

NAEP

The National Association of
Environmental Professionals

TM *Promoting Excellence in the Environmental Profession*

**NATIONAL ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS
EDUCATIONAL WEBINAR SERIES**

Environmental Practice in Flux: Transitioning to the Trump Administration

Hosted by the National Association of Environmental Professionals

MARCH 8, 2017



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- . . . the multi-disciplinary association for professionals dedicated to the advancement of the environmental professions.
- . . . a forum for state-of-the-art information on environmental planning, research and management.
- . . . a network of professional contacts and exchange of information among colleagues in industry, government, academia, and the private sector.
- . . . a resource for structured career development from student memberships to certification as an environmental professional.
- . . . a strong proponent of ethics and the highest standards of practice in the environmental professions.



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- Discounted registration fees for NAEP Annual Conference
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The 2017 NAEP Annual Conference will be occurring March 27-30, 2017 in Durham, North Carolina. Registrations are still being accepted.

Please visit <http://www.naep.org/2017-conference> for more information and to view the schedule of events.

INTRODUCTION



Moderator Profile: Shannon Stewart

NAEP Elected Board Member and NAEP Education Committee Chair

- 18 years of professional experience in land use planning and environmental impact assessment with special expertise in the energy sector
- Currently serving as a Senior Advisor in the Director's Office of the Bureau of Land Management in the Department of the Interior; previous work with the Department of Energy and in the private sector
- BS in Environmental Policy and MS in Urban and Regional Planning
- Certificate in NEPA from Duke University's Environmental Leadership Program

Contact: stewart.shannonc@gmail.com



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Environmental Practice in Flux: Transitioning to the Trump Administration

Moderator:

Shannon Stewart, NAEP Elected Board Member and NAEP Education Committee Chair

Speakers:

Jeremy Bernstein, Publisher, Inside EPA

Kit Muller, Strategic Planner for the Bureau of Land Management

Leslie Moulton-Post, ESA President/CEO

Pam Eaton, Senior Advisor, Energy and Climate, The Wilderness Society

INTRODUCTION



Speaker Profile: Jeremy Bernstein

Publisher, Inside EPA

- Contributor to ELI's Forum.
- 25 years experience reporting on federal environmental policy

Contact: jbernstein@iwppnews.com

INTRODUCTION



Contact: kmuller@blm.gov

Speaker Profile: Kit Muller

Strategic Planner for the Bureau of Land Management

- Have worked for the BLM for over 35 years, primarily in the Washington Office
- Currently guiding efforts to systematically understand and address broad-scale changes in the American West including drought, wildland fire invasive species, urban growth and industrial development
- Masters in Public Policy, University of California at Berkeley
- Bachelor of Arts, Social Anthropology, Harvard University

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INTRODUCTION



Contact:
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Speaker Profile: Leslie Moulton-Post ESA President/CEO

- 35 years experience as environmental consultant – planning and compliance. BA Human Biology, Stanford University
- Area of focus: Water
 - Supply, water rights, wastewater, flood and storm, water resources management
- ESA – employee-owned environmental consulting firm. Founded 1969.
 - Environmental planning, science, design, compliance, and restoration
 - Key markets: Community development, surface transportation, airports, water and energy utilities, and restoration
 - 450 people, 16 offices in 4 states

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INTRODUCTION



Contact: pam_eaton@twc.org

Speaker Profile: Pam Eaton

Senior Advisor, Energy and Climate, The Wilderness Society

- Nearly 30-years-experience in public lands management policy and advocacy.
- Current focus on reducing greenhouse gas emissions from public lands energy development.
- Expertise in renewable energy and transmission siting policy and practice in the West, protection and management of BLM and National Wildlife Refuge System lands, and Endangered Species Act policy.
- M.S. in Natural Resource Policy from University of Michigan School of Natural Resources
- B.A. in Geology from Yale University.

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Speaker: Jeremy Bernstein

Contact: jbernstein@iwpnnews.com

Outline

- Early deregulatory steps
- Continuing deregulatory actions
- Hurdles?

Jeremy Bernstein, Publisher, Inside EPA

Executive Orders: Deregulatory Architecture

Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects (Jan. 24)

- Identify high priority projects for expedited permitting, NEPA review.
- Recommendations from Commerce Secretary

Reducing Regulation and Controlling Regulatory Costs (Jan. 30)

- For any new regulation proposed or issued, agencies are required to "identify" at least two existing regulations for repeal (2-for-1).
- Any new incremental costs associated with a new rule must be offset by the elimination of existing costs associated with at least two prior regulations.

Enforcing the Regulatory Reform Agenda (Feb. 24)

- Designate regulatory reform officers and establish regulatory reform task forces.
- Each Regulatory Reform Task Force will evaluate existing regulations and identify candidates for repeal or modification. Each agency's Task Force will focus on eliminating costly and unnecessary regulations.

Jeremy Bernstein, Publisher, Inside EPA

Executive Orders: Rolling back rules and policies

Restoring the Rule of Law, Federalism, and Economic Growth BY REVIEWING the "Waters of the United States" Rule (Feb. 28)

- EPA and the Corps required to review Obama WOTUS rule.
- Definition of "Navigable Waters": The agencies "shall consider interpreting the term 'navigable waters' . . . in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*."

Additional order(s) due March 7:

- Reviewing EPA's Clean Power Plan
- Reviewing California's special Clean Air Act authority to adopt stricter mobile source standards
- Repealing BLM's moratorium on new coal leases

Jeremy Bernstein, Publisher, Inside EPA

Congressional Review Act resolutions of disapproval

- Expedited consideration of resolutions of disapproval for rules promulgated within 60 legislative days.
- Agency may not promulgate “substantially similar” measure without congressional approval.

Resolutions enacted since Jan. 20

- BLM: Stream Protection rule
- SEC: Disclosure of resource cos. payments to foreign governments
- SSA: Proposed rule barring 'mentally defective' recipients from purchasing guns

Pending in Congress

- BLM: Venting & Flaring Rule
 - BLM: Planning 2.0
- EPA: Risk Management Plan (Facility Safety) Update
 - GSA: 'Blacklisting' Rule
- OSHA: 'Continuous Reporting' Obligations

Jeremy Bernstein, Publisher, Inside EPA

FY18 Budget plans

EPA: Current budget \$8.1 billion, 15,000 FTEs

FY18 Proposed: \$6.1 billion (25 percent cut)

[FY1991-- \$6.094 billion]

State grants: 30 percent cut

FTEs: 20 percent cut

Eliminate: estuary programs, brownfields, diesel grants, endocrine disruptors and more

Other Agencies

DOE, DOI – 10 percent cut (each)

NOAA – 17 percent cut

State Department/USAID – 37 percent cut

Jeremy Bernstein, Publisher, Inside EPA

Appointees

Selected to ensure “the deconstruction of the administrative state.”
Steve Bannon, CPAC, Feb. 23

Scott Pruitt – Former OK AG. Sued EPA 14 times.
Rick Perry – Former Texas gov. Promised to eliminate DOE.
Ryan Zinke – Opposes privatization of federal lands

Jeremy Bernstein, Publisher, Inside EPA

GOP Primary Trump

– “Get rid” of most of EPA. “We are going to have little tidbits left . . . but we are going to take a tremendous amount out.”

Post-Convention Trump

– “Refocus” EPA on its “core mission of clean air and clean water.”

– Energy independence . . . bring back the coal industry, expand oil and gas drilling, maintain subsidies for renewable fuel (RFS)

Political Strategy

“For years, Republicans have been running scared on the environment, cringing under attacks from activists, constantly seeking to look 'green' and play down their energy ambitions. Not so Mr. Trump, the first Republican in the modern era who seems willing to turn the formula on its head and adopt a position in keeping with other energy-rich nations.”

Kimberley Strassel, WSJ, Nov. 24.

“The United States . . . has the cleanest air and water in the world, due in large part to Republican efforts, from the creation of the EPA during President Nixon's tenure to the sweeping 1990 Clean Air Act Amendments signed by President George H.W. Bush. We no longer contend with the large-scale environmental crises that still plague the rest of the world.”

C. Boyden Gray (Bush I White House Counsel), Washington Examiner, Dec. 28

“The one thing that seems to bring together the old, business-friendly Republican caucus and the Tea Party is rolling back environment regulations. “That seems to be the fallback ... one of the things that's holding the party together.”

Scott Slesinger, NRDC. Bloomberg/BNA, Oct. 26

Jeremy Bernstein, Publisher, Inside EPA

Hurdles Ahead

Market forces:

Historically low natural gas prices unlikely to help bring back coal. Ditto oil.

Gaps in the deregulatory architecture:

- 2-for-1 order: exempts mandatory rulemakings, lacks clear legal standards, call OMB.
- WOTUS rulemaking: interim standards? citizen suits. Scientific & administrative record.
- Clean Power Plan: Tort liability/nuisance suits. California, RGGI.

Revved up environmental movement:

- Record fundraising, citizen suits, public protests/blockades

Nervous federal bureaucracy:

- Leaks like a sieve


Congressional Overreach?

Jeremy Bernstein, Publisher, Inside EPA

Reflections on Transitions



Kit Muller
March 2017




Context

- ▀ What are we transitioning from and to?
- ▀ When do transitions occur?
- ▀ What is our job as civil servants in a transition?



Strategies & Actions

- Expect change
- Look for patterns in the history of transitions in your organization
- Think about what motivates your new leadership
- Identify “successes” your organization has achieved



Strategies & Actions -- Continued

- Identify “problems” your organization has experienced
- Be careful about presenting a “plan” to your new leadership
- Anticipate that it may take time to get new leadership in place
- Trust is critical



NAEP Environmental Practice in Flux – Transitioning to the Trump Administration

A Practitioner's View

March 8, 2017



Introduction



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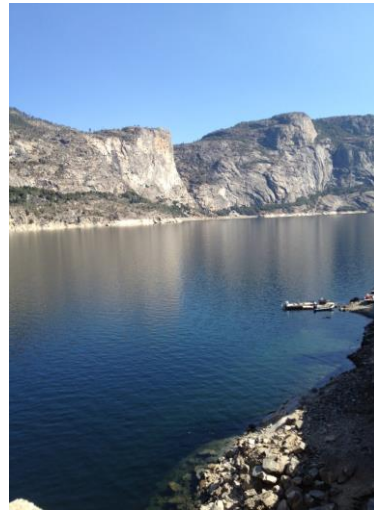
Leslie Moulton-Post, ESA President / CEO

- 35 years experience as environmental consultant – planning and compliance. BA Human Biology, Stanford University
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Agenda



- Clean Air Act
- Clean Water Act
- Endangered Species Act
- EPA Funding Cuts
- Infrastructure spending
- California prepares ...



Clean Air / Climate Change and Trump Admin



Possible developments:

- Stop enforcement of EPA's Clean Power Plan
- Deny Clean Air Act waiver for CA's more stringent vehicle standards (as the Bush administration did). Currently, State and Fed standards are aligned through 2025
- Reduce funds for the CA's climate research community



CA may have to fight political and legal battles rather than scientific and technological ones

Whither California ?



"We cannot fall back and give in to the climate deniers. The science is clear. The danger is real."

Governor Brown, State of the State Address, 1/24/17

"California more than ever is strongly committed to moving forward on our climate leadership... We will not deviate from our leadership because of one election."

Kevin de Leon, the leader of the State Senate

68 percent of Californians support CA's law requiring the state to reduce emissions to 40% below 1990 levels by 2030, even with higher costs.

July 2016 survey conducted by the Public Policy Institute of California.

California & Climate Change



Relevant policy, legislation & case law

- Executive Order S-03-05
- AB 32, SB 32, and 2030 Scoping Plan
- SB 375 (VMT), SB 350 (Energy), SB 1383 (SLCPs)
- AB 900, SB 226 (CEQA streamlining)
- SB 743, SB 379
- SB 535 and AB 1550 – Disadvantaged Communities
- BAAQMD Draft 2017 Clean Air Plan
- Newhall Case and its implications



Clean Water and Trump Administration



- 2.28.17 Executive Order directs EPA and Corps of Engineers to review and rescind or revise the WOTUS definition issued by rule published June 29, 2015 (WOTUS Rule).
- “It is in the national interest to ensure navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard to the rolls of Congress and the States under the Constitution.”



Clean Water and Trump Administration



- Significant nexus vs. permanent and continuous surface water connection
 - No changes for now as review proceeds and rule revision takes months/years
 - State regulations in WA, OR, CA, and FLA are stricter and will hold the line if federal rule changes
 - Excluded from new definition: vernal pools, ephemeral headwater streams, other seasonal wetlands



Clean Water Act – Permitting process



- Unintended consequences of environmental re-regulation / de-regulation:
 - Hiring freeze at USACE is preventing adequate staffing resulting in slower response times and much longer permit processing times
 - Likely to worsen as remaining staff experience increased pressure and depart
 - Fewer and newer, less experienced staff may shoulder regulatory compliance process
 - Does this promote economic growth or minimize regulatory uncertainty?

Endangered Species Act – what's coming?



Potential issue / change areas

- Allow or require economic impact analysis for listing or critical habitat designation?
- Takings?
- Reasonable and prudent alternatives?
- Conservation measures?

EPA Funding Cuts



- EPA funding cuts would significant limit environmental restoration and clean-up activities in major national estuaries:
 - Puget Sound
 - San Francisco Bay-delta
- Puget Sound impacts
 - FY16/17 federal funding is \$28M
 - Funds monitoring and restoration via local governments, Native American Tribes, and NGOs
 - Trump EPA provides \$2M = 93% cut
- SF Bay-Delta projects: \$0 funding eliminated

Infrastructure Funding



- \$1 trillion in spending on public infrastructure projects over ten years
- The President's approach is to offer federal tax credits to private investors, which would generate \$1 trillion in spending on infrastructure projects
- The Democrat's approach is to use direct federal spending to fund the \$1 trillion plan, which will be funded by closing federal tax loopholes and a \$10 billion "infrastructure bank" to "unlock" private capital

Infrastructure – expedited review



“ . . . it is the policy of the executive branch to streamline and expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects, especially projects that are a high priority for the Nation, such as improving the U.S. electric grid and telecommunications systems and repairing and upgrading critical port facilities, airports, pipelines, bridges, and highways.”

- President Donald Trump – Executive Order
January 24, 2016

California Input to "The List"



2.7.17 CA Governor's Letter to Nat'l Governor's Association

- Initial list of key infrastructure projects
 - 51 projects totaling \$100 billion
 - Highway, rail and transit, water, flood, emergency response, military, energy
 - Many meet requirement for “job” creation
- Will Trump Administration give CA \$\$?

California Prepares ...



Preserve California legislative package 2/23/17


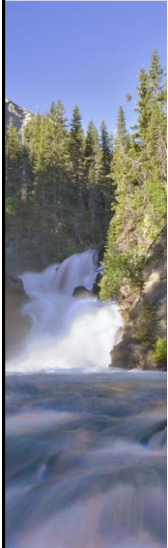

- Insulate CA from “dangerous rollbacks in federal environmental regulations and public health protections”
- **CA Environmental Defense Act (SB49)**
 - Enforce current federal clean air, climate, clean water, worker safety and species standards under state law
 - Federal laws set baselines; state can adopt more stringent rules. No backsliding.
- **Public Lands Protection Act (SB50)**
 - New State policy to discourage transfer for federal land to private developers. State Lands Commission should establish right of first refusal on such transfers
- **Whistleblower and Public Data Protection Act (SB51)**
 - Protects federal agency whistleblowers in CA from losing state licensure. Protects data.



Issues and Opportunities with New Administration

Pam Eaton, Senior Advisor, Energy and Climate



Areas to Watch

People

- Who gets appointed, who gets moved?

Budget

- How big is it, where does it go?

Policy



- How fast can they make changes and will they stick?




PEOPLE

Cabinet Secretaries: 15

It typically takes months before an agency's full new leadership team is in place.

EPA

79 political appointees

- 14 require Senate confirmation, including Administrator, Deputy Administrator, the Assistant Administrators (AA) and the Inspector General.
- Regional Administrators (RA) do not require Senate confirmation.
- Remaining 65 are "Schedule C" appointments are excepted from the competitive service because of their **"confidential or policy-determining character."** Examples: Chief of Staff, White House Liaison, Associate Administrators for Public Affairs; Policy and other senior advisors.


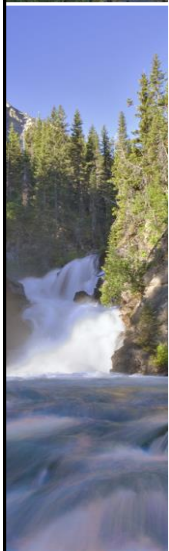




Department of the Interior

~100 political appointees

- 18 require Senate confirmation, including Deputy Secretary, Assistant Secretaries, Agency Heads.
- 89 are "Schedule C" or "non-career" including Press Secretary, Congressional Affairs.
- More than 200 are career Senior Executive Service (SES) managerial, supervisory, and policy positions, including State Directors.

NOTE: A career SES appointee cannot be involuntarily reassigned within 120 days after the appointment of a new agency head or the appointment of a new noncareer supervisor.


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Budget: Follow the Money

Mostly driven by Congress with advice from President.

House changed rules so now can zero out individual positions and program (Holman Rule).

President has proposed initial budget cuts.

- Interior: 10% proposed budget
- EPA: 24% proposed budget cut

Secretary of the Interior Zinke said he would fight the cuts and win.







 THE
WILDERNESS
SOCIETY

Policy Rollbacks

Unprecedented pace of change using new approaches:

- Congressional Review Act
 - Stream Protection Rule
- Executive Orders
 - Regulatory Reform Taskforces
 - Direction to review Waters of the US rule
- Stay of implementation
 - Office of Natural Resource Revenue Valuation Rule
 - BLM Oil and Gas Permitting Process
- Secretarial Orders
 - FWS lead ammunition & fish tackle Director's Order



Policies at Risk

BLM Land Use Planning Rule (Planning 2.0)

- Changes have benefits.
 - scale of planning
 - public engagement
- Already part of current practice in many field offices.
- Even if not required, likely to be used.

Addressing Climate Change in NEPA

- Courts have required analysis of climate emissions.
- Eliminating the CEQ guidance doesn't eliminate the legal requirement

Holding the Line

Engage public in every decision.

Focus in the field and work directly with agencies and stakeholder.

Provide science and data that may be ignored.

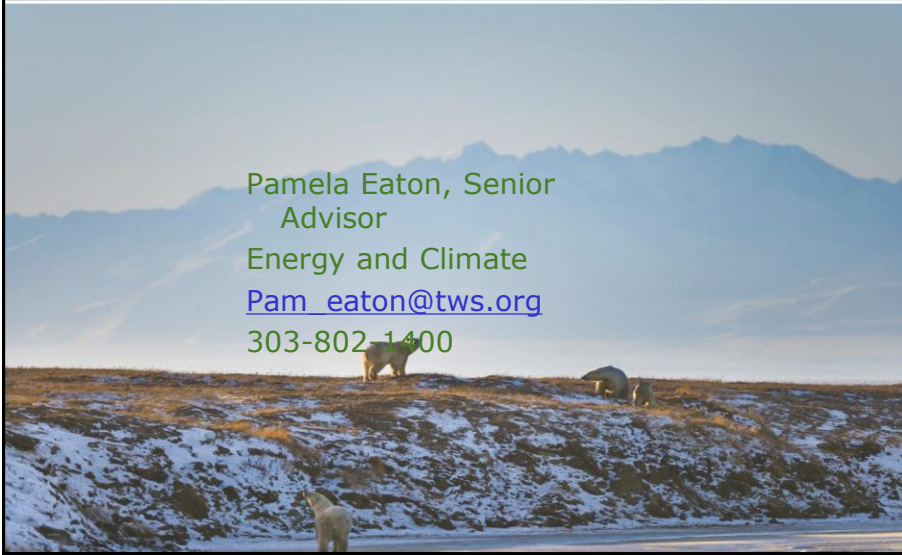
Use courts as backstop.

"The evidence from the best available empirical studies of environmental public participation processes and from the experiences of practitioners in the dispute resolution, planning and environmental assessment traditions converges on the conclusion that best practices in public participation can advance decision quality, legitimacy, and capacity simultaneously."

Questions?



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QUESTION AND ANSWER SESSION



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Upcoming Webinar



SAVE THE DATE!!

**Monday, March 20, 2017
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NAEP: Involvement, Engagement, Leadership

A Webinar for those wishing to know more, do more, and become more with NAEP

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Upcoming Webinar



SAVE THE DATE!!

**NEPA Case Law Update
May 10, 2017**

**NEPA Legislative/Policy Update
June 14, 2017**