sign an executive order streamlining permitting for oil and gas pipelines as early as next month.

National Economic Council Director Larry Kudlow shared that news at a meeting Wednesday hosted by the American Council for Capital Formation, sources who attended told E&E News. Trump may sign the order in Midland, Texas, a city located in the heart of the Permian Basin. Axios first reported the meeting today.

Attendees, who asked to remain anonymous in order to speak freely, said the order could be signed as early as next month, but they had no firm details about what the executive order

would call for or accomplish. Kudlow's speech was light on details, they said.

Speculation has circulated in Washington for months about the Trump administration's plans to issue a number of energy-related executive actions, but the substance of those orders and what they would accomplish remain mysteries.

Sources expect presidential actions to boost the proliferation of pipelines across the United States, limit state interference on water permitting and touch on everything from fast-tracking pipeline approvals out of the Permian Basin to potential action on liquefied natural gas exports.

Continued on page 6

Clean Water Act: Where EPA saw no data, Trout Unlimited crunched the numbers

(Greenwire, 4/1/2019) Ariel Wittenberg, E&E News Reporter

A new analysis from Trout Unlimited shows the U.S. Geological Survey underestimates the number of streams nationwide that flow only following rain.

The fishing and conservation group says that for every mile of stream mapped in the National Hydrography Dataset, another 1.5 miles of ephemeral streams exist.

The analysis comes as the Trump administration is soliciting comments on its Waters of the U.S., or WOTUS, rule that would eliminate Clean Water Act protections for ephemeral streams, which flow only following rainfall.

Outdoors groups like Trout Unlimited fiercely oppose the proposal, arguing that ephemeral

streams serve as critical habitat for fish species and contribute crucial supplies of cool, clean water to more habitat downstream.

Inside This Issue...

Endangered Species Act: Ninth Circuit set for chlorpyrifos clash 4

California Environmental Quality Act: Trump administration sues California over delta standards 4

NEPA: Bureau of Land Management eyes sage grouse habitat in Colorado sale..... 5

The Trump administration has said it can't determine how many streams stand to lose federal protections under its WOTUS proposal. After first denying there were any data on the number of ephemeral streams nationwide, the administration now says that because the National Hydrography Dataset is incomplete, it is unusable.

Trout Unlimited, however, views the data set as an important tool to determining the impact of the rollback.

"It's the best available data; it's what we have to work with," Trout Unlimited mapping specialist Kurt Fesenmyer said. "There are shortcomings, and we wanted to highlight potential areas the data misses."

The National Hydrography Dataset shows that 18 percent of streams nationwide are ephemeral, meaning they stand to lose protections under the Trump WOTUS proposal. But USGS only recently started differentiating between intermittent and ephemeral streams in the database, and the agency cautions that the data are incomplete.

To help find areas where rainfall would drain into channels and form ephemeral streams, Trout Unlimited overlaid the National Hydrography Dataset maps on elevation maps.

Fesenmyer's team consulted other studies of when and where ephemeral streams form. That science showed that ephemeral streams initiate in steep areas where more than 2 acres of a watershed drain to a particular point. In flat areas, ephemeral streams initiate when roughly 24 acres of watershed drain to a particular area.

Studies have shown that ephemeral streams initiate in areas where there are 2 acres of upstream watershed in steep areas and up to 24 acres of upstream watersheds in flat areas.

So Trout Unlimited estimated that "unmapped" ephemeral streams existed in areas where more than 11 acres of watershed would be draining.

"Anywhere below that point, we expected would be a stream channel," Fesenmyer said.

Fesenmyer described this approach as a "conservative" one that will result in overestimating the number of ephemeral streams

in flat places and underestimating them in wet landscapes.

The result is an interactive map on Trout Unlimited's website where users can click on a watershed and see how many stream miles are mapped, what percentage of those mapped are ephemeral and the number of unmapped ephemeral stream miles Trout Unlimited estimates exist for every mapped stream mile.

The group also put together some state-specific estimates. In Arizona, where 74 percent of the mapped 432,728 miles of streams are ephemeral, Trout Unlimited estimates an additional 0.6 miles of unmapped ephemeral streams exist.

All told, that would mean an estimated 84 percent of stream miles in Arizona are ephemeral and would not be protected by the WOTUS proposal, E&E News calculated.

While WOTUS is expected to have the biggest impact on states in the West, where arid climates mean more streams are dependent on precipitation, the Trout Unlimited mapping shows Northern and Eastern states will also be affected.

In Maine, for example, where the NHD maps 57,107 miles of streams, none of which are categorized as ephemeral, Trout Unlimited estimates that 1.6 miles of ephemeral streams exist for every mapped stream mile.

All told, that would mean an estimated 61 percent of Maine stream miles are ephemeral, E&E News calculated.

Fesenmyer is quick to caution that Trout Unlimited's estimates are by no means perfect and that whether individual streams flow only after precipitation is best determined on the ground. Instead, he calls his work "a foundation."

"There is going to be quite a bit of error associated with it, but it gives us a bit more of a ballpark than we had," he said.

Asked about Trout Unlimited's analysis and whether EPA had considered doing a similar examination of the National Hydrography Dataset, an EPA spokesman said the agency would review it if it were submitted to EPA and

the Army Corps during the public comment period for WOTUS.

Trout Unlimited's approach to the National Hydrography Dataset is markedly different from the one taken by the Trump administration.

When they announced their WOTUS proposal in December, the agencies initially denied that any estimates existed for how many wetlands and waterways would be excluded from their rollback of Clean Water Act protections.

"If you see percentages of water features that are claimed to be in, or reductions, there really isn't the data to support those statistics," EPA Office of Water chief David Ross told reporters.

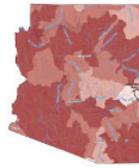
The agency changed its tune after E&E News published documents showing that EPA and Army Corps staff had, in fact, reviewed the NHD data a year before publishing the WOTUS rule.

Now, EPA and the Army Corps wrote in their economic analysis of WOTUS that while the National Hydrography Dataset is "the best national dataset" of waterways, it cannot be used because it "generally does not differentiate between streams with intermittent or ephemeral flow in much of the country."

Fesenmyer said his team at Trout Unlimited decided to look at the National Hydrography Dataset because they were unimpressed by EPA and Army Corps' jettisoning of the data.

"Their explanations weren't adequate," he said.

TROUT UNLIMITED ANALYSIS OF EPHEMERAL STREAMS



ARIZONA

432,728 mapped stream miles

74% are ephemeral

Additional **0.6 miles** of ephemeral streams estimated for every mapped stream mile



WISCONSIN

81,571 mapped stream miles

25% are ephemeral

Additional **0.8 miles** of ephemeral streams estimated for every mapped stream mile



MAINE

57,107 mapped stream miles

0% are ephemeral

Additional **1.6 miles** of ephemeral streams estimated for every mapped stream mile



NEW YORK

109,898 mapped stream miles

0% are ephemeral

Additional **1 mile** of ephemeral streams estimated for every mapped stream mile



CALIFORNIA

519,545 mapped stream miles

67% are ephemeral

Additional **0.7 miles** of ephemeral streams estimated for every mapped stream mile

Claudine Hellmuth/E&E News(graphic); Trout Unlimited (maps and data)

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

***Endangered Species Act:* Ninth Circuit set for chlorpyrifos clash**

***(Greenwire, 3/26/2019)* Ellen M. Gilmer, E&E News reporter**

The Trump administration heads to federal court today to fight a 2018 ruling that required EPA to crack down on the pesticide chlorpyrifos.

The 9th U.S. Circuit Court of Appeals will hear oral arguments this evening in a highly anticipated rehearing en banc — before 11 active judges on the court.

The court is weighing whether to reverse a three-judge panel's August decision requiring EPA to ban the farm chemical on food crops. EPA science has linked the pesticide to neurological problems in children.

The 9th Circuit panel concluded the Trump administration failed to justify its 2017 decision to reject a proposed ban that public health advocates have pushed for years.

Government officials then asked the 9th Circuit to revisit the ruling and notched a notable victory in February when that request was granted.

Trump-appointed Justice Department lawyer Jonathan Brightbill is arguing the case for EPA today.

The League of United Latin American Citizens and a coalition of farm, labor and environmental groups opposing EPA in the courtroom will be represented by Earthjustice lawyer Patti Goldman. New York Deputy Solicitor General Andrea Oser is representing a coalition of states pushing for a chlorpyrifos ban.

Documents obtained under the Freedom of Information Act by the Center for Biological Diversity and detailed in a New York Times investigation indicate the Fish and Wildlife Service found chlorpyrifos also posed jeopardy to 1,399 endangered species.

Pesticide makers and agriculture groups have argued that banning the chemical would derail many American food crops that rely on it.

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

***California Environmental Quality Act:* Trump administration sues California over delta standards**

***(Greenwire, 3/29/2019)* Jeremy P. Jacobs, E&E News reporter**

The Trump administration yesterday sued California over new state water quality standards, saying they would illegally restrict deliveries to farmers.

In December, California regulators updated the water quality standards for the San Francisco Bay and Sacramento-San Joaquin River Delta for the first time in 23 years.

They were aimed at saving endangered salmon and steelhead by requiring increased flows on San Joaquin River tributaries.

The Trump administration and its allies in Congress have sharply criticized the standards, which require 40 percent of "unimpaired" flows on three tributaries — the Tuolumne, Stanislaus and Merced rivers — to reach the delta from February to June.

And in a bit of legal jiu-jitsu, the Justice Department and Bureau of Reclamation challenged them yesterday under the California Environmental Quality Act (CEQA), the state's rigorous environmental statute.

Spokesmen for the State Water Resources Control Board did not return a request for comment on deadline.

The board's move in December was viewed as a last-ditch effort to save the fish species, whose populations have plunged to dire levels in recent decades. While some conservation and environmental groups supported the standards, many said they didn't go far enough.

Specifically, the lawsuit filed in both state and federal court challenges how the standards will affect operations of the New Melones Dam and reservoir on the Stanislaus River. It is a Reclamation facility and part of the federal Central Valley Project.

The agency claimed the standards would hamstring its congressionally mandated requirement to deliver irrigation water and manage the reservoir.

"The plan," Reclamation Commissioner Brenda Burman said in a statement, "poses an unacceptable risk to Reclamation's water storage and power generation capabilities at the New Melones Project in California and to local recreational opportunities."

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

The lawsuit is part of an ongoing legal war between the Trump administration and California but represents one of the few instances where California is the defendant. The Golden State has sued the administration nearly 50 times.

The Trump DOJ did, however, secure a victory in a lawsuit against the state over a law that conditioned the sale of federal lands.

CEQA is California's version of the National Environmental Policy Act and, like the federal law, requires environmental analysis of major regulatory actions.

Reclamation's lawsuit contends the board failed to provide an accurate description of how the standards would affect the reservoir, including storage requirements, water temperature and other mitigation measures.

As a result, it argues the standards impose "operational constraints" on the project, including loss of water supplies for Central Valley Project deliveries, as well as power generation and flood control.

NEPA: Bureau of Land Management eyes sage grouse habitat in Colorado sale

(Greenwire, 4/4/2019) Scott Streater, E&E News reporter

The Bureau of Land Management is evaluating whether to include nearly 70,000 acres of greater sage grouse habitat in northwest Colorado in a planned September oil and gas lease sale, just weeks after it finalized revisions to Obama-era grouse conservation plans that critics say will open more habitat to drilling.

The 75 parcels covering 69,057 acres were among nearly 150,000 acres BLM removed from a December 2018 lease sale after former Colorado Gov. John Hickenlooper (D) and other state leaders complained to BLM that allowing drilling in this area could harm the imperiled bird.

BLM also pulled the parcels last year in response to a federal court injunction that blocked it from implementing policy changes that shortened public review and protest periods for lease sale parcels. The bureau last year also deferred hundreds of thousands of acres of grouse habitat from planned lease sales in Montana, Wyoming and Utah due to the injunction.

A BLM spokesman in Colorado said no decision has been made on whether to include the 75 parcels at issue in the planned lease sale this fall. The parcels are being evaluated and are open for comment through April 16 as part of a public scoping process. An additional 30 days for

public comment will occur when BLM issues an environmental assessment of the parcels in the coming months.

But some environmental groups are upset that BLM would even consider offering the grouse habitat for lease, noting that the same concerns expressed by Hickenlooper and other state officials last year still exist today.

And they note that the evaluation of the sage grouse parcels comes shortly after BLM implemented revisions to the 2015 Obama grouse protection plans that include exemptions and waivers that could allow more drilling in and around sensitive habitat.

"The Trump administration's reckless proposal to trash northwest Colorado's remaining greater sage grouse habitat makes it abundantly clear that they have no interest in conserving this species," said Michael Saul, a senior attorney at the Center for Biological Diversity, in a statement.

The Center for Biological Diversity is one of four groups involved in a federal lawsuit that seeks to "halt and reverse" implementation of the revisions to the original federal grouse protection plans.

Saul called on new Colorado Gov. Jared Polis (D) "to stand up to this administration and

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

Lead NEPA Story (continued from page 1)

But they've also cautioned that the actions are far from settled.

Leading the effort is Francis Brooke, a senior energy adviser to Trump who left Vice President Mike Pence's office to replace former White House energy aide Mike Catanzaro.

Scott Segal, a partner and energy industry analyst with Bracewell LLP's Policy Resolution Group, agreed there's been much discussion about an energy infrastructure executive order for months.

"The general purpose appears to be to clear away some of the underbrush that has resulted in

oppose these efforts to sell out Colorado's last, best sagebrush habitats for drilling and fracking."

Polis has publicly supported the revised BLM grouse plans.

It's not clear if Polis will ask BLM to defer the nearly 70,000 acres of grouse habitat if offered for lease this fall.

The governor's office "will be reviewing these parcels in the context of the recently finalized" grouse plan revisions "and associated state efforts to move important conservation measures forward to protect" the bird, a spokeswoman for Polis said in an emailed statement to E&E News.

A total of 83 parcels covering 78,691 acres are up for consideration in the September lease sale, according to BLM records.

The proposed lease parcels are located in Routt, Moffat, Garfield, Rio Blanco, Jackson, Kiowa, Cheyenne, and Weld counties.

BLM held a Wyoming lease sale that ran from Feb. 25 through March 1 and offered hundreds of thousands of acres of previously deferred grouse habitat. The lease sale generated \$87.9 million, with bids on 437 parcels totaling 527,000 acres.

unpredictable delays for major projects like pipelines, domestic energy production, export facilities and the like," Segal said. "Improved agency coordination on permitting will likely be an important element. Agencies should be updating their approaches, picking up on the work of the one-federal-decision effort last year."

The White House declined to comment when asked about Kudlow's comments or the status of the executive orders.

Reporter Niina Heikkinen contributed.

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

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.

The National Association of Environmental Professionals (NAEP) is a multidisciplinary, professional association dedicated to the promotion of ethical practices, technical competency, and professional standards in the environmental fields. Our members reflect a diversity of employers, including government, industry, academia, consulting firms, and the private sector in the U.S. and abroad. They have access to the most recent developments in environmental practices, research, technology, law and policy.