

**To:** Jackson, Ryan[jackson.ryan@epa.gov]  
**From:** Morning Energy  
**Sent:** Thur 7/27/2017 2:05:58 PM  
**Subject:** POLITICO's 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 10:00 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.

**EU 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.

## 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:*

<http://www.politico.com/tipsheets/morning-energy/2017/07/27/pruitts-next-step-on-power-plants-221554>

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