

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Morning Energy
Sent: Wed 10/11/2017 2:03:57 PM
Subject: POLITICO's Morning Energy, presented by ExxonMobil: Reading the tea leaves on Clean Power Plan repeal — More political activity from Zinke revealed — Antiquities Act revamp gets its day in committee

By Anthony Adragna | 10/11/2017 10:00 AM EDT

With help from Alex Guillén and Emily Holden

LONG CARBON RULE BATTLE LIES AHEAD: President Donald Trump's administration sought to frame Tuesday's [move to rescind the Obama-era Clean Power Plan](#) as fulfilling a campaign process, but it really just kicked off what's likely to be an arduous and lengthy legal and regulatory process that may ultimately result in a replacement rule with very modest reductions in the emissions that fuel climate change. "This is the beginning of the process to carry out the president's promise to make sure that we do our job at the agency within the bounds of the law and don't declare war on certain sections of our economy," EPA Administrator Scott Pruitt said on "Fox News," his only public appearance Tuesday to discuss his proposed rule.

Many state officials, environmental advocates, businesses and reporters were left wondering why they hadn't received any sort of briefing or additional background before or after the proposal's release - especially since senior agency officials had a closed phone call Tuesday morning with conservative organizations where they took questions from groups like the Heartland Institute and State Policy Network, as Pro's Emily Holden [reports](#). Clint Woods, the director of the Association of Air Pollution Control Agencies, which represents mostly conservative state air agencies, said his members got a heads up on timing but would be "looking forward to more engagement prior to major announcements in the future."

Joe Goffman, EPA general counsel when the Clean Power Plan was proposed and finalized, said the agency typically had background conversations with all of those groups when rolling out a major proposal. "We thought that it was an elementary part of our obligation to present information to state governments, to the affected industry, often very broadly defined, and to environmental advocacy groups," Goffman said. A phone call between the administrator and reporters, and a briefing on the Hill for lawmakers was also customary, he said. Pruitt has accused Obama's EPA of not conducting enough outreach or listening enough to states, which Goffman said is "demonstrably false." The agency did not respond to questions about its outreach on the rollback.

ICYMI: Here's links to EPA's [fact sheet](#), [proposal](#) and [regulatory impact analysis](#).

Five things: Pro's Alex Guillén and Eric Wolff [take a look at](#) five of the biggest policy changes the Trump administration has made to try to prop up the prospects of fossil fuels. 1) Killing the crown jewel of Obama's climate change legacy by axing the Clean Power Plan, 2) A push to shore up coal's place in the nation's electricity marketplace, 3) The likelihood of trade barriers on imported solar products, 4) Tapping the brakes on tightened mileage standards that Obama had imposed for cars sold from 2022 to 2025 and 5) Actions designed to make federal lands more

amenable to fossil fuel development.

Push to shutter coal plants gets another jolt: Former New York Mayor Michael Bloomberg is at the Sierra Club's HQ this morning at 11:45 a.m. where he'll announce "an increased commitment" to shutter the U.S. coal fleet even amid the repeal of the Clean Power Plan. That comes as the Union of Concerned Scientists released [an analysis](#) finding 21 percent of the nation's coal fleet uneconomic and an additional 18 percent already slated for retirement or conversion to natural gas.

Quotable: California Senate leader (and potential Sen. [Dianne Feinstein](#) primary challenger) Kevin de León not mincing words on the withdrawal: "Washington's utter failure to confront the existential threat of climate change will go down among the most shameful chapters in US history," he [tweeted](#).

Here's where we are: EPA started the process to roll back the signature Obama-era effort to combat climate change even as the U.S. is reeling from back to back to back to back hits from hurricanes and ferocious wildfires slam California. Assuming a [disaster aid package](#) eventually clears Congress as expected, lawmakers will have spent more than \$50 billion responding to the natural disasters already, and House Majority Leader [Kevin McCarthy](#) said last week "I do not believe this will be the last of the supplementals." Three weeks after Hurricane Maria slammed into Puerto Rico, 84 percent of the island still lacks electricity and 36 percent of residents still don't have potable water, according to [official figures](#).

TIMELY TELEVISION VIEWING: "Frontline" titles its episode tonight "War on the EPA," as the PBS show focuses on Pruitt's rise from an anti-EPA crusader as Oklahoma attorney general to running the agency. Trailer for the episode [here](#).

WE'RE ROLLING RIGHT THROUGH THE MIDDLE OF THE WEEK! I'm your host Anthony Adragna, and Independent Petroleum Association of America's Neal Kirby was first to identify Sen. [Bill Cassidy](#) as our most recent physician elected to the Senate. For today: Who is the only senator to win a reelection race in their 90s? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter [@AnthonyAdragna](#), [@Morning_Energy](#), and [@POLITICOPro](#).

SKI RESORTS, ALASKAN STEAKHOUSE, OH MY! Interior Secretary Ryan Zinke attended at least two additional political fundraisers during trips he took for official Interior business, Pro's Esther Whieldon and Ben Lefebvre [scoop](#). Federal law permits Cabinet officials to participate in partisan political activities on their own time and without using any federal resources, but FEC records don't list any reimbursement payments to Interior for the events. "Both law and common sense tell us that taxpayer resources are supposed to be used when you're doing the taxpayers' business [but] are not supposed to be used to help candidates get elected," said Brendan Fischer of the nonprofit watchdog organization Campaign Legal Center.

The two events were:

- A mid-March fundraiser at a ski resort in Big Sky, Mont., organized by committees affiliated

with Republican Sen. Steve Daines. Donors were asked to contribute \$3,000 if they were attending on behalf of a political action committee or \$1,500 for an individual. Also in attendance: Sen. John Hoeven and Senate Energy Chairman Lisa Murkowski. He didn't charge for lodging or his per diem for part of the trip.

- A May 31 fundraiser for Alaskan Rep. Don Young where a Young campaign spokesman, Matt Shuckerow, said the secretary made "only very brief remarks." He said the campaign "took concerted efforts to follow" strict guidance from Interior's ethics personnel.

Interior's response: Spokeswoman Heather Swift said ethics officials signed off on all trips and they all complied with the law. "The Interior Department under the Trump Administration has always and will always work to ensure all officials follow appropriate rules and regulations when traveling, including seeking commercial options at all times appropriate and feasible, to ensure the efficient use of government resources," she said.

NOT PLEASED: Amid weeks of reporting on non-commercial travel and other troubling behavior from Cabinet officials, the acting head of the Office of Governmental Ethics issued a memo warning he is "deeply concerned" by recent actions. Among the suggestions is "modeling a 'Should I do it?' mentality versus a 'Can I do it?' mentality" in their actions. "It is essential to the success of our republic that citizens can trust that your decisions and the decisions made by your agency are motivated by the public good and not by personal interests," David Apol wrote.

THE WOTUS WITH THE MOSTEST: The Supreme Court today will take up a wonky but important question central to federal water law: Should challenges to the Obama administration's Waters of the U.S. rule go through a district court first or straight to an appellate venue? Of course, the Trump administration is working to repeal WOTUS in the coming months and says it will issue a rewritten version early next year. But this venue question is all but guaranteed to apply again, meaning SCOTUS guidance could prove useful.

What you need to know: The Clean Water Act says that most CWA regulations and actions should be challenged first at the district level, but it lists seven exceptions that would go straight to a circuit court. Two are in play here: one regarding rules affecting effluent limitation guidelines, and one for any action approving or denying discharge permits. The Trump administration argues both exceptions apply, and the suits should go to a circuit court first. Various challengers, led by the National Association of Manufacturers, want it to go through district courts first.

History brief: After the rule was released, lawsuits were filed in both district and circuit courts throughout the country. After some district-level proceedings that led to a stay of WOTUS in 13 states only, the circuit-level cases were consolidated into one mega-case before the 6th Circuit, which then issued a nationwide injunction. The 6th Circuit then issued a complicated 1-1-1 ruling that concluded that it should indeed hear the challenge first. One judge said both exceptions apply, one said only one exception applies and the third said neither applies and the challenges should first go through district courts.

Why it matters: This isn't entirely an esoteric spat. Supporters of district-first litigation argue

the Clean Water Act gives more time to challenge regulations that go to lower courts first. It also means challengers can pick the district court where they want to sue, whereas circuit-first challenges would be randomly consolidated. Meanwhile, those who want circuit-first review argue that it provides more certainty and helps avoid patchwork problems - such as the 13-state WOTUS freeze.

EPICALLY BUSY DAY AT HOUSE NATURAL RESOURCES: The panel is slated to convene two separate hearings Wednesday to examine controversial measures on offshore drilling and the Antiquities Act:

- At 2 p.m., the Energy and Mineral Resources Subcommittee considers a draft of the Accessing Strategic Resources Offshore Act, which would expand offshore revenue sharing program to additional states; prevent future presidents from withdrawing sections of the outer continental shelf from drilling or designating marine sanctuaries; and repeal certain Obama-era rules on Arctic drilling, among other things. Witnesses include former Senate Energy Chairwoman Mary Landrieu.

- The full committee then gathers at 4 p.m. to mark up Chairman Rob Bishop's long-awaited effort to overhaul the Antiquities Act. The bill, H.R. 3990 (115), would require a federal environmental review process to designate any monument more than 640 acres in size, require the sign off from local officials on new large monuments and prohibit marine national monuments "with no archeological or historic sites in need of protection." Committee members will also consider a resolution requiring Zinke to disclose more information about his review of existing national monument designations.

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A NEW DISASTER EMERGES - CALIFORNIA WILDFIRES: Trump declared a major disaster in California Tuesday as wildfires have forced the evacuations of tens of thousands, cost at least 17 lives to date and caused billions in damage. "We are with you, our prayers are with you, and we will be with you every day until we put the fires out and stand with these families to rebuild these communities," Vice President Mike Pence said alongside McCarthy and Rep. Jeff Denham after a briefing Tuesday. Separately, California Sen. Kamala Harris and Feinstein asked Trump in a letter to take all steps to release federal aid "as soon as possible."

Ryan heading to Puerto Rico Friday: According to multiple reports, Speaker Paul Ryan heads to Puerto Rico Friday along with Cathy McMorris Rodgers, the fourth-highest House Republican; Appropriations Chairman Rodney Frelinghuysen; top Appropriations Democrat Nita Lowey and Puerto Rico Resident Commissioner Jennifer González. That comes as the Financial Oversight and Management Board for Puerto Rico hired Williams & Jensen to lobby the federal government on disaster relief and recovery efforts (h/t POLITICO Influence). The White House late Tuesday asked for an additional \$4.9 billion in emergency hurricane aid to help Puerto Rico as part of a disaster funding package the House is still expected to consider this week, Pro

Budget and Appropriation's Sarah Ferris [reports](#).

ON THE HOUSE FLOOR: Lawmakers today are slated to consider a bill of interest to ME fans. The Power And Security Systems Act [S. 190 \(115\)](#) would extend energy efficiency standards exemptions for external power devices and is slated to be considered under suspension of the rules, requiring two-thirds support for passage.

PROTESTING PERRY'S PUSH AT FERC: The Nuclear Information and Resource Service and allied organizations are greeting FERC employees today at 8:45 a.m. to protest Perry's push for new rules that "properly value" the coal and nuclear sectors. That comes as National Rural Electric Cooperative Association CEO Jim Matheson sent Perry [a letter](#) thanking him for "jumpstarting a conversation" about the nation's electric markets.

DRINKING WATER UTILITIES ENTER FARM BILL FRAY: The American Water Works Association wants Congress to include provisions and funding to better protect drinking water sources from agricultural runoff, Pro Ag's Jenny Hopkinson [reports](#). The group is also pushing for "robust overall funding" for the conservation title - keeping it at \$6 billion, if not adding to the current allotment.

FROM THE DEPARTMENT OF WHERE ARE THEY NOW: With his red sweater, coal plant worker Ken Bone rose to national attention as an undecided voter during last year's presidential race but he's since become quite critical of the Trump administration, [CNN reports](#). "Almost anybody who is currently a Democrat in the Senate, I think I would probably vote for over Trump," he said.

DEPARTMENT OF AWKWARD TIMING: Perry gave an interview to the American Gas Association's magazine that prominently features a picture of the secretary with disgraced Rep. [Tim Murphy](#). Read his interview [here](#).

MOVER, SHAKER: Keith Maley has started as director of PR at the Trust for Public Land. He previously was director of regional media in the Obama White House (h/t [Playbook](#)).

Liam Donovan has joined Bracewell's Policy Resolution Group as a lobbyist specializing in tax, infrastructure, energy and other issues. He comes from the Associated Builders and Contractors where he was as senior director of legislative and political affairs.

Amy Graham is starting next week as communications director for Sen. [Todd Young](#). She most recently worked as senior communications adviser and deputy associate administrator at the EPA (h/t [Playbook](#)).

QUICK HITS

- Hillary Clinton at UC Davis: Climate change a factor in Northern California wildfires. [First Coast News](#).

- IMF tells rich nations that greater urgency needed on climate change. [The Guardian](#).

- Foster Friess confirms interest in primarying 'hero' John Barrasso. [Washington Examiner](#).
- Colonial partners with Enterprise for fuel exports from Beaumont terminal. [Reuters](#).
- Despite some opposition from Los Angeles, giant Southern California water agency approves Delta tunnels project. [Sacramento Bee](#).
- Lake Erie algal bloom cleanup falling short of 40 percent phosphorus reduction goal. [Cleveland.com](#).

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<http://www.politico.com/tipsheets/morning-energy/2017/10/11/reading-the-tea-leaves-on-clean-power-plan-repeal-222739>

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