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1. Green group sues Zinke for review documents

Jennifer Yachnin, E&E News reporter

Published: Wednesday, August 9, 2017

The Center for Biological Diversity announced today it has filed a lawsuit against Interior Secretary Ryan Zinke, asserting the Trump administration is "unlawfully withholding public records" in its ongoing review of dozens of national monuments.

<http://bit.ly/2hLuVIF>

2. Prairie bird nests fine among turbines — study

Adam Aton, E&E News reporter

Published: Wednesday, August 9, 2017

In the air, spinning wind turbines chew up birds by the hundreds of thousands each year. But on the ground, the situation might not be so bleak — at least for one species of prairie bird.

<http://bit.ly/2upi6nk>

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<http://bit.ly/2vmMZGg>

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<http://bit.ly/2wuyH6e>

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Investors managing hundreds of billions of dollars are pressing U.S. EPA to swiftly enforce a policy to limit the leaking of methane, the potent greenhouse gas.

<http://bit.ly/2up0zLH>

9. Jewell headed to Harvard

Dylan Brown, E&E News reporter

Published: Wednesday, August 9, 2017

Former Interior Secretary Sally Jewell has accepted a fellowship at Harvard University.

<http://bit.ly/2wIFf0z>

10. States urge justices to take up landmark groundwater ruling

Amanda Reilly, E&E News reporter

Published: Wednesday, August 9, 2017

Ten states this week urged the Supreme Court to take up a recent landmark decision that found a tribe has a legal right to the groundwater below its reservation.

<http://bit.ly/2ftxicg>

11. Enviro, renewables champ Niki Tsongas won't seek re-election

Kellie Lunney, E&E News reporter

Published: Wednesday, August 9, 2017

Massachusetts Democrat Rep. Niki Tsongas, the lone New Englander on the House Natural Resources Committee, announced today that she's leaving Congress when her sixth term is up in 2018.

<http://bit.ly/2vkdOMQ>

12. Risky compound found in coal ash, research finds

Published: Wednesday, August 9, 2017

Researchers at Virginia Tech have discovered a potentially dangerous new compound in burned coal.

<http://bit.ly/2vk12h3>

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1. Green group sues Zinke for review documents

Jennifer Yachnin, E&E News reporter

Published: Wednesday, August 9, 2017

The Center for Biological Diversity announced today it has filed a lawsuit against Interior Secretary Ryan Zinke, asserting the Trump administration is "unlawfully withholding public records" in its ongoing review of dozens of national monuments.

In a **lawsuit** filed in the U.S. District Court for the District of Columbia, the environmental group said that Interior has failed to respond to requests under the Freedom of Information Act.

"The Interior Department's refusal to release the communication records and schedules of its secretary, and its failure to provide Interior Department records generated in connection with its review of national monument designations, undermines FOIA's policy of government transparency," the lawsuit says.

CBD is seeking information in relation to Interior's review of 27 national monuments. President Trump ordered the review in late April, mandating that Zinke assess the boundaries of all monuments created since 1996 that encompass more than 100,000 acres.

To date, Zinke has declared that he will not recommend changes to at least five monuments — the Craters of the Moon National Monument and Preserve in Idaho, Hanford Reach National Monument in Washington state, Canyons of the Ancients National Monument in Colorado, Upper Missouri River Breaks National Monument in Montana and Grand Canyon-Parashant National Monument in Arizona — while calling for significant cuts to the Bears Ears National Monument in Utah.

A final report is due Aug. 24.

An Interior spokeswoman referred requests for comment on the lawsuit to the Justice Department, which declined to comment.

Although Zinke's daily schedules are available **online** from Interior, the documents do not necessarily offer details about the secretary's meetings.

Dates for his visit to the Bears Ears and Grand Staircase-Escalante monuments in Utah in May, for example, indicate only that the secretary would visit the sites and did not detail his meetings with local officials or other stakeholders.

<http://bit.ly/2hLuVIF>

1. Prairie bird nests fine among turbines study

Adam Aton, E&E News reporter

Published: Wednesday, August 9, 2017

In the air, spinning wind turbines chew up birds by the hundreds of thousands each year.

But on the ground, the situation might not be so bleak — at least for one species of prairie bird.

The Midwest's wind energy boom has kept researchers racing to understand the ecological impact of thousands of spinning blades dotting the Great Plains. It's an especially pressing question for grassland birds, which are declining at the fastest rate of any avian group in North America.

Among the species of concern is the greater prairie chicken. The bird's numbers have dwindled as farmland has expanded, shrinking from 20 states to limited areas in 11. One of its subspecies is already extinct.

A new study from the University of Nebraska might hold some good news for the remaining population.

The greater prairie chicken seems to nest around wind farms about as well as it does elsewhere, according to a paper published this week in *The Condor: Ornithological Applications*, the American Ornithological Society's peer-reviewed journal.

Roads, ranching and other human development disrupt the bird's habitat more than wind turbines or their transmission lines, according to two years of observations around a Nebraska wind project.

Scientists have spent years wondering how prairie chickens might react to wind projects. The ground fowl's main predators roost in high trees, so it's possible the birds might fear the tall wind turbines and power lines would be a roost for raptors. That extra stress could lead to more egg loss.

But researchers found that the birds didn't avoid the wind project. Some even nested among the turbines and along the transmission line. Furthermore, the wind facility seemed to have no impact on nest survival.

That aligns with past findings, the researchers said.

"There is no evidence, to date, to suggest that prairie-chickens nesting in proximity to wind energy facilities change their patterns of nest site selection or that wind energy facilities affect their nest survival," they wrote, pointing to a 2014 study with similar findings in Kansas.

The wind farm in the study comprised 36 turbines, and larger projects with more roads might affect the birds more.

Conservationists cautioned against reading too much into a single study — or missing the big picture.

Turbines are estimated to kill more than half a million birds each year and even more bats, according to a 2013 study published in the journal *Wildlife Society Bulletin*.

Other research has shown big effects for prairie chickens — and even bigger ones for sage grouse, said Michael Hutchins, director of the American Bird Conservancy's Bird-Smart Wind Energy Campaign.

"There's data going both ways," he said, with the location of wind projects playing one of the largest roles in how many birds they affect. Turbines along migratory paths and bodies of water — especially the Great Lakes — can devastate species, he said. Projects in land already used for farming might be the least harmful.

"We're not anti-wind in any way, shape or form. But we look very hard at where they want to put them," he said. "There's some real, non-trivial environmental costs to renewable energy that people often don't take into account."

<http://bit.ly/2upi6nk>

2.U.S. emerging as powerful force in LNG trade

Nathanial Gronewold, E&E News reporter

Published: Wednesday, August 9, 2017

of natural gas, according to Census Bureau and U.S. Energy Information Administration data. Golden Pass LNG Terminal

The United States is rapidly becoming a net exporter of natural gas for the first time in 60 years.

That's according to data from the Census Bureau and the U.S. Energy Information Administration. While imports of gas are flat or falling, exports continue to rise, and the data give weight to government analysts' conviction that the United States is on track to become a net energy exporter, possibly as soon as within a decade.

EIA noted in a report yesterday that during the first half of 2017, the United States exported more natural gas than it imported in three of the first five months.

New Census Bureau data show that, by value, the United States was again a net exporter in June 2017, selling about \$593 million worth of natural gas to the world while importing \$566 million via gas pipelines from Canada and as liquefied natural gas.

That means the United States sold more gas to foreign trade partners than it imported for four of the first six months of the year. With new pipeline and LNG export capacity coming online soon, the United States should close out 2017 as a net exporter of natural gas, a situation that hasn't been seen since 1957, according to EIA.

Pipeline gas exports to Mexico are climbing relatively quickly as Mexico moves toward more gas-fired power generation. But gas pipeline exports to Canada have risen, too, while Canadian exporters have struggled to increase sales to the United States ever since the shale gas revolution unlocked huge new volumes of U.S. gas reserves.

"While the United States remains a net importer of natural gas from Canada, U.S. exports to eastern Canada have been increasing steadily since 2000, when the Vector pipeline began service," EIA noted. "U.S. natural gas exports from Michigan, mainly through the Vector pipeline, make up most of the natural gas export volumes by pipeline to Canada."

Imports from Canada enter primarily in the West.

Census Bureau trade data show the values of exports and imports of natural gas are about neck and neck so far this year in value, both at around \$4.2 billion each. LNG exports now dwarf imports, however. The data show \$1.7 billion in sales of U.S. LNG to the world for the first half of this year, while LNG importers bought \$346 million worth.

Cheniere Energy's Sabine Pass became the first major LNG exporting hub to commence shipments since the shale gas boom. That facility is now poised to expand export capacity. Freeport LNG south of Houston expects to begin liquefaction and shipments in late 2018 or early 2019. Dominion Energy's Cove Point LNG in Maryland will be in service by the end of this year, the company says. More projects are coming in Corpus Christi, Texas; elsewhere in the Gulf of Mexico region; and at Georgia's Elba Island.

Proponents of these investments say LNG and other gas exports will help alleviate the United States' gargantuan trade deficit. However, to date, there is little evidence that rising exports of fossil fuels are helping to reduce the deficit.

The Bureau of Economic Analysis reported on Friday that the trade deficit is now more than 10 percent larger than it was a year ago. Oil imports used to make up a major portion of the total trade deficit as the United States became heavily dependent on other nation's crude oil production. But that ceased being true around 2000. A huge goods trade deficit with the world and with China in particular now dwarfs any impact on the numbers from oil imports.

Though the data show U.S. energy exports are not alleviating the overall trade deficit, that could change over time as the nation becomes a net energy exporter, depending on the future value of oil and natural gas. So far this year, U.S. oil exports have more than doubled, while exports of refined fuels remain strong.

Rising sales abroad of U.S. crude oil, pipelined natural gas, LNG and refined fuels should combine to see the nation becoming a net energy exporter, but that transition is being led by fossil fuels trade. The United States has seen its domestic solar power manufacturing industry hammered by import competition; combined with wind power technology, the U.S. renewable energy industry's overwhelming dependence on foreign wind and solar technology will likely continue for a long time.

<http://bit.ly/2vOYKrL>

3. Pa.'s gas tax under attack with lawsuits and banners

Mike Lee, E&E News reporter

Published: Wednesday, August 9, 2017

A coalition of industrial groups called on Pennsylvania legislators to oppose a package of energy tax increases that cleared the state Senate last month, saying it would hurt the state's economy and smother its budding petrochemical industry.

The bill is unpopular with environmentalists, too, because it would roll back some of the state's environmental regulations. Some nonprofit groups have discussed suing to block portions of it.

The business groups have consistently opposed Democratic Gov. Tom Wolf's tax proposals, but they're sounding a more urgent alarm this year. A bipartisan compromise in the state Senate would impose a direct tax on natural gas production for the first time. And House Democrats may use a procedural move that could force a vote on a separate natural gas tax proposal in the lower chamber.

The combination "brought more stuff to a head," Gene Barr, president of the Pennsylvania Chamber of Business and Industry, said in an interview yesterday.

The chamber held a conference call with the Marcellus Shale Coalition, which represents the state's unconventional drillers, and a half dozen other trade groups calling on the House leadership to reject the bill.

The budget bill would impose a variable tax on natural gas production, in addition to the annual impact fee that producers pay for each well. It also would tax natural gas consumers and expand the taxes on electricity for telephone usage (*Energywire*, July 28).

An analysis by nonprofit group Resources for the Future estimated that the production tax would've brought in \$90 million in 2015. That makes it "unlikely to have a major effect on either government revenues or the investment climate for Marcellus shale developers," wrote senior research associate Daniel Raimi.

Wolf and other proponents argue that taxing the soaring production from Pennsylvania's Marcellus Shale gas field is an easy solution to the state's recurring budget problems. Most other oil- and gas-producing states have a similar tax.

Producers argue that they already pay a tax in the form of the impact fee, and some other oil and gas states don't have a corporate income tax. The Marcellus field also struggles with low prices — as little as half the national average — because Pennsylvania lacks pipelines connecting to major markets.

A new tax would not only harm gas producers, it would raise costs for plastic manufacturers and others that might consider building in Pennsylvania. Higher energy costs would also harm factory owners and other big energy users, said Dave Taylor, president of the Pennsylvania Manufacturers' Association.

"We leave it unto ourselves to take every measure whether it is Hill visits or town hall meetings or earned media or paid media or internet buys or smoke signals or we'll hire a plane down the shore in Jersey with a banner behind it," Taylor said on the conference call. "We're going to do whatever is necessary."

Environmentalists, too, are trying to kill the budget bill. The proposal includes a series of measures aimed at speeding up permitting for natural gas products and would create a committee to review the state Department of Environmental Protection's proposed regulations aimed at controlling methane emissions from the industry.

The Clean Air Council and other groups have researched whether that language would stand up in court, said Joe Minott, executive director and chief counsel of the Clean Air Council. In the meantime, they're pressuring legislators to change the bill.

"This tax code is a disaster," he said. "Hopefully the Legislature will come to its senses."

It's unclear when the House will even vote on the bill. Both legislative chambers have approved the state's \$32 billion budget for fiscal 2017-18 but haven't agreed on a revenue plan to pay for it. The House adjourned shortly after the Senate passed its version of the tax bill and may not return to the Capitol until the end of this month.

House Speaker Mike Turzai (R) has blocked previous attempts to pass a gas tax. But the idea has some support among the Republican rank and file, and at least two GOP representatives have filed their own gas tax bills.

Democrats in the House hope to use a procedure called a discharge resolution to force a vote on one of the GOP tax bills, which has been stuck in a committee since it was introduced. A discharge resolution removes a bill from a committee's jurisdiction and brings it to the floor of the House for a vote.

The maneuver isn't guaranteed to work, because the resolution process allows enough time for the committee to modify the bill, either diluting it or changing its purpose enough that the speaker can assign it to a different committee, said Michael Herzing, a spokesman for the House Democratic Caucus.

<http://bit.ly/2vmMZGg>

4. Grijalva warns easing regs could lead to industry free-for-all

Jennifer Yachnin, E&E News reporter

Published: Wednesday, August 9, 2017

Arizona Rep. Raúl Grijalva, the top Democrat on the House Natural Resources Committee, is warning that efforts to exempt U.S. Customs and Border Protection activities from environmental laws could lead to a regulatory free-for-all on lands adjacent to the nation's southern border with Mexico.

Grijalva raised his concerns to E&E News in response to Natural Resources Chairman Rob Bishop's latest attempt to waive environmental laws — including the National Environmental Policy Act, Endangered Species Act and Safe Drinking Water Act — for CBP officers operating within 100 miles of the nation's borders.

Bishop (R-Utah) included the waiver language in the "Border Security for America Act" introduced by Homeland Security Chairman Michael McCaul (R-Texas) late last month. The measure would provide \$10 billion for construction of additional border walls, fences or other barriers, while also adding 5,000 patrol agents and 5,000 CBP officers (*E&E Daily*, July 31).

"The status quo gives drug and human traffickers the upper hand as our federal border lands, including ecologically sensitive areas, remain exposed to illegal crossings and environmental degradation," Bishop said in a statement announcing his newest version of the waiver language.

Bishop's past attempts with similar bills have fallen short, as the Obama administration viewed the environmental waivers a poison pill given the more than 25 million acres of public lands situated along the nation's border.



Rep. Raúl Grijalva (D Ariz.). House/Wikipedia

But with the Trump administration's focus on rolling back environmental regulations, Grijalva said he expects Bishop's proposals could finally gain momentum.

"I hope it falls short, but if he's ever had an opportunity to get that done, if there was a glimmer of hope to get that done, it's now," Grijalva said. "You have to be concerned. The people that have fought this consistently, not just myself, are geared up knowing that if there was ever an opportunity to sneak it in, attach it to something, now is the time."

Grijalva and environmentalists are warning that waiving environmental regulations for CBP officers could open the door to new oil and gas extraction without any form of oversight.

"This whole rolling back goes beyond the fence," Grijalva said. "I don't think the motivation is entirely about providing border security as it is about creating precedence for suspending those laws to allow industry to go in without any oversight."

He added that for areas like the Permian Basin in Texas and New Mexico, "it just becomes a potentially blanket precedent to do extraction with minimal to no regulatory law."

But Natural Resources Committee spokeswoman Katie Schoettler dismissed Grijalva's concerns as baseless, asserting there is no potential connection between waivers for CBP operations and energy extraction.

"The language has nothing to do with oil and gas. To assert otherwise is ludicrous," Schoettler said. "The language, previously approved by the House, merely removes restrictions that stop the Border Patrol from doing their job. Arguments against the language are desperately inaccurate."

The Interior Department manages nearly 800 miles of border territory, or about 40 percent of the U.S.-Mexico boundary as it crosses California, Arizona, New Mexico and Texas.

In addition, within 100 miles of the line, Interior oversees more than 25 million acres of public lands, including six wildlife refuges, lands held in trust for four American Indian tribes, a half-dozen national parks and Bureau of Land Management districts.

Sierra Club Borderlands Program Coordinator Dan Millis, who is based in Tucson, Ariz., similarly raised concerns that the waiver language could "create a free-for-all for big corporations to turn profits from pollution and extractivism."

"Mr. Bishop thinks it's fair to deny Americans the protections afforded to them by the Clean Air Act and Safe Drinking Water Act simply because they live within 100 miles of an international border," Millis said.

But Western Energy Alliance President Kathleen Sgamma asserted it is Grijalva who is using "tired rhetoric on oil and natural gas every chance he gets."

"Section 112 and the bill overall is directly related to a border wall, and has absolutely nothing to do with oil and natural gas development," she added.

Construction of a new border wall is already exempt from those environmental regulations under the 2005 Real ID Act, which allowed the Department of Homeland Security to speed construction of barriers along the border.

But CBP activities are otherwise governed under a 2006 memorandum of understanding between DHS and the departments of the Interior and Agriculture.

Grijalva said he is concerned that MOU could be dismantled in the Trump administration.

"Those don't have the authority they had in the past, and that's my big concern," he said.

<http://bit.ly/2wuyH6e>

5. McCaskill pushes alternative rulemaking overhaul

Maxine Joselow, E&E News reporter

Published: Wednesday, August 9, 2017

A bill introduced last week by Sen. Claire McCaskill (D-Mo.) could shake up the regulatory reform debate when Congress comes back from recess.

On her second-to-last day before heading into the monthlong August break, McCaskill introduced S. 1734, the "Regulatory Improvement and Transparency Act" (*Greenwire*, Aug. 7). It aims to alter the federal rulemaking process by overhauling the 1946 Administrative Procedure Act.



Sen. Claire McCaskill (D Mo.). Senate/Wikipedia

In particular, the bill would slow down the regulatory process by adding procedural obstacles that agencies would have to overcome before issuing new rules.

For instance, agencies would be encouraged to gather public comments after issuing a notice of proposed rulemaking. They would also be obligated to conduct cost-benefit analyses for both proposed rules and final rules.

McCaskill in a statement said her bill would streamline the regulatory process by amplifying public input and pinpointing repetitive rules.

"We need to have smart regulatory reform that reduces burdens on families and businesses while still protecting Missourians' health and safety," McCaskill said.

"My commonsense legislation will improve the regulatory process to ensure Missourians have a greater voice when new regulations are drafted and help us identify current regulations that are unnecessary or duplicative."

In many respects, McCaskill's bill bears a striking resemblance to the "Regulatory Accountability Act," [S. 951](#), from Sens. Rob Portman (R-Ohio) and Heidi Heitkamp (D-N.D.).

The RAA would direct agencies to find the most "cost-effective" option and to also conduct cost-benefit analyses when considering new rules (*Greenwire*, April 26).

The RAA has been floating through the halls of Congress for years. But with President Trump's push to cut regulations that conservatives say are crippling the economy, the measure has stoked a high-profile debate (*E&E Daily*, May 16).

'800 pound gorilla'

On one side of the debate are companies, industry groups and other regulated interests. They say the RAA is a commonsense reform that would give stakeholders more input in the regulatory process and save unnecessary costs.

On the other side are environmentalists, science groups and public health organizations. They say the measure could derail the entire regulatory process, in addition to compromising air and water quality.

James Goodwin, a senior policy analyst at the Center for Progressive Reform, said there are few meaningful differences between McCaskill's bill and the RAA.

He cautioned that McCaskill's bill could reignite the contentious debate about federalism and administrative procedure that the RAA initially kindled.

"The 'Regulatory Accountability Act' is sort of the 800-pound gorilla that looms over us all in the reg reform world," Goodwin said. "The McCaskill bill is very similar in that it drastically overhauls the Administrative Procedure Act."

In the same vein as the RAA, McCaskill's bill would be a boon for industry, Goodwin said. "If the rulemaking process is gummed up as mandated by the McCaskill bill and the 'Regulatory Accountability Act,' that benefits industry," he said.

Yogin Kothari, Washington representative for the Union of Concerned Scientists' Center for Science and Democracy, was also quick to draw a parallel between McCaskill's bill and the RAA.

"The Senate Homeland [Security and Governmental] Affairs Committee has been doing a lot of work on regulatory reform," Kothari said. "To me, the real vehicle in that committee is really the 'Regulatory Accountability Act,' and that's what we're really concerned about at UCS."

<http://bit.ly/2vn0SE2>

6. Groups make last-ditch pleas over proposed rule delays

Arianna Skibell, E&E News reporter

Published: Wednesday, August 9, 2017

Environmental groups and Democratic attorneys general are urging U.S. EPA to keep in place an Obama-era rule for curbing methane emissions at oil and gas operations, while companies are asking for more time to address concerns.

Obama's EPA issued the standards last year to curb heat-trapping emissions of methane and reduce leaks of volatile organic compounds that contribute to smog.

Earlier this summer, the Trump administration said it planned to delay portions of its 2016 New Source Performance Standards for two years — on top of an existing 90-day stay, which a federal court overturned ([Greenwire](#), July 3).

EPA officials said the two-year stay would allow the agency to review elements of the rule. The delay applies to fugitive emissions, and to pneumatic pump and professional engineer certification requirements.

The written comment period for both proposed delays ends today. Among the commenters, more than 150 environmental and public safety groups urged EPA Administrator Scott Pruitt to keep the rule in place.

"EPA's attempt to circumvent the law and stay provisions of these lawfully promulgated standards is unauthorized, unwarranted, and will adversely impact those people who live near new oil and gas development," the groups wrote in a [letter](#).

"These important pollution controls are needed to protect communities from oil and gas industry air pollution, as well as help stave off catastrophic climate change."

The American Petroleum Institute, on the other side, said there are crucial elements of the rule that need to be reconsidered. And while the two-year window would facilitate those tweaks, improvements could be made more quickly.

"Going forward, the agency should consider addressing any issues, on an expedited timeline, that can be easily addressed to provide the clarity the industry is seeking to comply with the rule," API Senior Policy Adviser Matthew Todd wrote in a [letter](#).

API outlined technical issues and challenges it said industry would face if compliance deadlines are not extended. API, for example, said language around the repair of an identified fugitive leak needs clarifying.

The language, API said, "erroneously presumes that various shutdown events and well shut-ins would result in the blowdown of all equipment located on-site, including the leaking component on delay of repair. This is not accurate and can lead to an untenable lack of clarity regarding compliance expectations."

Other technical issues include legal complications associated with third-party equipment, low production wells, the alternative means of emission limitation and obtaining certification by a professional engineer.

Threat 'real'

Rule supporters say technical concerns can be addressed without staying the standards. New York Attorney General Eric Schneiderman (D) led a coalition of 14 attorneys general and others to oppose the delay.

"Yet again, the Trump EPA is putting polluters before public health," Schneiderman said in a statement. "Attorneys General have not hesitated to act when the EPA has failed to meet its obligations to protect our environment and our health."

"The threat of climate change is real — no matter how many times the Trump administration tries to shove it under the rug — and we'll do what it takes to protect the people and communities we serve."

The 150 groups also pointed out that an EPA analysis of the delay found that "the environmental health or safety risk addressed by this action may have a disproportionate effect on children."

More than 203,000 Americans, including 51,000 children, live within half a mile of the more than 18,000 oil and gas well sites that would be affected by the proposed stays, their letter states.

Nationally, there are more than 750,000 summertime asthma attacks in children younger than 18 because of ozone — the primary component of smog — resulting from oil and gas pollution, wrote the groups.

They also argued that EPA's proposed stays are unwarranted, as several oil- and gas-producing states have already put in place similar safeguards.

"As shown during the public comment period for the original rule, requiring operators to find and repair leaking equipment on a regular basis is reasonable, with modest costs in the hundreds of dollars per survey," they wrote.

"And these and other provisions that EPA proposes to stay would save gas that would otherwise be wasted but for those provisions."

Also at issue are the benefits of methane reduction. The groups state that while EPA made efforts to calculate the money it believes the oil and gas industry will save in avoided compliance costs, it did not characterize the emissions reduction benefit.

<http://bit.ly/2hKbdXv>

7. Investors to Trump EPA: Don't freeze Obama methane rule

Benjamin Hulac, E&E News reporter

Published: Wednesday, August 9, 2017

Investors managing hundreds of billions of dollars are pressing U.S. EPA to swiftly enforce a policy to limit the leaking of methane, the potent greenhouse gas.

The agency last year finalized a rule requiring the oil and gas industry to rein in methane leaks from hydraulic fracturing and natural gas projects. But the Trump administration stayed the rule, which is now tied up in a federal court fight.

In comments sent yesterday, 66 investors representing \$270 billion of assets under management urged EPA to reinstate the rule.

Investors concerned about climate change often use their financial clout to negotiate with companies and governments on environmental issues. The practice has grown in popularity in recent years, though House Republicans are seeking to dismantle shareholder activism (*Climatewire*, June 9).

"As shareholders, we have a vested interest in the long-term success of the companies we are invested in," the authors wrote to Peter Tsirigotis, an official in EPA's air office. The comments were submitted in response to the Trump administration's plans to freeze the regulation's implementation for two years, after initially staying the rule for 90 days.

The stay of the rule and a jump in methane emissions "constitute a clear and measurable harm not only to the climate, but also to investors who have positioned their portfolios with these regulations in mind," they said. "We urge their implementation now."

The Interfaith Center on Corporate Responsibility, a shareholder advocacy group, organized the letter. And mutual funds, pensions and religious investment groups signed it.

Last month, a federal court in Washington, D.C., ruled against EPA and ordered it to enforce the rule after the Trump administration halted the implementation of the standard.

Oil and gas industry lawyers filed court papers Friday at the U.S. Court of Appeals for the District of Columbia Circuit. They said the panel of judges on the court had erred in requiring EPA to enforce the methane rules and requested that the full 11-judge court consider the case (*[Energywire](#)*, Aug. 4).

Those behind the investor letter want quick EPA action.

"Despite real efficiency gains by some parts of the industry in regard to its methane emissions, investor concern about methane leakage has only grown since the EPA methane rules were first proposed," Jamie Bonham of NEI Investments, a Canadian firm and a signatory, said in a statement.

"The oil and gas industry is the leading industrial source of methane pollution," said Mary Minette of Mercy Investment Services. "If methane emissions are not addressed, they will undermine natural gas's reputation as a cleaner energy source."

Delaying the Obama administration's methane rules, the investors wrote, will waste natural gas that could be sold, put jobs at risk and flummox investors who planned for climate regulations, including those to slash methane leaks.

<http://bit.ly/2up0zLH>

8. Jewell headed to Harvard

Dylan Brown, E&E News reporter

Published: Wednesday, August 9, 2017

Former Interior Secretary Sally Jewell has accepted a fellowship at Harvard University.

The Institute of Politics at the Harvard Kennedy School announced today that the former REI Inc. CEO and petroleum engineer will teach students about an "economically successful and environmentally sustainable" future during the upcoming fall semester.



Sally Jewell. Interior Department/Wikipedia

"Sec. Jewell's experience across business, non-profit and public service sectors will provide students with invaluable insight into this highly topical issue of global and national concern," the institute's acting director, Bill Delahunt, said in a statement.

Jewell served as Interior secretary for President Obama's entire second term, replacing Ken Salazar in April 2013.

The institute hailed Jewell's "science-based, landscape-level, collaborative approach to natural resources management and to rebuilding a trusting, nation-to-nation relationship with indigenous communities."

In the same statement, Jewell said, "I am very, very interested in making a difference in the lives of young people and becoming a mentor as I have been mentored."

She added, "This fellowship affords me the opportunity to not only provide information and motivation, but to take what I learn from students and share it in other formal and informal settings."

<http://bit.ly/2wIFf0z>

9. States urge justices to take up landmark groundwater ruling

Amanda Reilly, E&E News reporter

Published: Wednesday, August 9, 2017

Ten states this week urged the Supreme Court to take up a recent landmark decision that found a tribe has a legal right to the groundwater below its reservation.

Led by Nevada, the group of states filed a friend-of-the-court **brief** Monday in support of two California water agencies that are trying to overturn the decision.

The states said they were concerned that the ruling of the 9th U.S. Circuit Court of Appeals created uncertainty over groundwater rights.

"By filing this brief, my office encourages the Supreme Court to take the necessary steps to clarify the States' groundwater rights and to ensure Nevada's best interests are being protected from unnecessary and unwarranted federal interference," Nevada Attorney General Adam Laxalt (R) said in a statement.

In March, the 9th Circuit found that when the federal government established a reservation for the Agua Caliente Band of Cahuilla Indians in Southern California's arid Coachella Valley, it implicitly created a right to tap the water below.

The tribe has lived in the Coachella Valley since before California became a state in 1850. Its 31,396-acre reservation, laid out in a checkerboard pattern, was established by two executive orders in 1876 and 1877.

Beneath the valley is an aquifer that supports nine cities, 400,000 people and 66,000 acres of farmland.

The aquifer is the main source of water for the reservation, but the tribe doesn't directly pump it from the ground, relying instead on state water agencies.

Concerned about future availability of groundwater, the tribe filed a lawsuit in 2013, asserting reserved and aboriginal rights to water from the aquifer.

The 9th Circuit decision in favor of the tribe marked the first controlling opinion that the federal "reserved rights" doctrine applied to groundwater.

According to the doctrine, the United States intended to reserve water for tribes when it established reservations to the extent necessary to accomplish the purpose of the reservation.

"Survival is conditioned on access to water — and a reservation without an adequate source of surface water must be able to access groundwater," Judge Richard Charles Tallman wrote in the opinion for the court (*Greenwire*, March 8).

The Coachella Valley Water District and Desert Water Agency appealed to the Supreme Court, arguing in petitions last month that the ruling makes it harder to address water scarcity in the West and conflicted with prior rulings in two state courts (*Greenwire*, July 7).

According to the Nevada-led coalition of states, the 9th Circuit also disrupted settled expectations by ruling that the reserved rights doctrine pre-empts state-law regulations of water.

The ruling may expose states to federal reserved water rights claims over groundwater basins that have been managed under state law, their brief said.

"By imposing federal reserved water rights over groundwater in nearly a fifth of our nation's states, *Agua Caliente* is literally a watershed opinion washing away the authority and control that states have traditionally exercised over groundwater resources," the states said.

Joining Nevada were Arizona, Arkansas, Idaho, Nebraska, North Dakota, South Dakota, Texas, Wisconsin and Wyoming.

<http://bit.ly/2ftxicg>

10. Enviro, renewables champ Niki Tsongas won't seek re-election

Kellie Lunney, E&E News reporter

Published: Wednesday, August 9, 2017

Massachusetts Democrat Rep. Niki Tsongas, the lone New Englander on the House Natural Resources Committee, announced today that she's leaving Congress when her sixth term is up in 2018.

"I have learned in life that there is a time for endings and new beginnings," Tsongas said in a **statement** announcing she would not seek a seventh term in the House. "After much thought, I have decided that this is one of those times." She added that she wants to spend more time "enjoying and celebrating my wonderful and growing family."



Rep. Niki Tsongas (D Mass.). House/Wikipedia

As ranking member of the Subcommittee on Federal Lands during the 114th Congress, Tsongas pushed to reauthorize the Land and Water Conservation Fund in 2014 and 2015, helping to secure a three-year reauthorization for LWCF in 2015. In 2014, she shepherded into law a bill to help protect the natural, cultural and recreational values of the Nashua River in her state.

From her perch on the panel, she also has leaned hard on the National Park Service to examine the agency's culture of sexual harassment and retaliation, recommending that NPS take a page from the Defense Department and conduct anonymous surveys of the workforce to better understand and tackle the problem.

Tsongas also serves on the Armed Services Committee.

During a June Natural Resources Committee hearing, she asked Interior Secretary Ryan Zinke whether sexual harassment was a "broader issue" throughout the department — not just one confined to the Park Service. "It may be departmentwide, I think that is a fair assessment," said the former Montana congressman, specifically mentioning the Bureau of Land Management as another trouble spot.

Tsongas, a founding member of the House Sustainable Energy and Environment Coalition, has been a champion of renewable energy during her 10 years in Congress and has consistently voted against construction of pipelines, including the Keystone XL pipeline. She unsuccessfully tried to add an amendment to a recently passed House bill (**H.R. 2910**) that would have prohibited the Federal Energy Regulatory Commission from issuing permits for oil or natural gas pipelines on public lands.

In July, she introduced legislation dubbed the "Every Kid Outdoors Act" (**H.R. 3186**) that would provide free access to federal lands and waters for students and accompanying adults.

Tsongas, the wife of the late Massachusetts Democratic Rep. and Sen. Paul Tsongas, took up the mantle of conservationism her late husband was known for when she was first elected in 2007 to fill the seat vacated by Democrat Martin Meehan. The Bay State's 3rd District includes the towns of Lowell and Fitchburg and is home to several national historic and wildlife areas.

"We all come with a name that starts somewhere," Niki Tsongas said in a 2015 interview with E&E News (*E&E Daily*, July 22, 2015). "I was proud to be a part of the building of that name and what it came to mean as a result of his service."

Tsongas in her statement today mentioned pieces of legislation she's authored over the years that "protect our natural and historic heritage and resources for our children and grandchildren," as well as her commitment to increasing the number of women in politics.

"Ten years ago, I sought this seat because I was motivated by a lifelong commitment to public service and a desire to change people's lives for the better," said Tsongas, who has worked as a lawyer and social worker. "I also felt, as I have often said, that women can't win if women don't run. I'm proud that my election marked the first time in a quarter-century that Massachusetts sent a woman to Congress."

The top Democrat on the Natural Resources Committee called Tsongas "the epitome of a strong, fearless leader" and said she has been "instrumental" in the fight to protect national parks, monuments and endangered wildlife.

"She's not only been an effective champion for the people of Massachusetts, but also for people across the country who care about a clean environment and healthy public lands," said Rep. Raúl Grijalva (D-Ariz.). "The good news is that we still have more than a year to get into some 'good trouble' together, and knowing Niki, she'll be fighting for environmental justice until the very end."

<http://bit.ly/2vkdOMQ>

11. Risky compound found in coal ash, research finds

Published: Wednesday, August 9, 2017

Researchers at Virginia Tech have discovered a potentially dangerous new compound in burned coal.

The researchers found the potentially hazardous material — made of titanium and oxygen — in 22 samples of coal ash from states including Virginia and Illinois. Their findings were published yesterday in the journal *Nature Communications*.

The researchers made their discovery after examining the aftermath of a massive coal ash spill in North Carolina. The spill occurred in 2014, when one of Duke Energy Corp.'s pipelines leaked coal ash into the Dan River.

More than two dozen insurance companies are now pushing back against Duke over the cost of coal ash cleanup in the Carolinas (*Energywire*, June 19; Eric Roston, [Bloomberg](#), Aug. 8). — **MJ**

<http://bit.ly/2vk12h3>