Top Stories

1/25/19 – Congress and the president reached an agreement to enact a three-week continuing resolution through Feb. 15, funding the nine federal agencies (departments of Transportation, Agriculture, Homeland Security, Treasury, Commerce, Housing and Urban Development, Justice, State and Interior, as well as the IRS, National Science Foundation, FDA and EPA) that had been closed for 36 days as part of the partial federal government shutdown. It remains unclear if Congress and the president will reach a formal agreement concerning federal funds for a barrier on the southern border. Stay tuned to NCSL for further details on fiscal year 2019 appropriations.

1/22/19 – In a release of newly added cases for its 2019 term, the Supreme Court of the United States (SCOTUS) did not include either of the two major cases concerning the regulation of water pollution. Both cases center around the question of how the federal government should view pollution that appears in a “water of the United States,” which is federally regulated by the Environmental Protection Agency (EPA), after first entering through groundwater, which is regulated by states. The court previously requested that the solicitor general weigh in, which legal experts noted as a sign of interest. In County of Maui, Hawaii v. Hawaii Wildlife Fund the Ninth U.S. Circuit Court of Appeals ruled that Maui County lacked the necessary federal permit for its wastewater discharges, which were proven to migrate through groundwater to the Pacific Ocean, a water of the United States. The EPA filed a brief in the case backing arguments against the county stating that “EPA’s longstanding position has been that point-source discharges of pollutants moving through groundwater to a jurisdictional surface water are subject to CWA permitting requirements if there is a “direct hydrological connection” between the groundwater and the surface water. Additionally, in Kinder Morgan Energy Partners L.P. v. Upstate Forever, the Fourth U.S. Circuit Court of Appeals issued a similar ruling in a case involving a pipeline rupture that leaked gasoline into groundwater that eventually discharged via a “direct hydrological connection” into nearby streams, which are considered a water of the United States, in South Carolina. Both circuits relied upon the hydrologic connection theory to extend jurisdiction of the Clean Water Act to cover pollutants that reach surface waters via groundwater.

1/18/19 – The U.S. District Court for the District of South Carolina ordered the Department of Interior (DOI) to freeze all permit work on seismic surveys of offshore oil and gas deposits off the Atlantic coast due to the lack of current appropriations for the agency.

1/16/19 – Chairman Raúl Grijalva (D-Ariz.), of the House Natural Resources Committee, and Chairwoman Betty McCollum (D-Minn.), of the House Environment and Interior Appropriations Subcommittee, wrote a letter to DOI acting Secretary David Bernhardt demanding that he provide legal justification for his agency’s decision to require furloughed employees to return to work to continue work on the agency’s offshore oil and gas leasing operations. The letter states that such an action is a violation of Anti-Deficiency Act, which prevents the executive branch from engaging in activities without an appropriation from Congress.

1/15/19 – The Government Accountability Office is investigating the declining enforcement actions against companies accused of violating EPA pollution standards during the current administration. The Department of Justice (DOJ) reported that the number of cases referred for criminal prosecution by the
EPA hit a 30-year low in 2018. Specifically, the agency referred 166 cases, the lowest since 1988, when 151 cases were referred to the DOJ. The number of referrals reached its all-time high in 1998 when it referred 592 cases. Additionally, the DOJ reported that EPA referrals resulted in 62 federal convictions in fiscal year 2018, the fewest since 1995.

1/9/19 – President Donald Trump formally nominated Andrew Wheeler to serve as EPA administrator. He has been serving as the acting administrator following the departure of former Administrator Scott Pruitt in 2018. Wheeler was formerly the principal and head of the energy and environment team at Faegre Baker Daniels Consulting.

1/8/19 – Data from the U.S. Energy Information Administration unveiled that U.S. carbon dioxide emissions rose by 3.4 percent in 2018, ending a downward trend. According to an analysis by the Rhodium Group, it is the second-largest emissions jump since 1996, topped only by a 3.6 percent spike in 2010. The report indicates that weather played a significant role with an unusually cold winter and a warm summer, in addition to an increase in industrial emissions by about 55 million metric tons.

1/6/19 – The National Park Service announced its plan to use visitor fees to fund cleanup efforts at certain national parks impacted by the partial government shutdown. The agency used fees to clean bathrooms, pick up garbage, maintain roads, boost law enforcement and emergency operations, and staff some entrances until the funds are exhausted. The legality of the use of the fees, which flow through the Federal Lands Recreation Enhancement Act, has been questioned by members of Congress, as they are legally required to be used in funding used for visitor experience, rather than pay for basic maintenance.

1/3/19 – Former Federal Energy Regulatory Commissioner Kevin McIntyre passed away. He served as chair of the commission when he first joined in August 2017, but voluntarily stepped down from that role due to health issues in 2018.

1/3/19 – DOI Secretary Ryan Zinke stepped down following a December 2018 announcement that he would leave the administration in 2019.

1/3/19 – The House passed a new rules package, 234-197, for the 116th Congress, which includes major changes to past rules. No longer will a committee and subcommittee chairperson be limited to six-year terms, while the requirement for legislation to be made public for “three-days” before it is voted on was changed to “72 hours,” which would prevent legislation from being released on Friday night and voted on Monday morning. Additionally, the rules package reinstates pay-as-you-go (PAYGO) rules, replacing “cut-as-you-go” (CUTGO). PAYGO requires that new mandatory spending or tax cuts be fully offset with tax increases or mandatory spending cuts whereas CUTGO allowed only spending cuts. As for tax increases, the rules package also repeals a rule that no legislation containing an increase in federal income tax rates can pass the House without a three-fifths vote on a roll call. Dynamic scoring requirements on the Congressional Budget Office (CBO) are also rescinded, although a provision would now require the CBO to determine the budgetary impact of federal land transfers to state, local or tribal governments. Another major budgetary change is the undoing of a requirement that transfers from the general fund to the Highway Trust Fund “shall be counted as new budget authority and outlays equal to the amount of the transfer in the fiscal year the transfer occurs.” This rule, which had been in place since 2011, meant that such transfers needed to be offset by spending cuts or revenue increases elsewhere in the budget.

12/27/18 – The EPA issued a proposed revised Supplemental Cost Finding for the Mercury and Air Toxics Standards (MATS), finding that it is not appropriate and necessary to regulate hazardous air pollutant (HAP) emissions from coal- and oil-fired power plants. The proposed finding is due to the agency’s determination that compliance costs of the MATS rule ($7.4 to $9.6 billion annually) is significantly larger than the monetized HAP benefits of the rule ($4 to $6 million annually). In this proposal, total benefits do not include “co-benefits,” which can be attributed to emission reductions for pollutants other than HAP, and which the agency previously included and found provided $37 billion in benefits. However, as part of this proposal, the EPA is not proposing to rescind or repeal the HAP emission standards or other requirements of the MATS rule that have been in place since 2012, as the electric utility sector has been complying to the standards.
From Congress

1/17/19 – The Government Accountability Office issued a report recommending that the U.S. State Department take climate resilience into account when making international development decisions. The recommendation from the GAO comes despite the rescission of a 2016 presidential memorandum, which had previously required agencies to develop implementation plans to identify the potential impact of climate change on human mobility, among other things, a 2014 executive order which required agencies to prepare for the impacts of climate change. In commenting on the report, the department indicated that “it would update its integrated country strategy guidance and will specifically note that missions have the option to provide additional information on climate resilience and related topics.”

1/3/19 – Prior to the 115th Congress adjourning, the Senate confirmed several EPA, Department of Energy (DOE) and other executive branch officials. This included Alexandra Dapolito Dunn as EPA assistant administrator for the Office of Chemical Safety and Pollution Prevention, William McIntosh to serve as EPA’s assistant administrator of international and tribal affairs, Mary Neumayr as chairwoman of the White House Council on Environmental Quality, Kelvin Droegemeier as director of the White House Office of Science and Technology Policy, Teri L. Donaldson as DOE inspector general and Daniel Simmons as DOE assistant secretary for energy efficiency and renewable energy.

12/31/18 – Representative Kathy Castor (D-Fla.) will chair the new Select Committee on the Climate Change Crisis, House Speaker Nancy Pelosi said in a statement. The Rules Committee voted on proposed rules that would place nine Democrats and six Republicans on the panel. It will not have subpoena power but will be required to issue policy recommendations by March 31, 2020.

From the Administration

1/23/19 – The U.S. Energy Information Administration (EIA) noted as part of its 2019 Short Term Energy Outlook that it forecasts that non-hydroelectric renewable energy resources, such as solar and wind, will be the fastest growing source of U.S. electricity generation for at least the next two years. Overall, the EIA projects that the share of total U.S. electricity generation produced by all renewables other than hydropower will increase by 3 percentage points during the next two years, from 10 percent of total generation in 2018 to 13 percent in 2020.

1/18/19 – The Department of Defense released a new report highlighting the effects of a changing climate on the department. The report notes that flooding, drought and wildfires driven by climate change pose threats to two-thirds of the U.S. military’s installations but also identifies that its own conclusions probably underestimate the full extent of risk to military facilities because it only looks at likely impacts over the next two decades. The report did not include cost estimates to upgrade current installations to ensure they can withstand the effects of climate change.

1/16/19 – Trump resubmitted a number of nominations to the Senate that were not confirmed before the second session of the 115th Congress ended, including Peter Wright to be EPA assistant administrator for the Office of Land and Emergency Management and Susan Combs for assistant interior secretary for policy.

1/9/19 – A report from the National Academies of Sciences, Engineering and Medicine indicates that U.S. forests are among the most vulnerable in the world to predators and disease—with roughly 7 percent of U.S. forests losing at least 25 percent of their trees by 2027. It suggests that the U.S. Department of Agriculture and the EPA consider utilizing biotechnology to promote healthy forests, including the introduction of genetically engineered trees to prevent the loss of forested lands from pests.

Courts

1/16/19 – SCOTUS declined to take up the appeal in Osage Wind v. Osage Minerals Council, in which the 10th Circuit Court of Appeals ruled that wind turbine construction is a form of mining on Indian lands and that Osage Wind should have
obtained a mineral lease. The administration urged SCOTUS against hearing the appeal. The court also declined to hear Exxon Mobil's appeal request in its case with Massachusetts Attorney General Maura Healey concerning climate change. The petition to the court was an appeal of a decision from the Massachusetts Supreme Judicial Court, which rejected Exxon's argument that the attorney's general's office has no jurisdiction over the company. Additionally, SCOTUS will not review a decision from a three-judge panel of the U.S. Court of Appeals for the Federal Circuit that found the federal government was not liable for flood damage in Louisiana that stemmed from Hurricane Katrina.