Message

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**Sent:** 8/17/2018 2:04:52 PM
**To:** Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
**Subject:** POLITICO's Morning Energy: What's happening with WOTUS — Keystone fight far from over — Wheeler to Michigan

By Kelsey Tamborrino | 08/17/2018 10:00 AM EDT

*With help from Annie Snider, Ben Lefebvre and Alex Guillén*

**A COUNTRY DIVIDED:** Which streams and wetlands are protected under the Clean Water Act? As of Thursday, the answer depends on where you're standing. After a South Carolina District Court ruling overturning the Trump administration's attempted delay of the Obama administration's Waters of the U.S. rule for failing to offer the public a proper opportunity to comment, the 2015 rule is now officially on the books in 26 states — but not in the other 24 states where other district court injunctions are in place.

"**The agencies refused to engage** in a substantive reevaluation of the definition of the 'waters of the United States' even though the legal effect of the Suspension Rule is that the definition of 'waters of the United States' ceases to be the definition under the WOTUS rule and reverts to the definition under the 1980s regulation," Judge David Norton wrote in Thursday's ruling. "An illusory opportunity to comment is no opportunity at all."

**Environmental groups hailed the decision**, with Jon Devine of the Natural Resources Defense Council calling it a "sharp rebuke to the Trump administration." Meanwhile, Zippy Duvall, president of the American Farm Bureau Federation, one of the fiercest critics of the Obama-era rule, called on the Trump administration to "to take immediate steps to limit the impact of this dangerous court decision."

**But will it hold?** The Justice Department is reviewing the decision, a spokesman said, and players on both sides broadly expect an appeal. Separately, EPA said in a statement it and the Army Corps of Engineers "will review the order as the agencies work to determine next steps." But the fate of the delay rule could ultimately become moot if the federal district judge in Texas grants a nationwide injunction request.

**And don't forget, this is just the warm-up fight.** The battle royale will be over the Trump administration's rule to repeal the 2015 rule, which the agency has not finalized. Geoff Gisler, the Southern Environmental Law Center attorney who brought yesterday's case on behalf of local environmental groups, argued that Thursday's South Carolina court decision has implications for that fight and "should give the agencies pause" as they move forward. "The agencies just aren't telling the public what they're doing," he argued. "What this decision said was you can't just have a comment period, it has to be a meaningful comment period."

**WE MADE IT TO FRIDAY!** I'm your host, Kelsey Tamborrino. Simon and Company's Jen Covino named the eight senators who formerly served as mayors: Dianne Feinstein, Cory Booker, Jim Inhofe, Bob Corker, Bernie Sanders, Tim Kaine, Mike Enzi and Bob Menendez. For today: Who are the three current House lawmakers who previously served as ambassadors? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

**FAR FROM OVER:** A federal judge's order directing the State Department to conduct a supplemental environmental review for the Keystone XL pipeline's updated path through Nebraska is another setback in nearly a decade full of them for TransCanada. The order is sure to stall construction of the pipeline for months, Pro's Ben Lefebvre reports. Plaintiffs in the case said the review would involve public hearings in Nebraska and consultations with Native American tribes whose land the pipeline would traverse.

**Pipeline opponents** are hoping to use the new review to push for a broader study of the project, Ben reports. Doug Hayes, a lawyer for the Sierra Club and one of the plaintiffs in the case, said the judge's ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route. "If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

**WHERE'S WHEELER?** Acting EPA Administrator Andrew Wheeler travels to Michigan today to discuss issues plaguing the Great Lakes and meet with GOP Rep. Tim Walberg, a member of the Energy and Commerce Committee, and officials from the Michigan Department of Natural Resources and Department of Environmental Quality.

**WHEELER DELIVERS MESSAGE ON HARASSMENT:** Wheeler reaffirmed EPA's policy against harassment in a memorandum sent to staff Thursday. Wheeler wrote that he expects "all individuals working at the EPA — employees, supervisors and non-employees — will not engage in or be subjected to unlawful and prohibited harassment."

**MURKOWSKI: FERC NOMINEE SHOULD GO LITMUS TEST-FREE:** Senate Energy Chairman Lisa Murkowski wouldn't comment on POLITICO's report that DOE's Bernard McNamee will be nominated to FERC. But the Alaska Republican said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants, Pro's Darius Dixon reports . "I worry that this is going to be viewed as, 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski said. "That's not the way that we should be selecting commissioners for the FERC."

**GET YOUR COMMENTS IN:** American Petroleum Institute's Frank Macchiarola reiterated the need for Renewable Fuel Standard reform on a call with reporters Thursday outlining the group's comments for EPA's proposed biofuel blending requirements for the coming year under the RFS. "Very simply what we want is an end to this program by 2022," he said. Macchiarola said API is "willing to compromise" on certain policies like a waiver for summertime sales of E15, but only if the program will sunset by 2022. "The problem again is that the ethanol industry has been dug in to not doing anything," Macchiarola said. He added legislation is being drafted to reform the program in both chambers, but noted challenges and lengthy debate are likely ahead. Comments are due today on EPA's proposed volumes, with the final rule due to be released by Nov. 30.

— **API is also looking at the proposed plan** by EPA and the Department of Transportation to freeze fuel efficiency standards for cars and trucks. "It is a very complex proposal to a very complex program," Macchiarola said. "We will say that we appreciate the administration's relooking at CAFE in the light of changing energy market realities."

**SECRET'S OUT:** Thursday was the last day for comments on EPA's proposed "secret science" rule, which would ban the use of studies that don't publicly disclose all their data. Getting their thoughts in under the wire, Sens. Sheldon Whitehouse, Brian Schatz, Maggie Hassan, Jeff Merkley, Ed Markey, Tammy Duckworth, Kirsten Gillibrand, Tom Carper and Kamala Harris banded together to make their opposition known. "The proposed rule is illegal because it is arbitrary and capricious," they write, adding that "the proposed rule is illegal because it is the result of an effective delegation of rulemaking authority to private interests."

**The American Chemistry Council**, meanwhile, applauded the proposal in its comment Thursday. "EPA's proposal codifies an important good governance principle — that government agencies should be as transparent as possible, within the bounds of the law, about scientific information relied upon and the justifications for the significant regulatory decisions they make." Still, the trade association also highlighted that implementation of the plan would benefit from better historical context and applicability, and that greater clarity is required on key definitions and regulatory text, among other recommendations.

**FIGHTING FIRE WITH A FEDERAL PLAN:** The Agriculture Department released a new, aggressive approach to fighting wildfires Thursday, with proactive steps. During a bipartisan press conference, Secretary Sonny Perdue unveiled a plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales, Pro's Liz Crampton reports . Though Perdue brushed aside specific questions on climate change's role, he said Interior Secretary Ryan Zinke is on board with the plan and noted further details and costs will be forthcoming from the U.S. Forest Service. "Really a lot of people ... when you talk about climate change, they want to talk about what the causes are," Perdue said. "[What] we're trying to talk about is the impact."

**FERC RESTARTS PART OF PIPELINE:** FERC modified a stop work order for the Mountain Valley Pipeline this week, allowing construction to restart for around 77 miles of the pipeline's West Virginia route with the exception of a 7-mile area surrounding the Weston and Gauley Bridge Turnpike Bridge Trail, MVP said Thursday. However, the company said about half of its construction workforce has been released due to continued delays. MVP said that it "remains committed to the earliest possible in-service date," though it noted that is now expected to arrive during the fourth quarter of 2019.

**GREENS CALL FOR FERC REVIEW:** The Southern Environmental Law Center and Appalachian Mountain Advocates petitioned the 4th U.S. Circuit Court of Appeals on Thursday to review FERC's approval of the Atlantic Coast Pipeline. The suit was filed on behalf of 13 other conservation groups. "FERC ordered the ACP construction stopped because the 4th Circuit determined that permits were issued without proper scrutiny," SELC attorney Greg Buppert said in a statement. "On the very same day, FERC rejected a rehearing request in which the conservation groups asserted that it also rushed through its decision to permit a pipeline that we don't need." The 4th Circuit last week vacated two permits issued for the project by the U.S. Fish and Wildlife Service and the National Park Service.

**GREENS FILE FOIA SUIT:** Environmental group Friends of the Earth filed a lawsuit Thursday against the Interior Department for lack of response to a Freedom of Information Act request. The lawsuit seeks to compel DOI to produce documents related to senior members of the department and the industries they regulate. The suit points to David Bernhardt's work as a lawyer and lobbyist for oil and gas companies and Vincent DeVito's time working as an energy industry representative. Friends of the Earth is being represented by the law firm Meyer Glitzenstein & Eubanks LLP.

**AD-ING IT UP:** Ahead of Wyoming's gubernatorial primaries Tuesday, a partnership between the Wyoming Wildlife Federation and Rocky Mountain Farmers Union, dubbed the Wyoming Conservation Legacy, will launch a five-figure ad campaign asking candidates to support conservation. The campaign will begin on Saturday and run through Aug. 21 with full-page print ads in the Casper Star Tribune and the Wyoming Tribune Eagle, separate radio buys on Wyoming Public Media programs, and digital ads across the state. See the ads here.

**MAIL CALL! ON THE FARM:** The National Biodiesel Board sent a letter to farm bill conference committee lawmakers reiterating its support for the inclusion of biodiesel programs in the five-year bill.

**STAR-STUDDED SUMMIT:** Attendees of the Global Climate Action Summit in San Francisco in September will hear from former White House officials, including former Vice President Al Gore and Secretary of State John Kerry. The summit announced Thursday night that new delegates will join the event, including Executive Secretary of the United Nations Framework Convention on Climate Change Patricia Espinosa and U.N. Special Envoy for Climate Action Michael Bloomberg. Actor Alec Baldwin and chimpanzee expert Jane Goodall will also attend.

**GO NUCLEAR:** The American Nuclear Society this week launched a nuclear science educational program for middle schoolers that covers topics like fission and fusion, and detecting radiation. The "Navigating Nuclear:

Energizing Our World" program is aligned with the Next Generation Science Standards framework, which provides an evidence-based foundation for scientific research.

**MOVER, SHAKERS:** Jack Cramton, policy adviser for Sen. Bill Cassidy (R-La.), will start Monday as a legislative affairs adviser at the Department of Energy's Congressional and Intergovernmental Affairs Office.

**QUICK HITS**

— "U.S. energy chief applauds Mexico's plan to end fuel imports," Reuters.

— "Trump's CO2 rule is coming, and industries wonder who's next," E&E News.

— "California fire risk won't abate until November, U.S. warns," Bloomberg.

— "Zinke said he would never sell public land. But Interior is considering it," The Washington Post.

— "Elon Musk confronts a fateful tweet and an 'excruciating' year," The New York Times.

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