https://www.washingtonpost.com/national/health-science/how-the-west-virginia-coal-industry-changed-federal-endangered-species-policy/2019/05/10/56d28de0-4bf0-11e9-b79a-961983b7e0cd_story.html?utm_term=.8b9d794bac05

How the West Virginia coal industry changed federal endangered species policy

By Juliet Eilperin

LENORE, W.Va. — Donna Branham was grilling steaks in her backyard when she felt the tremors. She was two miles away from the coal mine, but she could feel the blasts.

“Oh my god, not again,” she thought.

In 2017, blasting at the surface mine had cracked her ceiling, her mirrors and her fireplace. When the mine was shut down amid complaints that its waste was encroaching on crayfish, a threatened species, she thought she had caught a break.

Now the mine is back in business, thanks to the intervention of Trump appointees at the Department of the Interior and West Virginia officials who allowed the resumption of drilling at Twin Branch and about a half-dozen other mines under a June 2017 policy, according to documents obtained under the Freedom of Information Act (FOIA).

President Trump’s pro-coal stance is not surprising, but the documents offer a rare glimpse into how state and industry officials have tapped the president’s political appointees to advance their economic interests over the objections of the agency charged with protecting endangered wildlife — in this case, two crayfish species that help keep the state’s creeks and rivers healthy.

A United Nations panel warned in a report Monday that human activities have pushed one-eighth of the world’s species to extinction and urged governments to protect them. Meanwhile, the emails show that the Trump administration has moved in the opposite direction: Federal, state and industry officials bypassed the U.S. Fish and Wildlife Service to win approval for operations near sensitive habitat.

Championed by Landon “Tucker” Davis, an Interior Department official who used to represent the state’s coal industry, a 2017 directive that paved the way for mine permits illustrates how environmental rollbacks enacted at the start of the administration are reshaping the nation’s landscape in ways that could harm threatened species.

Jason Bostic, vice president of the West Virginia Coal Association, and other coal executives say federal Fish and Wildlife officials were not providing guidance quickly enough on how mines could operate. He also expressed skepticism that crayfish face serious jeopardy.

“We are talking about a crayfish that survived the Industrial Revolution, in one of the most rugged, isolated and hard-to-operate places in the country,” Bostic said in a phone interview. “It was somewhat an affront to us to believe that modern mining was a threat to them.”

A crustacean resembling a miniature lobster, crayfish remain a fixture in nearly every West Virginian’s childhood. They burrow under rocks to build their homes and extensive tunnels, said Zachary Loughman, a West Liberty University biology professor. They go by many names in Appalachia: crawdads, crawdaddies and, in some cases, mudbugs.

Besides helping to clean creeks and rivers, the animals serve as prey for sport fish. And the very activities that threaten their habitat can affect local residents’ water supplies.

In April 2016, the Interior Department under President Barack Obama placed two species of crayfish — the Guyandotte River and Big Sandy, named for the rivers they inhabit — on the federal endangered species list.It identified logging and coal mining, which deposits sediment and chemical runoff into streams, as primary threats.

Once a species is listed, federal officials are required to identify critical habitat for its survival and provide guidance so the government does not authorize activities that could cause further harm. Once Trump was elected, Interior’s approach to the crayfish shifted.

Environmentalists argue that federal officials have failed to establish legally required protections and properly oversee state environmental officials, who have permitted mines under less-stringent requirements.

Now the Center for Biological Diversity and other advocacy groups are preparing to sue the Interior Department for failing to protect the crustaceans from activities such as those at Twin Branch mine. The center’s senior scientist, Tierra Curry, who helped qualify the two species as endangered, laid out her argument as she watched a coal truck make its way recently to a mining operation permitted under Trump policy.

“The law says you can’t jeopardize an endangered species, and the science says sediment and pollution from coal mines is going to jeopardize the species,” she said, referring to the Endangered Species Act. “So the law and the science are both clear.”

So are the countervailing political head winds: Trump won the state in 2016 by nearly 42 points, and nine months later, its governor — a former coal tycoon — switched his party registration from Democrat to Republican. While Sen. Joe Manchin III (D-W.Va.) retained his seat during last year’s midterms, he is the outlier in what has become a solidly Republican state. And there is bipartisan agreement that the coal industry needs protection, even if miners and loggers combined make up just 3 percent of its workforce.

Bostic said industry and state officials appealed to top appointees at the Interior Department after they could not get specific guidelines from the Fish and Wildlife Service. Without the guidelines, the West Virginia Department of Environmental Protection could not permit new mine operations in areas occupied by the two crayfish listed under the Endangered Species Act.

“We were confronted with this listing, and nobody could tell us what to do,” he said, adding that state and industry officials felt like they could make a case to Interior Department officials once President Trump took office. “We felt like we had an audience. It was time to voice our opinion.”

The West Virginians achieved their objective, according to documents released under a FOIA lawsuit filed by the Center for Biological Diversity.

In October 2016, Fish and Wildlife officials launched plans to block dumping of mining waste into the watersheds sustaining the endangered Guyandotte River crayfish, whose range had shrunk 92 percent, and the threatened Big Sandy crayfish, which had experienced a 62 percent decline.

But in February 2017, Trump signed legislation nullifying the “stream protection rule,” which had barred mining firms from dumping waste within 100 feet of a stream. Without that protection, Fish and Wildlife officials began to retool the plan to reconcile coal mining with saving the crayfish.

Then, West Virginia and mining officials — who opposed listing the crayfish in the first place — began weighing in with Interior Department leaders.

On March 8, 2017, Austin Caperton — a former coal lobbyist who serves as Cabinet secretary for the West Virginia Department of Environmental Protection, wrote then-Interior Secretary Ryan Zinke about “a problematic situation.”

Caperton complained that the federal Fish and Wildlife Service had “unilaterally imposed protective measures” that raised costs for the coal industry and delayed mining activities.

As negotiations dragged on, Fish and Wildlife experts fretted about the fate of the Guyandotte River crayfish.

“I mean let’s face it, this is not going to stop mining from proceeding here, whether legally or illegally . . . so we will need to do some of our best strategy ever to increase the odds of averting a hopefully avoidable extinction,” one official wrote in an exchange with other career employees on May 11, 2017.

West Virginia officials repeatedly objected to the agency’s proposed restrictions. In a May 23 email, Harold Ward, the director for mining and reclamation at the state Department of Environmental Protection, called Fish and Wildlife’s proposal “unnecessarily over reaching.”

Several top Interior Department staffers backed West Virginia officials in the dispute. They included Aurelia Skipwith, who helps oversee fish, wildlife and parks, and Davis, who served as the West Virginia director for Trump’s 2016 campaign and was a longtime booster for the coal industry before joining the Interior Department as a policy adviser for the Office of Surface Mining Reclamation and Enforcement.

In a June 6 email, a Fish and Wildlife Service official referred to Davis as an Interior “political” and said Davis had complained the agency was holding up permits.

Davis repeatedly served as a liaison between West Virginia and coal industry representatives and Interior officials, according to public records, relaying West Virginia's concerns to Skipwith and urging her to address the permitting holdup.

Davis also questioned other department efforts to monitor mining's impacts. Explaining why it had abruptly canceled a study into coal mining's effects on the health of nearby residents, he said, "Science was a Democrat thing," according to notes by the Interior Department's Office of Inspector General.

On June 28, 2017, the industry got what it wanted. Vincent DeVito, the Interior Department's energy-policy counselor at the time, sidestepped the Fish and Wildlife Service and issued a new directive. It required mining firms to draft a protection plan if their projects were within 500 meters of a known crayfish stream, but only if a company survey found a crayfish listed under the Endangered Species Act.

A short time later, when Skipwith questioned whether Fish and Wildlife was holding up a permit for the Twin Branch mine, another official reassured her that the operation had been approved under then new policy. "Tucker is satisfied," the official wrote Skipwith.

On July 3, Ward, the state mining official, shared the directive with coal industry executives, telling them, "Get the permits moving along in the process."

To Bostic, the coal industry leader, it was "a great relief."

"Excellent work fellers," Bostic replied to the West Virginia regulator.

Bostic estimated that hundreds of permits in four counties could have been blocked without the directive because companies need new permits as they move onto new areas.

"This problem was amplified given that crayfish habitat, whether actual or alleged, lies right in the heart of central Appalachia's metallurgical coal fields," he said.

In an interview, Bostic said the DeVito guidance was critical for extracting metallurgical coal, a low-sulfur coal that is used in industrial manufacturing instead of electricity generation. Demand for metallurgical coal exports has remained strong even as the market to sell coal to U.S. power plants has contracted.

[In small U.S. towns, the death of a coal plant leaves a void]

Although the United States recorded an estimated 39-year low in coal consumption last year, the price of Appalachian coal shot up some 40 percent as China, India and other countries demanded more metallurgical coal for the steel undergirding their growing cities, according to the U.S. Energy Information Administration.

Overseas demand for West Virginia coal has not yet translated into local coal job growth. Coal production in Appalachia has dropped 59 percent from its peak in 1990, the Institute of Energy Economics and Financial Analysis reported, and state figures show the number of direct mining employees dipped slightly between the third quarters of 2017 and 2018.

But DeVito was ready to celebrate on July 6, 2017, sending an email to the Interior Department's communications director at the time with news that a mine in southern West Virginia had received a permit to operate.

"Need to figure something for Z to own this success," he wrote, referring to Zinke. "The Berwind mine has been idle and they went to work yesterday, only 5 days after I approved a guidance document. Three more companies should have plans for getting to work later this/early next week."

Coal operators at the Eagle Creek mining area near Beckley, W.Va., attempt to control debris and water movement as mining waste flows down toward the streams. (Michael S. Williamson/The Washington Post)

The Interior Department issued a news release Aug. 1, 2017, hailing the mine's reopening. "The Berwind Mine is the first of many projects that demonstrate the Trump administration's commitment to coal country and to good government," Zinke said.

DeVito left the department a year later, with Zinke praising him for having helped "set the course for energy dominance in the first term of this administration."

Within a month, he took a job as executive vice president and general counsel for Cox Oil Offshore, a drilling firm operating in the Gulf of Mexico.

In March, Branham felt the first blasts as the Twin Branch mine cranked up its operations. Raised above a coal tipple, where companies ship out their coal, Branham watched as her parents had to abandon her childhood home after the well water was polluted by the nearby strip mine.

"You know, I have three good wells on my property, plus a lot of springs, and I'll fight to the end to try to protect it," said Branham, a 65-year-old with steely blue eyes who boasted that her property's creek was still clean enough to hunt for crayfish.

Fish and Wildlife officials declined to comment, citing the Center for Biological Diversity's lawsuit against the agency over its disclosure of public records and its failure to designate critical habitat for the two species. The West Virginia Department of Environmental Protection did not respond to a request for an interview.

Booth Energy, which owns the Twin Branch mine, did not respond to requests for comment.

Most residents welcome Trump's regulatory changes even as they try to diversify the local economy. Highway signs promote off-road-vehicle tourism in the mountains and local trails, such as the one retracing the steps of the feuding Hatfield and McCoy families.

Nancy Hatfield, the great-great-granddaughter of her family's patriarch, Devil Anse, has embraced the tourist economy. She operates a lodging business in the town of Gilbert and has opened a distillery in the hills above her house where she, her daughter and son-in-law make moonshine based on the original Hatfield and McCoy recipes.

Hatfield's father was a coal miner, along with her late husband and her current one, who suffers from black-lung disease. She grew up playing in the creeks, just like Branham, and knows mining can take a toll.

"Pollution's real, you know. It's real. But what can we do about it? We have to eat," she said, sitting in her modest home filled with photos of her famous clan and multicolored bottles of moonshine perched on shelves in the living room. "We don't have a whole lot here, and God's been good to us, you know. He's really been good to us."

Near the Virginia border, Fish and Wildlife's White Sulfur Springs National Fish Hatchery has embarked on a rescue mission.

Four pregnant Big Sandy crayfish — their shells boasting brilliant shades of turquoise and red hues — burrow beneath flat, brown rocks. Hatchery officials have spent more than a year learning how to raise more common crayfish and tending to ones Loughman, the West Liberty biology professor, and his students collected in the wild.

"I think we can absolutely bring these animals back," Loughman said.

Curry, who grew up in a Kentucky hollow surrounded by mountaintop-removal mining, is less optimistic. Although Fish and Wildlife scientists were allowed to make minor tweaks to DeVito's guidance in March, Curry argues that it fails to protect the species.

"We can see right here that mining waste — toxic mining waste — is running directly into endangered species habitat," she said, pointing to a mine that drains into Clear Fork, one of the two creeks where the Guyandotte River crayfish survives. "And nobody's doing anything about it. And under this guidance the Trump administration put into place, nobody's even required to do anything about it."