

**To:** Jackson, Ryan[jackson.ryan@epa.gov]  
**From:** POLITICO Pro Energy  
**Sent:** Thur 7/27/2017 9:44:59 AM  
**Subject:** Morning Energy, presented by Chevron: Pruitt's next step on power plants — Energy retribution for Murkowski's healthcare vote? — Largest U.S. wind farm announced

By Anthony Adragna | 07/27/2017 05:41 AM EDT

*With help from Alex Guillén, Esther Whieldon, Eric Wolff and Annie Snider*

**ESCAPE PLAN FOR COAL PLANTS?** EPA Administrator Scott Pruitt is ready to let coal-fired power plants off the hook for their contribution to climate change, based on a novel legal argument that the Clean Air Act bars him from further regulating carbon dioxide emissions from existing power plants because a separate Obama-era regulation on toxic mercury emissions already applies to them, Pro's Alex Guillén [reports](#), citing multiple sources with knowledge of his plan. That approach echoes a novel interpretation of the statute Pruitt leaned into as Oklahoma attorney general, but it would avoid an all-out brawl over the established science on climate change.

**The argument**, known throughout Washington's legal circles as the "112 exclusion," says EPA cannot regulate carbon emissions from power plants under section 111(d) of the Clean Air Act because section 112 already goes after hazardous air pollutants from those sources. A federal appeals court never ruled on the matter before pausing the case in the wake of President Donald Trump's election, but several judges on the D.C. Circuit [appeared skeptical](#) of it during oral arguments last year. Environmental groups, meanwhile, are ready to fight the planned repeal of the Clean Power Plan, including the 112 exclusion argument, and Pruitt's broader claim that the Clean Air Act does not give EPA the proper tools to fight climate change.

**Pruitt's approach won't be enough for some:** Conservatives want Pruitt's EPA to go further still by overturning the agency's 2009 endangerment finding that classified carbon dioxide as a pollutant. That approach has divided coal companies, with one industry source saying entities are split over whether Pruitt should repeal the endangerment finding or pursue more lenient rules that would not force plants to shut down. "The more they look at it, the more they're going to realize they need to re-open and revise the endangerment finding," said Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute and the Trump administration's EPA transition team leader. Pruitt is not expected to repeal the endangerment finding in the near term, though he has announced plans for a "red team/blue team" debate of the consensus on climate change.

**WELL FOLKS, IT'S THURSDAY!** I'm your host Anthony Adragna, and former Rep. Kerry Bentivolio ([a former reindeer rancher](#)) won a general election while losing a special one on the same day back in 2014. For today: Who holds the record for shortest tenure as House Speaker? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

**NOT TOO SUBTLE:** One day after Senate Energy Chairman [Lisa Murkowski](#) voted against beginning debate on Obamacare repeal, Interior Secretary Ryan Zinke called both Alaska

senators to warn their energy priorities were suddenly at stake, the Alaska Dispatch News reports. "I'm not going to go into the details, but I fear that the strong economic growth, pro-energy, pro-mining, pro-jobs and personnel from Alaska who are part of those policies are going to stop," Sen. [Dan Sullivan](#) said. "The message was pretty clear." Among the priorities now at risk, according to the paper: the nominations of Alaskans to Interior Department posts, a [long-sought one-lane gravel road](#) from the isolated southwestern Alaska village of King Cove, and expanded drilling opportunities throughout the state.

**MOVING THAT MINI-BUS!** Lawmakers moved their way through dozens of amendments on the Energy and Water-filed mini-bus package [H.R. 3219 \(115\)](#) late Wednesday night. Expect lawmakers to finish two remaining votes on Energy and Water amendments today ahead of a final vote on the mini-spending package on Friday. Among the measures of interest to ME readers:

— Lawmakers approved by voice vote Rep. [Paul Gosar's](#) amendment barring the [development of any rule or guidance document](#) related to the social cost of carbon.

— A [bid](#) by Democrats to strip a rider insulating the Trump administration's withdrawal of the Waters of the U.S. regulation from legal challenges failed by voice vote.

— Rep. [Scott Perry's](#) amendment [adding \\$15 million to the Office of Energy Efficiency and Renewable Energy](#) by taking away from DOE's administration fees and Rep. [David McKinley's](#) amendment [restoring fossil energy funding](#) to fiscal 2017 levels passed by voice vote. — A [bid](#) to add \$921 million to EERE by pulling from the nuclear weapons program failed by voice vote, as did several smaller efforts.

— Ohio Republican [Steve Stivers'](#) push to [block any funding for Cape Wind](#), the offshore wind project in Massachusetts' Nantucket Sound that has been stalled for years, passed by voice vote.

— Efforts by Nevada Democrats to remove language [barring the closure of Yucca Mountain](#) flopped by voice vote.

— Seventh time's the charm? Rep. [Michael Burgess'](#) perennial [light bulb rider](#) blocking enforcement of DOE efficiency standards passed by voice vote again.

**Before they adjourned Wednesday night**, lawmakers set up a vote on Rep. [Marsha Blackburn's](#) push for a 1 percent across-the-board discretionary cut and two Michigan Republicans withdrew an amendment [barring the Corps from slow-walking](#) a controversial study related to keeping Asian carp from reaching the Great Lakes.

**LIKELY TRUMP WATER PICK HAS AG GROUP, RED STATE CRED:** The likely nominee to run EPA's water office is David Ross, director of the Environmental Protection Unit at Wisconsin's Department of Justice, according to multiple sources close to the decision. Before heading to Wisconsin last year, Ross was in the Wyoming Attorney General's office, where he worked on the 13-state lawsuit challenging that Obama administration's Waters of the U.S. rule that won an early injunction from a North Dakota District Court judge in 2015.

Ross also spent more than a decade in private practice, largely in Crowell & Moring's environment and energy group, where he worked on a number of hot-button water lawsuits. He was part of the team that represented the American Farm Bureau Federation in its challenge to the landmark Chesapeake Bay cleanup plan — a suit that Pruitt joined as an intervenor while serving as Oklahoma's attorney general, although he now says he supports the effort — and represented agricultural groups and fertilizer companies in litigation brought by environmental groups in a bid to force stricter pollution limits in the sprawling Mississippi River basin.

**\*\* A message from Chevron:** Advanced technology is helping us find safer ways to deliver energy. We're piloting a program that uses drones to monitor tanks and pipelines. Watch the video: <http://bit.ly/2vFEzbX> \*\*

**FROM 'MONEYBALL' TO... DOE?** Financial writer Michael Lewis, known for books like "Moneyball" and "Flashboys," explores the convoluted past, present and future of the Energy Department in a [lengthy piece](#) for Vanity Fair. Much like we've [explained](#) the agency's [many important](#) — and thankless — tasks, Lewis tells the story of what DOE does, that no one seems to get it, and how fraught with risk it all is. And he hits the highlights: the loan program, nuclear security, physical and cyber threats to the electric grid, and (paging Sen. [Maria Cantwell](#)) an extended section on the Hanford nuclear cleanup. He interviewed Arun Majumdar to talk about DOE's ARPA-E program, which he launched and is under threat from Trump.

**MASSIVE WIND FARM GOING UP:** American Electric Power [announced](#) Wednesday it would invest \$4.5 billion into a massive 2,000-megawatt wind farm that will provide power to customers in Arkansas, Louisiana, Oklahoma and Texas once completed. It would be the largest wind farm in the country, and AEP says customers will save \$7 billion over 25 years once the wind farm is online. The effort includes a 350-mile dedicated, extra-high voltage power line designed to serve up to 1.1 million customers, according to developer Invenergy.

**TRUMP TRANSITION OFFICIAL THINKS WHITE HOUSE SHOULD DO CLIMATE ASSESSMENT:** Former Trump Transition official David Schnare argued in [an op-ed](#) for Inside EPA that the White House Office of Science and Technology Policy, and not EPA, should conduct a re-evaluation of climate science. Schnare, who decried the "alarmist" views he said dominated the Obama administration's approach, calls Pruitt's proposal for a red team/blue team debate "silliness" and "not how science works." He argues that under the 1990 Global Research Act, only OSTP, and not EPA, has the authority to conduct such a review. "EPA can play, but it isn't in charge and doesn't have the authority," he writes. Schnare was an attorney with EPA for 30 years, though he is now general counsel for the anti-climate action Energy and Environment Legal Institute.

**E.U. TAMPED DOWN SANCTIONS BILL:** The legislation still faces some obstacles before it reaches Trump's desk, but European officials actually managed to blunt the initial scope of the proposed Russian sanctions through last-minute tweaks last weekend, POLITICO Europe's Anca Gurzu and Lili Bayer [report](#). Officials are especially worried provisions in the measure could deliver an economic blow to EU companies involved in Russian energy export pipelines or that partner with Russian companies on energy projects. "We do a lot under the radar because we

wanted to avoid the appearance that we are split with the U.S. on the sanctions," a Commission official said.

**NOT SO FAST, REX:** Critics are not down with Secretary of State Rex Tillerson's plan to slash dozens of positions known collectively as special envoys, POLITICO's Nahal Toosi [reports](#). The administration has already indicated it plans to eliminate a special envoy for climate change. But today the Senate Foreign Relations Committee will consider legislation that will give lawmakers a greater say over how special envoy jobs are filled.

**MAIL CALL! WE'RE WITH YOU ON OFFSHORE DRILLING PLAN:** A group of 36 Senate Republicans, led by [Lisa Murkowski](#), sent a [letter](#) to Zinke Wednesday voicing support for his agency's new Outer Continental Shelf Five-Year Oil and Gas Leasing Program for 2019-2024. "We encourage you to carefully review those areas that were not included in the 2017-2022 Five-Year Program to ensure that opportunities are not missed," they wrote. BOEM is currently [accepting comment](#) on a new five-year drilling plan through Aug. 17 that would replace the plan developed under the Obama administration.

**PERRY'S BAD TUESDAY GETS WORSE:** Top House Energy and Commerce Democrat [Frank Pallone](#) asked GAO Wednesday in a [letter](#) to probe whether Energy Secretary Rick Perry misused taxpayer funds in writing an op-ed criticizing the Affordable Care Act and if the agency improperly promoted that piece through social media channels. "I have significant concerns as to why DOE is using official agency resources to weigh in on the health care debate, and am troubled that recent DOE actions may represent a broader effort by the Administration to inappropriately use agency resources on matters well beyond an agency's jurisdiction," Pallone wrote, asking for an opinion on whether Perry's actions violated Antideficiency Act, the Anti-Lobbying Act, and the Consolidated Appropriations Act of 2017.

**TASTE OF WHAT'S TO COME IN SEPTEMBER:** House Energy and Commerce lawmakers today vote on Drinking Water System Improvement Act [H.R. 3387 \(115\)](#). The measure [cleared subcommittee](#) on July 13 after the addition of amendments requiring states to spend a minimum share of federal dollars on disadvantaged communities, boosting the popular Drinking Water State Revolving Fund's authorization to \$8 billion over five years and encouraging removal of lead service lines. Be on the lookout for a manager's amendments with further tweaks when [the session](#) begins at 10 a.m. in Rayburn 2123.

**ICYMI:** The Senate Energy and Natural Resources shelved a vote originally planned for today at 9:30 a.m. on half a dozen Interior and DOE nominees "until a date and time to be determined," Pro's Esther Whieldon [reports](#). A committee aide chalked it up as a casualty to the chamber's vote-a-rama on healthcare repeal.

**PRUITT MET CANADA'S HARPER:** The EPA confirmed late Wednesday that Pruitt met with former Canadian Prime Minister Stephen Harper back in March. "The purpose of the meeting was to extend a courtesy visit to the former Prime Minister of Canada and thank him for past bilateral cooperation on environment," a spokeswoman said. "It was not intended, nor was it, a policy meeting." The Huffington Post first [reported](#) the meeting, which it said was arranged by a top Comcast lobbyist.

**MONUMENT REVIEW ROLLS ON:** Zinke continues his visits to national monuments today as his swing takes him to New Mexico. He'll have a closed-press helicopter tour of the Organ Mountains Desert Peaks National Monument in the morning, followed by a meetings with local elected officials, ranchers, academics, border security experts, and others (also off-limits to the press).

**It hasn't been announced yet** but a rural Nevada county commissioner told the Las Vegas Review-Journal Zinke will be in the area next Monday to hear input on the Gold Butte and Basin and Range National Monuments in the state. Nye County Commission Chairman Dan Schinhofen told the paper Zinke would hear from him about former President Barack Obama's designation of the Basin and Range. "We don't object to national monuments, but to take 700,000 acres to protect private property that represents less than one percent of that land seems excessive," he said. "We think it can be pared down."

**Speaking of monuments,** the Commerce Department announced it would give the public an additional 15 days to comment on the status of 11 marine national monuments and sanctuaries through August 14, Pro's Esther Whieldon reports. A spokesperson declined additional comment on why the public comment period was extended.

**REPORT: APPLIANCE EFFICIENCY COULD SAVE BIG BUCKS:** The Appliance Standards Awareness Project and the American Council for an Energy-Efficient Economy released a report Wednesday recommending 21 appliance standards states could adopt on a variety of products, from computers to portable air conditioners. The groups say those standards would save \$113 billion through 2035 assuming they go into effect by 2020.

**MORE STATES JOIN GREEN CONTRACT TREND:** Two states, Minnesota and Nebraska, this year joined the ranks of about a half dozen states that have allowed their utilities to offer direct-sale, long-term supply contracts for renewable generation, according to a report out today by the Advanced Energy Economy. Under these so-called green tariffs, big companies like Facebook and Google since 2012 have signed deals for more than 8 gigawatts of renewables.

**CHANGING THE FACE OF THE GREEN MOVEMENT:** Environmental advocates and lawmakers gather today at 10 a.m. in Cannon 421 for a discussion on the need for diversity in the mainstream environmental movement. Reps. Donald McEachin and Pramila Jayapal, along with representatives from Green 2.0, the Hip Hop Caucus, Defenders of Wildlife, LCV and GreenLatinos, participate.

### **MOVERS, SHAKERS:**

**Gwendolyn Keyes Fleming**, chief of staff at EPA under Gina McCarthy from 2013 to 2015, has joined the law firm Van Ness Feldman in its environmental practice. She'll focus on environmental litigation and national security issues. Before becoming chief of staff, Fleming was EPA's regional administrator for the Southeast, and before that she was an elected district attorney in Georgia's DeKalb County. After leaving EPA, Fleming spent nearly two years as the top legal adviser for Immigration and Customs Enforcement. In recent months DeKalb County

had employed Fleming as a consultant to advise it on relations and negotiations with EPA and state regulators.

**Cynthia Giles**, EPA's top enforcement official during the Obama administration, has joined the University of Chicago's Energy & Environment Lab as executive fellow and director of strategic initiatives. The organization aims to work with governments to design and test environmental policies that can be scaled up.

**Mike Godwin** has joined the Niskanen Center as a senior fellow; He was most recently the director of innovation policy at the R Street Institute (h/t Playbook).

## QUICK HITS

— How Venezuela chaos could spark oil rally OPEC has failed to achieve. MarketWatch.

— Flint's water quality improving; 5 resource sites to close. AP.

— Coroner: Schuylkill County coal miner killed when run over by own bulldozer. Allentown Morning Call.

— Britain to Ban New Diesel and Gas Cars by 2040. New York Times.

— Many Chicago Park District Fountains Are So Contaminated With Lead That They Can't Be Turned Off. WBEZ.

## HAPPENING TODAY

9:00 a.m. — USEA 10th Annual Energy Supply Forum, National Press Club, Grand Ballroom, 529 14th Street NW, 13th Floor

POSTPONED — Senate Energy and Natural Resources Committee votes on various nominations, Dirksen 366

10:00 a.m. — Legislative Hearing on 3 Bills, House Natural Resources Energy and Mineral Resources Subcommittee, 1324 Longworth

10:00 a.m. — House Energy and Commerce Committee votes on Drinking Water System Improvement Act, among other bills, Rayburn 2123

12:30 p.m. — Natural Gas Roundtable hosts INGAA Chair Diane Leopold, University Club, 1135 16th Street, NW

## THAT'S ALL FOR ME!

**\*\* A message from Chevron:** Advanced technology is helping us find better and safer ways to deliver energy to America. We're piloting a program that uses drones, HD imaging, and thermal

mapping capabilities to monitor Chevron wells, tanks, and miles of pipeline. Watch the video <http://bit.ly/2vFEzbX> \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/07/pruitts-next-step-on-power-plants-023943>

## Stories from POLITICO Pro

### EPA eyes plan to shield coal from future regulations [Back](#)

By Alex Guillén | 07/27/2017 05:00 AM EDT

The Trump administration may have found a way to let coal plants off the hook for their carbon emissions without relitigating the established science on climate change.

EPA Administrator Scott Pruitt, who has been tasked with undoing the Obama administration's landmark climate change regulation on existing power plants, is preparing to argue that the Clean Air Act bars him from setting any limits on carbon dioxide from their smokestacks, according to multiple sources with knowledge of the proposal. That's because a separate Obama-era EPA regulation on toxic mercury emissions already applies to coal plants, according to a novel interpretation of the law that Pruitt embraced when he was attorney general of Oklahoma.

Such a legal maneuver would effectively allow Pruitt to repeal the Clean Power Plan without having to impose new rules on coal plants, despite Supreme Court precedent and an underlying scientific finding that identified greenhouse gas emissions as a threat to public health.

Pruitt's proposal to undo the Clean Power Plan has been under review at the White House since June, and the administration has provided no target date for its release. It is separately expected to make a legal case that EPA cannot require states to shift away from coal power and toward natural gas and renewables, as the Obama administration sought to do with its rule, although that approach by itself would not alleviate Pruitt of the obligation to develop a narrower rule based on coal plant efficiency.

Pruitt's attempt to wipe out power plants' climate regulations altogether would go further than he suggested was possible at his confirmation hearing, but it still won't be enough for some conservatives. EPA declined to comment on the proposed Clean Power Plan repeal while it is still undergoing interagency review.

Testifying to the Senate Environment and Public Works Committee in January, Pruitt seemed to acknowledge a [role for EPA](#) in regulating carbon stemming from the 2009 endangerment finding classifying it as a pollutant. Since then, conservative activists and some coal executives like Bob Murray have urged Pruitt to repeal that conclusion, which would essentially require him to disprove the scientific consensus that climate change is a threat. Pruitt has announced plans for a "red team/blue team" debate of that consensus, but he has not said where he expects that exercise to lead.

Pruitt is not expected to repeal the endangerment finding in the near term, but the approach he is leaning toward would have the same practical effect for the hundreds of coal-fired power plants that would have been subject to the Clean Power Plan. A coal industry source, speaking on condition of anonymity, said companies are split over whether Pruitt should repeal the endangerment finding or pursue more lenient rules that would not force plants to shut down.

"At least for so long as this management is at EPA, it is a way to not regulate at all without having to revisit the endangerment finding," said Sean Donahue, an attorney working with the Environmental Defense Fund, which supported the Obama-era rule. But he argued the approach would face huge hurdles in court.

Known in legal lingo as the "112 exclusion," Pruitt's argument is that EPA cannot write rules for power plants under section 111(d) of the Clean Air Act — a catchall provision under which the Clean Power Plan was written — because those sources already are regulated under Section 112 of the law, which targets hazardous air pollutants from a variety of sources.

However, the 112 exclusion argument was muddied by a strange legislative "glitch" that occurred when Congress last revamped the Clean Air Act, in 1990. Two competing sections on this issue, one each from the Senate and the House, were inadvertently signed into law. The challengers seized on the language of the House version as a foundation for their exclusion argument, while the Obama administration said either version should allow it to regulate via the Clean Power Plan.

The D.C. Circuit never ruled on this or any of the other legal issues before the case was paused when the Trump administration took office.

EPA's 2012 mercury rule is a Section 112 rule covering coal plants, and Pruitt has previously argued that should be enough to overturn the climate rule.

In a [2014 report](#), Pruitt wrote, "EPA has no authority at all to require States to adopt CO<sub>2</sub> performance standards for existing [power plant] CO<sub>2</sub> emissions," citing the 112 exclusion argument.

But in oral arguments last year over the Clean Power Plan, several judges on the D.C. Circuit indicated they were skeptical of this argument, particularly since the exclusion would apply only when a 111 rule follows a 112 rule, but not vice versa.

Judge Brett M. Kavanaugh, a George W. Bush appointee, said at the hearing that he agreed with the challengers that the House version should supersede the Senate language — but that even then, he was "not sure the House amendment actually blocks this."

If courts ultimately invalidate the 112 exclusion argument — or if Pruitt decides not to pursue it — the Trump administration could choose to regulate on a much narrower path. That 2014 report from Pruitt outlined a proposal for a limited "inside the fence line" approach for power plants under section 111(d) if the agency were determined to implement such a climate rule.

Meanwhile, an array of more far-fetched possibilities have been the subject of think tank speculation for years.

However, conservatives pushing EPA to overturn the endangerment finding likely wouldn't be appeased even if EPA is successful here.

Myron Ebell, director of the Center for Energy and Environment at the Competitive Enterprise Institute and the Trump administration's EPA transition team leader, noted that the finding also provides a legal justification for a host of other EPA regulations, including vehicle emissions standards, methane regulations and permitting rules.

Ebell is a longtime critic of climate change science, and CEI is one of several groups currently petitioning the Trump administration to revisit the endangerment finding. He said CEI has no current plans to sue EPA to force it to respond to that petition, saying the group is waiting to see how the Clean Power Plan repeal works out. However, another petitioner, the Texas Public Policy Foundation, said it may sue EPA if the agency does not meet its late October deadline for a response.

"The more they look at it, the more they're going to realize they need to re-open and revise the endangerment finding," Ebell said.

Environmentalists are already gearing up to fight back against the planned repeal of the Clean Power Plan, including the 112 exclusion argument, and Pruitt's broader claim that the Clean Air Act does not give EPA the proper tools to fight climate change.

Adopting that legal justification "makes hash out of the Clean Air Act," said David Doniger, director of the Climate and Clean Air Program at the Natural Resources Defense Council.

"There's no way that in constructing these interlocking provisions ... there's no way that they intended to leave the gap or create a gap that Pruitt and his colleagues asserted," Doniger said.

The Supreme Court never said EPA had the best possible tool to combat climate change, he argued, but the agency must use what tools Congress has given it.

It's like wishing "you had a Phillips screwdriver but all you have is a flat one," Doniger said. "You still have to work on the screw."

*To view online [click here](#).*

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**Six takeaways from the D.C. Circuit over EPA's Clean Power Plan** [Back](#)

By Alex Guillén | 09/27/2016 08:30 PM EDT

After nearly seven hours of legal arguments over EPA's Clean Power Plan, the Obama administration emerged with encouraging signs from the judges on some of the key issues — except the contentious debate over whether EPA can go beyond coal-fired power plants' fence lines to set emissions targets.

Predicting how the court will ultimately rule can be tea-leaf reading, and the comments made by judges in court may not indicate where they will each fall on the case. Still, several of the members of the 10-judge panel that heard the case offered hints about how they were leaning on specific issues. Here are POLITICO's list of 6 takeaways from Tuesday's arguments before the D.C. Circuit Court of Appeals.

### **1. The court appears on the fence about the fence line.**

Several judges — primarily those appointed by Republican presidents — peppered the Obama administration with pointed questions about how EPA structured the rule, and in particular the agency's decision to use generation shifting to go "beyond the fence line."

Judge Brett M. Kavanaugh, named to the bench by George W. Bush, cited the 2014 Supreme Court ruling authored by late Justice Antonin Scalia, who, in striking down part of a different EPA rule, chided the agency by writing that the court would "expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.'"

That ruling came around the time that EPA released its Clean Power Plan proposal, and the challengers have long considered it a shot across EPA's bow.

Scalia's ruling "might have been written with this case in mind," Kavanaugh said. The CPP is "fundamentally transforming an industry," even though Congress did not specifically call on EPA to reduce greenhouse gas emissions.

Justice Department attorney Eric Hostetler defended the CPP, saying that previous EPA rules have also relied on generation shifting. And Judge David Tatel, a Clinton appointee, said he didn't see Scalia's contention applying to CPP because EPA had used its existing authority — and it had received direction from the Supreme Court on greenhouse gases.

Still, some of the GOP-appointed judges also questioned the plaintiffs assertion, with Judge Thomas Griffith, another Bush appointee, hinting that EPA's "beyond the fence line" approach struck him as plausible.

How was rule was inconsistent with the Clean Air Act's requirement that EPA set a "best system of emission reduction?" he asked, adding that the electric power industry had been shifting away from coal and toward natural gas and renewables.

"They're just accelerating that," he said.

West Virginia Solicitor General Elbert Lin replied that EPA has always previously required technology installed on-site at power plants, not investments in new generating plants.

Other judges seemed to question EPA's use of generation shifting as well.

Judge Patricia Millett, an Obama appointee, at one point noted that such a practice would essentially require coal plant owners to subsidize their competitors.

But DOJ's Hostetler disputed that, saying sources can meet their obligations without doing that, such as by switching to gas co-firing. He also argued that the rule is about "investing" in renewable sources, not "subsidizing" them.

Even if all four of the Republican-appointed judges on the D.C. Circuit side with the challengers on this issue, they would still need two of the judges appointed by Democrats to overrule EPA.

## **2. Congress' rejection of cap and trade still looms large.**

The Senate's failure to pass a cap-and-trade bill back in 2010 was a key event for the CPP challengers, who cited it as evidence that if Congress had wanted EPA to go this far to limit greenhouse gases, it would have passed that law.

That argument appealed to Kavanaugh, who said that although it was "laudable" to take action on climate change, that didn't give EPA the right to violate the separation of powers.

"Congress is supposed to make decisions," he said, and Congress could have helped out groups hurt by the rule, like the coal industry, if it had passed a cap-and-trade package. That is something EPA's Clean Power Plan cannot do.

"Why isn't this debate going on on the floor of the Senate right now," rather than in front of a panel of unelected judges, asked Griffith.

## **3. The 112 Exclusion argument is on thin ice.**

The challengers had hoped to kill the CPP outright by arguing Section 111(d) of the Clean Air Act, under which the CPP was written, bars regulating power plants for carbon dioxide because EPA already regulated them for mercury emissions under Section 112.

It's an arcane argument reliant on an unusual 26-year-old legislative glitch and obscure legislative procedures.

But many of the judges from across the spectrum indicated they saw that argument as spurious, particularly since under the challengers' interpretation, EPA would have been on solid legal ground if it had regulated carbon dioxide first and mercury afterwards, but not the other way around.

"There was no debate by Congress to suggest they intended to create this giant loophole," said Judge Judith Rogers, a Clinton appointee.

"If Congress wanted to avoid double regulation, why is it just dependent on timing?" asked Judge Nina Pillard, an Obama appointee.

The challengers' argument relied on conflicting Senate and House provisions that were inadvertently signed into law back in 1990. The Senate version clearly would allow the Clean Power Plan, while the House version's meaning is more disputed — and the challengers say the House provision should be the one that counts.

But even Kavanaugh, who signaled he agreed that the House version should win out, said that might not be enough to overturn the Clean Power Plan, as the challengers argue.

"I'm not sure the House amendment actually blocks this," he said, admitting the issue and the law's language are "convoluted."

#### **4. The constitutional challenges may not hold water.**

Many of the judges appeared unconvinced on the constitutional challenges to the Clean Power Plan.

Griffith asked for details on exactly which state officials were being "commandeered" by EPA, referring to plaintiffs' arguments that the Obama administration had sought to force state lawmakers and regulators to take action on climate change under the regulation. And Griffith seemed skeptical that requiring the states to alter their resource planning or take action to assure grid reliability were any different than what they would have to do under myriad other environmental rules.

Judge David S. Tatel, a Clinton appointee, argued that the Clean Power Plan wasn't constitutionally different from the Americans with Disabilities Act.

"Compliance can only occur if states use their police power to issue permits" for disability accommodations, said Tatel, who is blind.

The ADA was meant to lead to changes in the private sector, replied attorney David B. Rivkin, Jr., representing state challengers. The Clean Power Plan "is far more profound," he added. "The goal is to change our energy infrastructure."

Even the star power brought by Laurence Tribe, the Harvard professor and liberal icon now advocating against the rule for coal producer Peabody Energy, didn't seem to sway the bench.

Millett said she was having trouble reconciling his arguments that the CPP is unconstitutional with the Supreme Court's previous rulings concluding that EPA is the proper entity to address greenhouse gas emissions.

Kavanaugh later added that while the CPP may go beyond what one DOJ lawyer called "bread-and-butter cooperative federalism," it is "not necessarily unconstitutionally more."

## **5. The judges seem ready to kick the can on other parts of the challenge.**

The final two issues of the day saw the court wondering whether it can just leave those for later.

During a segment challenging whether the final rule was too different from the proposed rule, several judges pointed to court precedent that requires challengers to first petition EPA on any issues they feel they did not get a chance to comment on during the rulemaking process. If EPA rejects such petitions, the judges added, that is the appropriate time for the courts to get involved.

Thomas Lorenzen, a Bush-era DOJ environmental attorney now at Crowell & Moring who represented the challengers, said that at least four petitions on these notice issues were filed as far back as a year ago, but EPA has not yet responded. DOJ attorney Norman Rave replied that EPA received 38 petitions in total and is working its way through them.

The court seemed similarly interesting in punting on any broad decisions about whether the rule was feasible or how EPA calculated states' separate targets.

"It is simply too early in the game to address these state-specific objections," said Rogers.

Kavanaugh pointed to the Supreme Court's decision in 2014 upholding EPA's Cross-State Air Pollution Rule but allowing "as-applied" challenges to various states pollution budgets — challenges that partly succeeded.

He and Millett also sought assurances from EPA that if a state's target ultimately proves too difficult to achieve, the state would have legal avenues to lower its target. A DOJ lawyer replied that state planning processes or a petition to change a state's target based on new information would provide such options.

## **6. Judges have a low opinion of Congress, too.**

The public overwhelming gives Congress a failing grade, and the D.C. Circuit isn't much better.

"Everyone understands frustrations with Congress," Kavanaugh admitted to laughter from the crowd at one point.

Maybe Congress' way of handling climate change, or lack of action "is proof it shouldn't be doing anything," Tatel later joked.

*To view online [click here](#).*

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**Alaska's long road war** [Back](#)

By Andrew Restuccia | 04/04/2014 05:00 PM EDT

In the fall of 1998, Frank Murkowski took to the Senate floor to make an impassioned plea for the authority to build a one-lane gravel road from the isolated southwestern Alaska village of King Cove to a neighboring community with an all-weather airport.

"This is a road to life for the residents of King Cove," he said.

More than 15 years later, his daughter, Republican Sen. Lisa Murkowski — along with the rest of the Alaska congressional delegation — is still fighting for the road, insisting it's the only viable way to ensure that King Cove's 965 largely native Alaskan residents have access to emergency medical care.

( [Also on POLITICO: Full transportation and infrastructure policy coverage](#) )

What seems like a simple request is anything but. The proposed road would cut through federally protected wilderness land in the Izembek National Wildlife Refuge, a 315,000-acre sanctuary near the tip of the Alaska Peninsula. And the Interior Department says the road would threaten vulnerable plants and animals that rely on the area's unique ecology.

The oftentimes ugly fight has pitted Alaska politicians against the federal government for decades, sowing mistrust and frustration. It has also reinforced the view of many in Alaska that policymakers in the Lower 48 are out of touch with their needs.

At the same time, the battle has laid bare tensions between Alaskan leaders and conservation groups, which argue that approving the road could set a dangerous national precedent in other protected wilderness areas.

Lisa Murkowski and Alaska Democratic Sen. Mark Begich, who faces a tight reelection fight, are vowing to do everything in their power to win approval for the road, even though the Interior Department rejected the proposal late last year after a four-year analysis.

( [PHOTOS: 10 tough Senate races for Democrats](#) )

Murkowski is using her position as the top Republican on the Senate Energy and Natural Resources Committee to elevate the issue, expressing her outrage at hearings and in floor speeches and holding a series of news conferences with King Cove residents. She has also [lambasted](#) Interior Secretary Sally Jewell, who [announced](#) the most recent rejection of the road just two days before Christmas.

"I am not willing to let a day go by without raising this as an issue," Murkowski said in an interview.

The road would give King Cove residents access to the larger airport in the nearby community of Cold Bay when extreme weather grounds flights at the smaller King Cove airport. King Cove has a medical clinic, but residents often have to travel to Anchorage for major procedures and emergencies.

The road, proponents argue, is the best solution to the transportation problems that have long plagued isolated King Cove.

Besides its small airport, the town has access by boat across the Izembek Lagoon, but foul weather can make air and boat travel difficult, residents say. Supporters of the road say at least 19 deaths over the years have resulted from plane crashes or an inability to obtain adequate medical care.

( [Sign up for POLITICO's Morning Transportation tip sheet](#))

Della Trumble, a King Cove resident and longtime advocate for the road, said its approval is a matter of life and death.

"I just feel strongly that the human factor far outweighs the wildlife," she said. "We will protect the wildlife. It's who we are."

Trumble and other residents have made dozens of trips to Washington to make their case, telling stories of family and friends who have been hurt or killed trying to get out of the community during storms. Trumble said she watched as her niece was flown out for a medical emergency amid winds of 70 to 80 mph. She said another niece was born on the galley table of a crab boat during an evacuation attempt.

Just this week, an injured fisherman was flown out of King Cove by the Coast Guard, marking the fifth medical evacuation of the year, according to [King Cove officials](#).

But opponents say the road would wreak havoc on the refuge and its wildlife. The refuge hosts more than 200 species, including caribou, grizzly bear and, in the fall, about 98 percent of the world's Pacific black brant. It also has one of the largest eelgrass beds on the planet and was one of the first areas in the U.S. to be designated as a [wetland of international importance](#).

"You can't punch a road through there without doing serious damage," said Don Barry, who served as Interior's assistant secretary for fish, wildlife and parks during the Clinton administration.

In addition, the proposed road faces major legal hurdles. In 1980, Congress designated most of the refuge as wilderness, the highest level of public land protection.

Barry, now a senior official at the conservation group Defenders of Wildlife, said it would be unprecedented to allow a road through a wilderness area. Though the refuge has some old military roads, they were built before the conservation laws were enacted.

Several opponents raised concerns that approving the road would lead to a push for development in other protected areas.

"Once you carve a road of this kind right through the middle of a national wildlife refuge, where

does it stop?" former Clinton administration Interior Secretary Bruce Babbitt asked.

Babbitt and other opponents have also suggested that the road could be used for commercial purposes, noting that Peter Pan Seafoods has a cannery in King Cove. "But despite pledges and promises to the contrary, the real purpose for building the road is the same as it ever was: moving fish and workers to and from King Cove's canneries," Babbitt wrote in the Los Angeles Times last month.

Peter Pan has rejected those accusations, and Murkowski notes that her legislation calling for approval of the road specifically bars using it for commercial purposes.

The fight over the road burst into public view in the late 1990s, when then-Sen. Frank Murkowski pushed legislation that would allow for approval of the road as part of a land exchange. The bill passed the Senate in 1998 but never passed the House. President Bill Clinton threatened a veto amid concerns about the road's effect on wildlife.

Soon after, then-Sen. Ted Stevens launched into a tense series of negotiations with the Interior Department. The resulting compromise was a \$37.5 million appropriation approved by Congress to improve the King Cove medical clinic and airport and make accommodations for a hovercraft to transport residents to Cold Bay. The hovercraft was used until 2011, but it is being sold because, operators said, it was too expensive to operate.

"Finally it was settled — and now it turns out it isn't," said Babbitt, who worked with Stevens to negotiate the deal and strongly opposed the road.

Within several years, the issue was back on the table. Lisa Murkowski included a provision in a 2009 bill calling on the Interior Department to analyze the road and proposing another land exchange. In exchange for setting aside land in the refuge for the road, the federal government would receive more than 43,000 acres of Alaska state land and more than 13,000 acres of land owned by the King Cove Native Corp.

The provision set off a four-year analysis by Interior that culminated in December with the department's rejection of the road.

"While the proposed land exchange would bring many more acres of land into the Refuge System, the analysis indicates that the increased acreage could not compensate for the unique values of existing refuge lands, nor the anticipated effects that the proposed road would have on wildlife, habitat, subsistence resources and wilderness values of the Refuge," the department said in a statement at the time.

The decision infuriated the Alaska delegation and has strained Murkowski's relationship with Jewell.

After hearing about the decision, Murkowski said she told Jewell, "I cannot forgive the fact that you have delivered this, that you have dashed all hope for the people of King Cove, and the fact that you did this the week of Christmas is absolutely callous and cold-hearted."

Other Alaska lawmakers have similarly taken Jewell to task. "If someone dies out of King Cove, I want you to really think about it and be ashamed of yourself," Rep. Don Young told Jewell at a hearing Thursday.

The road's opponents say viable alternatives exist — a notion that Murkowski and others reject. Opponents also argue that the road, which would snake through isolated land often battered by extreme weather, would pose its own dangers.

At a recent Senate hearing, Jewell said she is committed to working with King Cove residents to find alternatives. During a recent meeting with Begich, she said she will again listen to the community's concerns.

"Jewell committed to reviewing the information that the community plans to provide on the issue and to provide a response to the senators, State of Alaska and the community on their request to reconsider the final decision," Interior spokeswoman Jessica Kershaw said in an email.

Alaska lawmakers face major hurdles toward changing Interior's mind but say they're not giving up.

Begich said in a recent interview that he hopes to attach his bill approving the road to upcoming Interior appropriations legislation. Murkowski vowed to continue hammering away as well.

"This secretary has made a decision, and I think she thought the people of King Cove were tucked far enough away that nobody would be making a big deal about this," Murkowski said. "But I'm not forgetting them, and it's not just an idle threat."

*CORRECTION: A previous version of this story offered an incorrect name for the city where King Cove residents sometimes have to travel for major medical procedures.*

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**Help wanted at DOE: Toil in the shadows — at least until a crisis** [Back](#)

By Darius Dixon | 11/22/2016 05:03 AM EDT

Of the thousands of jobs President-elect Donald Trump will have to fill over the next few months, few are as misleadingly named as Secretary of Energy.

The Energy Department is not going to be the venue for Trump to follow through on his campaign promises to unleash an oil, gas and coal boom by dialing back Obama-era environmental programs, and most Americans are oblivious to what it does. Only about a third of DOE's budget supports energy research and development, the creation of efficiency standards

and the clean energy loan guarantee program that became a flashpoint in President Barack Obama's first term. But the bulk of any Energy secretary's attention gets yanked to the lower-profile but higher-stakes work of maintaining the U.S. nuclear stockpile and the cleanup of old Cold War weapons sites — which accounts for the remaining two-thirds of its budget.

It's a post fraught with endless frustrations, leading an agency that toils away in obscurity between episodes of crisis. Befitting DOE's broad profile, past secretaries have come to the job with a range of previous experience, including academics like Steven Chu, former elected officials like Bill Richardson or Spencer Abraham, and national security experts like Navy Admiral James Watkins or James Schlesinger, who had been Defense secretary before becoming the nation's first Energy secretary in 1977.

"I think and I pray that whoever influences the president on the selection ... looks for somebody who knows how to manage a sprawling enterprise — and has some bona fides in one or two of the areas that will cause you the most consternation," said Hazel O'Leary, President Bill Clinton's first Energy secretary.

Trump has not said much about the type of person he would like to lead DOE, and the transition team covering the agency just got turned over in the past few days. Last week, lobbyists Mike McKenna and Mike Catanzaro left the transition team established by Chris Christie after Vice President-elect Mike Pence took over the operation and forced registered lobbyists to either give up their clients or resign. But on Monday, Trump's team announced that Tom Pyle, president of the libertarian-leaning American Energy Alliance, was the new point man on DOE's transition.

A DOE spokesperson said Monday afternoon no one at the agency has spoken to anyone affiliated with the Trump transition.

Trump on Monday named members for landing teams to several executive branch agencies, including heavy hitters like the State and Treasury departments as well as smaller outposts like the Small Business Administration. Additional announcements are expected this week.

On the campaign trail, Trump said several eyebrow-raising things about nuclear weapons and nonproliferation in general, including suggesting that Japan could defend itself with nukes and questioned NATO, an underpinning of U.S. nonproliferation policy. Energy Secretary Ernest Moniz was meeting with the directors of DOE's weapons-focused national labs two days after the election and stressed the importance of letting Trump's team know about their work, recalled Jill Hruby, the director of Sandia National Laboratories.

"One of the comments he made is that we have to collectively make sure that this transition team understands that the Department of Energy has a national security mission," Hruby said of Moniz.

Other lab directors are churning over how to address the common misconception about DOE.

"I worry about the possibility of people coming into the department who don't appreciate just how much national security work the department is responsible for," Lawrence Livermore

National Lab director William Goldstein said. "It's not unusual for people to not have a good understanding" of DOE's role in emergency response and weapons of mass destruction. "People may think of the department as an energy place — it certainly is — [but] the amount of responsibility and work is something we have to make sure is well understood in this transition."

Part of the challenge is that DOE is all over the map, literally and figuratively. The agency's nearly \$30 billion budget and more than 100,000 employees and contractors include 17 national labs, several field offices and other operations that give it a presence in more than a dozen states. Its mission is domestic and international, science and politics, and an advanced course in organization.

DOE sent nuclear experts to Japan after the Fukushima nuclear disaster in 2011, weapons specialists traveled to Switzerland with the U.S. delegation last year to help analyze aspects of the Iran nuclear deal. The agency also deployed a radiological team to Rio de Janeiro during the 2016 Olympics in case of a terrorist attack like a dirty bomb.

Researchers at DOE's Oak Ridge national lab, which is a science facility that also works on nuclear cleanup issues, spend about 20 percent of their time on work for other federal agencies, particularly for the Pentagon, Department of Homeland Security and the intelligence community, said Thom Mason, the lab's director since 2007. He said several DOE labs have similar breakdowns.

"One of the challenges of transition is it's a short period of time to go up a very steep learning curve," he said.

Past energy secretaries have learned that crises can erupt without warning — and may be present virtually from Day One. For Abraham, President George W. Bush's first Energy secretary, it was the Enron crisis roiling electricity markets across the West.

"I get sworn in during the Inaugural parade and then informed that there was a rolling blackout in California happening the moment of my arrival," Abraham said in an interview. Two days later, he was in the White House trying to figure out whether to extend an emergency order signed by his predecessor compelling power sales in California.

On her first week on the job, O'Leary had to decide what to do about two leaking tanks of radioactive nuclear waste at DOE's Hanford site in Washington state, where problems persist to this day. Just last month, the site made [headlines](#) when a work crew was accidentally exposed to radiation.

"Boy, did I come up to speed on waste management and I didn't get out of it for six months," O'Leary recalled in a recent interview.

For all the high praise Moniz enjoyed from both Republicans and Democrats, even he has been dogged by troubled multibillion dollar projects few Americans are even aware exist: a waste treatment project in Washington state, accidents at a radioactive waste storage site in New Mexico and the uncertain future of two nuclear processing facilities in South Carolina.

In July 2012, peace activists — including an octogenarian Catholic nun — broke into the Y-12 National Security Complex, an ostensibly high-security uranium processing facility. There were concerns at DOE headquarters that Chu, Obama's first Energy secretary, may have to consider resigning over the incident. Instead, aside from the occasional tongue-lashing on the Capitol Hill, GOP lawmakers proved to be more concerned with the agency's imbroglio involving a \$535 million federal loan guarantee to the ill-fated solar manufacturer Solyndra.

Despite the decades of headaches and the trail of embarrassments sprinkled throughout the agency, presidents tend not to lose much sleep over the job. Energy secretary was one of the last Cabinet posts Bush filled on his way into office, in part, Abraham said, because the new president considered appointing a Democrat to the job.

"There's always going to be a focus on [the departments of] Defense, State, Justice and Treasury because they're the oldest agencies and they're the ones that are responsible for all of the top issues of the day," Abraham said.

Sometimes the confusion over DOE's mission becomes a waste of everyone's time.

Halfway through his tenure, Chu, a Nobel Prize-winning physicist and aggressive thinker on climate issues found himself on CNN being interviewed about high gasoline prices frustrating commuters — an issue far-afield for his job description. Moniz has been pelted with misfired questions about oil and gas permitting on Capitol Hill.

Former Alaska governor and Republican vice presidential nominee Sarah Palin also made a brief pitch for heading DOE in a Donald Trump administration by talking about oil, gas and minerals — apparently mistaking DOE's job description with that of the Interior Department.

Despite the lack of public clues, Trump is said to be considering a variety of possibilities to lead DOE.

Continental Resources CEO Harold Hamm, who had been advising Trump's energy policy on the campaign and some view him as a top contender, likely has the management skills to grapple with a large bureaucracy. But his understanding of DOE's nuclear mission is an open question.

Former Texas Gov. Rick Perry famously proposed eliminating the Energy Department when he was a presidential candidate in 2012, but he met with Trump Monday, reportedly to discuss a possible appointment as Energy secretary.

Rep. Kevin Cramer (R-N.D.), a former state utility regulator and a Trump energy adviser, seemed interested in the post but many of the energy policy levers that states are accustomed to only have parallels with FERC, an independent subdivision of DOE.

Meanwhile, James Connaughton, a former utility executive who was Bush's head of CEQ, and the Chamber of Commerce's Karen Harbert, a former DOE assistant secretary, have as good a snapshot of the agency's mission statement as anyone being widely discussed. Venture capitalist

Robert Grady, another rumored candidate, was an adviser on energy and environment issues in the George H. W. Bush White House.

It may be several more weeks until Trump taps someone to run DOE.

"It's a tough place," a former Energy Department official said. "Anyone who really says they want to go there I wonder if they really know what they're getting into."

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### **Inside Moniz's mission to reshape the Energy Department [Back](#)**

By Darius Dixon | 03/25/2016 05:00 AM EDT

The clock is ticking down on Ernest Moniz's three-year campaign to reshape the Energy Department's mammoth bureaucracy.

Even as he helped negotiate last year's Iranian nuclear deal and pressed the global effort to fight climate change, the energy secretary has sought to streamline the agency and improve how it oversees the national labs and approves new projects.

Unlike his predecessor, Steven Chu, who ran a department flush with \$35 billion in stimulus funding, Moniz has faced the budget sequester, a divided Congress and an agency bruised by bad press after the Solyndra solar imbroglio. And he's had to cope with that all while grappling with the still-unsolved problem of where to store much of the nation's nuclear waste.

"Some of these things are bigger and longer term than anybody who's in for a political term has the time and/or energy to deal with," said Dan Arvizu, who stepped down as director of the National Renewable Energy Laboratory last fall. "So, you pick your battles, pick what you're gonna do — your two or three things — and then recognize that your clock's going to run out before you know it."

Certainly Moniz, a high-ranking DOE official in the Clinton administration, entered the job knowing the challenges he faced. John MacWilliams, now a top official at the agency, recalled meeting with then-nominee Moniz at his Massachusetts Institute of Technology office in April 2013, while Cambridge was still under "shelter in place" restrictions after the Boston Marathon bombing.

"I walked in and every whiteboard in the office was filled with a detailed depiction of what became the reorganization of the department," MacWilliams said. By July of that year, Moniz unveiled his [reorganization plan](#) to the agency staff.

Many current and former DOE officials said Moniz's biggest agenda item was a relatively

unheralded one: creating the role of undersecretary for management and performance. That job focused on what Moniz and his advisers saw as their most difficult task: project management.

DOE projects tend to come in one size: massive, not only in their dimensions but in delays and cost overruns. Project management problems have kept the department on the Government Accountability Office's infamous High Risk List for a quarter-century, soured its relationship with Congress and frustrated the network of research labs that report to it.

The Management and Performance office went over well with the White House, a former DOE official said. It also appealed to lawmakers on Capitol Hill, who hoped it might address the agency's terrible record on nuclear waste cleanup.

Many of the frustrations over waste stem from the political stalemate over the Yucca Mountain project, as well as criticisms that DOE's weapons cleanup mission has progressed at an painfully slow pace, allowing costs to spiral higher.

"Everyone thinks Moniz is so great, but he will be leaving the biggest mess I have ever seen for his successor," one former senior DOE official said in an email. "By the time the real liability for nuclear waste is revealed, the cost estimate for refurbishing H Canyon [a nuclear chemical separations plant] is revealed, and every other mess he has left behind, Moniz will likely be the president of some prestigious university somewhere."

The official added: "I wonder if after a while all we'll be doing is paying fines and not doing any research, cleanup or management of fuels and [high-level waste]."

One conservative critic of the agency says waste cleanup, called environmental management, is DOE's single most important task.

"And the spectacularity with which it fails at it should give pause to anyone supporting any DOE activity beyond that, as far as I'm concerned," said Jack Spencer, an executive with the Heritage Foundation's Institute for Economic Freedom and Opportunity. "DOE should be focusing on that mission and not worrying about reducing the cost of solar panels, nuclear reactors or anything else that the market is perfectly capable of taking care of."

Much of the agency's work to overhaul its project management falls to MacWilliams, now an associate deputy secretary focused on tackling some of DOE's thorniest quagmires. He is also the agency's first chief risk officer.

A former investment banker who worked at Goldman Sachs and JP Morgan Partners, MacWilliams created a risk committee stacked with some of the agency's most senior project managers — people, he said, who know the "ground truth."

But some of those decisions have generated political heat, such as the effort to defund the MOX project in South Carolina.

Moniz's confirmation was held up for several weeks while Sen. Lindsey Graham (R-S.C.) sought

assurances about the administration's commitment to the project, which would process weapons-grade plutonium into nuclear fuel. But after Moniz came to power — and the release of several studies — he had to explain that the MOX project, which was billions of dollars over budget and decades behind schedule, was a mistake. The state has since sued DOE for not collecting nuclear material from the unfinished facility on time and this week Republican Gov. Nikki Haley pressed Moniz to halt a shipment of weapons-grade plutonium from entering South Carolina.

Moniz and MacWilliams have pushed for a cheaper alternative to move the plutonium out of the state about two decades ahead of schedule. But that would likely mean laying off of hundreds of contractors, and the state opposes it.

To MacWilliams, MOX is emblematic of a flawed DOE review process. It was a first-of-its-kind project that was approved with only 25 percent of its design completed, so it wasn't a surprise when it soon fell behind its deadlines. DOE's new Risk Committee now requires designs to be 90 percent completed for large nuclear projects, and forces managers to address the panel at each critical decision point, so MacWilliams said these problems are unlikely to recur. "We'll make mistakes but not these kinds of mistakes," he said.

The goal, Moniz says, is "staying ahead of the projects before they turn into big problems" — addressing "little alligators" before they turn into "big alligators," as he is fond of telling his staff.

While it's critical to make structural changes to how projects are reviewed, Moniz told POLITICO, federal spending is another issue.

"We have the funding to make serious progress," he said in an interview in his office. "We don't have all the funding we could use effectively to fast-track projects and ultimately save life-cycle costs substantially."

However, the Senate hasn't confirmed either of the people Obama nominated for the Management and Performance undersecretary post.

Another priority for Moniz has been to improve relations with the 17 national labs — some of which felt they had been pitted against each other under Chu — and improve their collaboration.

"Before we leave here, it is our intent to do a major integrative report on the laboratories," Moniz said. "That will be part of providing something that we can hand over to the next administration."

The labs have operations in 14 states, so their directors can be some of Moniz's best salespeople with the Senate if the department can gain the labs' trust and generate results.

"You have really smart people and for a while they felt like they weren't in the circle of trust," said Jonathan Levy, who helped manage the transition between the two secretaries and eventually became a deputy chief of staff to Moniz.

The labs have long felt put upon by both Congress and DOE headquarters — "One of us gets cancer, and all of us get chemotherapy," was how one former director of Sandia National Lab was known to describe the backlash from Washington. And although Chu had led a national lab himself, he didn't embrace the agency bureaucracy the way Moniz has, said Arvizu, who says he's briefed eight energy secretaries during his roughly 40 years in the lab system.

"Steven Chu's a brilliant scientist. Certainly though, one of his favorite things is not to manage a bureaucracy," Arvizu said. Where Moniz uses collaboration, Chu unintentionally fostered a competition that was "absolutely destructive" for the labs.

Moniz also instituted a tonal change that was "huge" among lab employees by insisting that no one at DOE headquarters call them "contractors," preferring instead "strategic partners," Arvizu said.

Arvizu said the lab directors see their relationship with headquarters as better than ever, but they fear that ties with Washington will erode under the next secretary. So the lab directors are looking to make permanent the councils and meetings that have been set up under Moniz.

"Institutionalize," he said, has "been the watchword for the last year or so."

Moniz is similarly boastful of how relations have improved with the labs.

"If you look out there you will see that the laboratories are doing a lot more work together now, collaboratively trying to be more than the sum of the parts," he said.

Moniz has also tried to bring together the Energy Department's agency's "applied" and basic science offices, and he executed a long-expected merger between the science and energy undersecretaries.

That built on Chu's efforts, said Brandon Hurlbut, Chu's former chief of staff, who is now consults on energy-sector investing. But Chu also had to focus on carrying out a new president's priorities and rolling out billions of stimulus dollars.

Also, changing the relationship between the applied and basic research runs counter to traditional roles inside the agency bureaucracy, said David Garman, who served as an energy undersecretary under George W. Bush, in an email.

"[T]he renewable energy interests, the nuclear interests, and the fossil interests each like having their own assistant secretary as their inside-the-administration cheerleader," Garman said. "They would all probably oppose a rational reorganization, and they would incite their allies in Congress to fight it as well."

Garman argues that DOE offices should be organized by energy use, like transportation or buildings, rather than by energy source, such as nuclear, and he helped write a [proposal](#) for DOE reform in 2013.

Though he praised many of Moniz's changes, Garman argued that both Obama's energy secretaries took a path of least resistance.

"Neither Secretary Chu nor Secretary Moniz wanted to take that fight on, so instead they implemented ARPA-E, the Innovation Hubs, the Energy Frontier Research Centers, and the Lab Councils while launching crosscutting initiatives on issues such as grid modernization," he wrote. "These are essentially workarounds that overlay the organizational stovepipes. Is it wasteful and duplicative? Yes. But it avoids upsetting the stakeholders and is thus politically convenient."

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## **House panel approves bipartisan update to Safe Drinking Water Act [Back](#)**

By Annie Snider | 07/13/2017 11:49 AM EDT

A House measure to update the Safe Drinking Water Act is gaining bipartisan momentum after lawmakers approved a slate of amendments during subcommittee markup this morning.

Among the changes made to the [Drinking Water System Improvement Act](#) by the House Energy and Commerce Committee's environment subpanel is a boost to the popular Drinking Water State Revolving Fund's authorization, allowing \$8 billion in spending over five years. Also approved were [amendments](#) supported by Democrats to require states to spend a minimum share of federal dollars on disadvantaged communities, encourage removal of lead service lines and require projects supported with federal funds to use American-made iron and steel.

Rep. [Paul Tonko](#) (D-N.Y.), the top Democrat on the subcommittee, said the measure that will now go to the full committee was a compromise after his party pushed for major increases in federal funding and changes to the process EPA must follow in order to set new drinking water standards.

"This bill reflects compromise. It is not the bill Democrats would have written on our own," Tonko said. "We have met halfway to get this bill on the path to being able to be supported by every or nearly every member of this committee."

**WHAT'S NEXT:** The measure heads to the full House Energy and Commerce Committee for consideration.

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## **Senate panel cancels Thursday votes on DOE, Interior nominees** [Back](#)

By Esther Whieldon | 07/26/2017 03:10 PM EDT

The Senate Energy and Natural Resources Committee today canceled its scheduled Thursday morning vote on a half dozen Energy and Interior Department nominees.

The panel had been slated to vote on Mark Wesley Menezes to be DOE undersecretary, David Jonas for DOE's general counsel, Paul Dabbar to be DOE undersecretary for science, Brenda Burman to lead Interior's Bureau of Reclamation, Susan Combs to be Interior's assistant secretary of policy management and budget, and Douglas Domenech to be Interior's assistant secretary of insular affairs.

**WHAT'S NEXT:** The committee did not state the reason for holding off on a vote but on its website [said](#) the business meeting is "postponed until a date and time to be determined."

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## **Commerce extends marine monuments review comment deadline** [Back](#)

By Esther Whieldon | 07/26/2017 06:00 PM EDT

The Commerce Department is giving the public through Aug. 14 to comment on its review of 11 marine national monuments and sanctuaries.

NOAA this afternoon [announced](#) it would extend the comment window due to "public interest and requests for additional time."

Per an executive order President Donald Trump signed in April, the Commerce Department, in consultation with the secretaries of Defense, Interior and Homeland Security, has until Oct. 25 to send the White House its analysis of the monuments and sanctuaries. The report will include the costs of managing the monuments and sanctuaries, the extent to which state, tribes and other agencies were consulted before those designations were made and the potential for offshore fossil fuel production on the Outer Continental Shelf in those areas.

Because the original comment deadline ends today, the agency is technically going to re-open the comment period for another 15 days starting July 31 but said it will accept any comments submitted in the meantime.

**WHAT'S NEXT:** The agency will continue to accept comments through Aug. 14.

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