

**From:** POLITICO Pro Energy  
**To:** [megan\\_bloomgren@ios.doi.gov](mailto:megan_bloomgren@ios.doi.gov)  
**Subject:** Afternoon Energy, presented by Trout Unlimited: Paris decision on hold — Democrats demand investigation into Icahn's biofuels advice — Emergency declared at Hanford  
**Date:** Tuesday, May 09, 2017 3:23:48 PM

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By Kelsey Tamborrino | 05/09/2017 04:18 PM EDT

*With help from Alex Guillén, Esther Whieldon and Darius Dixon*

**TRUMP DELAYS PARIS DECISION:** President Donald Trump had been expected to decide as soon as this week whether the U.S. will stick with the Paris climate deal. But he does not plan to make up his mind until he returns from the G-7 summit in Italy at the end of this month, White House press secretary Sean Spicer [said today](#). "The president has been meeting with his team for quite a while on this matter," Spicer told reporters at the afternoon White House briefing. The Paris deal has divided Trump's advisers between hard-line conservatives like strategist Steve Bannon and EPA Administrator Scott Pruitt, who want to exit the deal, and more moderate voices such as first daughter Ivanka Trump and Secretary of State Rex Tillerson, who say Trump would be better off maintaining a seat at the table in global climate negotiations.

**Meanwhile, former Secretary of State Condoleezza Rice** is reportedly pushing Trump to stay in the Paris deal. According to [The Wall Street Journal](#), Rice "implored the president to avoid the diplomatic backlash that could result from the U.S. fully withdrawing from the agreement."

**Former President Barack Obama** [said today](#) he believes the U.S. will continue to make progress on climate change, whatever Trump decides to do about Paris. "It may be that some of the steps we put in place move more slowly than they otherwise would have, but I'm confident that the United States will continue to move in the right direction," Obama said. "The private sector has already made a determination that our future is in clean energy." More [here](#).

**And Chinese President Xi Jinping** told French President-elect Emmanuel Macron that he would uphold the agreement, Reuters [reports](#).

**CORN-STATERS MOSTLY OK WITH METHANE VOTE:** Most of the corn-state Republicans who had been withholding their support from an oil industry-backed measure to overturn BLM's methane rule are now on board, Sen. [John Thune](#) said today. They had been stuck on the fence in an effort to secure support for an EPA waiver that would make it easier for retailers to sell 15 percent ethanol blends year-round, and Thune said GOP leaders assured them they would have a legislative path for that change. "I think most of us who are interested in that issue are probably in a place now where we're confident that we're going to get this dealt with," Thune said of the ethanol waiver. "I think most will be on board [with the methane CRA] but I can't speak for them all." Anthony Adragna has more [here](#).

**In other methane news**, the son of fracking pioneer George Mitchell is advocating against overturning the rule. "Repeal would be a costly and wasteful mistake," Todd Mitchell wrote in a [Denver Post op-ed](#) today.

**Welcome to Afternoon Energy.** I'm your host Kelsey Tamborrino. Send your thoughts, news

and tips to [ktamborrino@politico.com](mailto:ktamborrino@politico.com), [mdaily@politico.com](mailto:mdaily@politico.com) and [njuliano@politico.com](mailto:njuliano@politico.com), and keep up with us on Twitter at [@kelseytam](https://twitter.com/kelseytam), [@dailym1](https://twitter.com/dailym1), [@nickjuliano](https://twitter.com/nickjuliano), [@Morning\\_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

**DEMOCRATS DEMAND ICAHN INVESTIGATION:** Sens. [Elizabeth Warren](#) and [Debbie Stabenow](#) are leading a group of their Democratic colleagues asking federal regulators to look into whether Trump's billionaire adviser Carl Icahn broke the law by advocating changes in biofuels policy and reaping a huge windfall at one of his companies. The senators' argue that CVR Refining, which Icahn owns, made an unusual bet that prices would drop in the market for biofuel credits associated with the Renewable Fuel Standard. "Mr. Icahn was in a unique position to know and impact the direction of government policy — and evidence suggests that he did so," the senators wrote. Eric Wolff has more [here](#).

**EMERGENCY DECLARED AT HANFORD:** The Energy Department's Cold War nuclear weapons cleanup site in eastern Washington declared an emergency at 11:26 a.m. after railroad tunnels containing contaminated materials near a former chemical processing facility partially collapsed. All the workers have been accounted for and there have been no reports of injuries, a hotline operator told AE. DOE says that the best place to get the latest on what's going on there is on the emergency information [webpage](#). The 200 East Area, where the emergency was declared, also features a defunct and highly contaminated plutonium extraction facility. A local reporter [posted a surface picture](#) on Twitter of the tunnel collapse. The Hanford Fire Department is on scene and the agency said that there are concerns that soil over the tunnels could sink. Energy Secretary Rick Perry is nearby today visiting Idaho National Lab.

**\*\* A message from Trout Unlimited:** For over 50 years, Trout Unlimited has been dedicated to conserving, protecting and restoring North America's coldwater fisheries and watersheds on behalf of today's anglers and coming generations of sportsmen and women. Join us as we support America's public lands and national monuments: <http://bit.ly/2paVoYB> \*\*

**MEMO PROVIDES FURTHER DETAIL ON ENERGY ORDER:** A Monday [memo](#) from the White House is providing more detail on Trump's [energy executive order](#), Alex Guillén [reports](#). Trump's order gave agencies until this Friday to submit to the White House a plan to carry out their regulatory reviews. The memo outlines five specific aspects such plans should contain, starting with identifying actions that "potentially burden the development or use of domestically produced energy resources" and ending with recommendations to "alleviate or eliminate the potential burden."

**WATER WELL INFO EXEMPT FROM FOIA:** The D.C. Circuit Court of Appeals today [ruled](#) that the government does not have to hand over information on water wells thanks to an exemption in the Freedom of Information Act applying to "geological and geophysical information and data, including maps, concerning wells." The nonprofit AquAlliance had sought information on wells in northern California's Central Valley water project amid concerns over potentially adverse environmental effects of water transfers. The group argued that the FOIA exemption was only meant to apply to oil and gas wells for which there is competitive concern, not water wells, but the court did not agree.

**STATES WEIGH IN:** EPA and the Army Corps of Engineers want states to provide comments on their rewrite of the Waters of the U.S., [letters](#) sent this week show. "Cooperative federalism is a guiding principle for us. We want to clearly understand what definition will work best for your state as we develop a new federal definition of 'waters of the United States'

consistent with the Scalia opinion," the agencies wrote, [referencing](#) a framework previously laid out by the late Justice Antonin Scalia that has historically been disregarded in favor of a system described by Justice Anthony Kennedy. Alex has more [here](#).

**SACKETT LAWYER A TRUMP COURT PICK:** Trump has nominated Damien Schiff of the Pacific Legal Foundation, a conservative legal group, for a 15-year term on the U.S. Court of Federal Claims, which hears monetary claims against the federal government. Schiff successfully argued the 2012 Supreme Court case *Sackett v. EPA*, in which the high court unanimously [said](#) Clean Water Act administrative compliance orders could be challenged in court right away. The previous process required landowners to refuse to cooperate with the agency and wait to be taken to court, during which time huge fines racked up.

**LABRADOR RUNS FOR GOVERNOR:** Republican Rep. [Raul Labrador](#) will run [for governor](#) of Idaho in 2018, leaving his conservative House seat open in the next election. Labrador, a subcommittee chairman on the House Natural Resources Committee, filed to run for governor today. He was first elected to the House from Idaho's 1st District in the 2010 Republican wave election.

**EPA TO LET NORTH DAKOTA OVERSEE CCS WELLS:** EPA has [proposed a rule](#) to grant North Dakota primacy on regulating long-term storage of captured carbon, drawing cheers from North Dakota Sen. [John Hoeven](#). "We've worked since 2008 to develop a states-first approach to regulating geological sequestration, which will help our energy industry, both traditional and renewable, to develop new technologies for storing CO2," Hoeven said in a statement today. Eric [has more](#).

**CALIFORNIA TO EXPLORE CHANGING UTILITY MODEL:** Commissioners of the California Public Utilities Commission and California Energy Commission have scheduled an all-day [joint hearing](#) on May 19 to examine the changing status of retail choice in the state and potential changes that may be needed to the utility business model as more distributed generation and storage is brought online. CPUC staff issued a [white paper](#) Monday afternoon on the topic.

**MOVERS, SHAKERS:** Jason Stanek, an energy market oversight branch chief in FERC's Enforcement Office is leaving the agency for a job as House Energy and Commerce senior energy counsel and policy adviser, Stanek told AE. Stanek also served as policy adviser to former Commissioner Philip Moeller and former Chairman Pat Wood.

## QUICK HITS:

- Earth could break through a major climate threshold in the next 15 years, scientists warn, [The Washington Post](#).
- Majority of superfund sites near low-income housing, [Bloomberg BNA](#).
- In Trump era, conservation advocate preaches collaboration, [E&E News](#).

## WIDE WORLD OF POLITICS:

- Senate Democrats pressed on [poor diversity in hiring](#)
- [Who has Trump's ear?](#) Often rich, white, Republican men

— Former presidents walk fine line [in Trump's America](#)

**\*\* A message from Trout Unlimited:** For over 100 years the Antiquities Act has been a bipartisan tool for conserving America's public lands and our outdoor heritage. Since the time President Theodore Roosevelt signed the Act into law, the Antiquities Act has provided for the long-term conservation of some of the best fish and wildlife habitat and hunting and angling opportunities in the country, spurring local economies. In these places, locally driven conservation efforts need to be preserved and celebrated. Currently, the Department of the Interior is reviewing national monuments designations. Secretary Zinke has strongly supported keeping America's public lands in public hands. Join us in showing him that we support upholding our national monuments: <http://bit.ly/2paVoYB> \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/afternoon-energy/2017/05/paris-decision-on-hold-022753>

## Stories from POLITICO Pro

### Spicer: Trump will not announce Paris climate decision until after G-7 [Back](#)

By Madeline Conway | 05/09/2017 02:41 PM EDT

President Donald Trump will not announce whether the United States will pull out of the Paris climate agreement until after he returns from the G-7 leaders' summit in late May, White House press secretary Sean Spicer said today.

"The president has been meeting with his team for quite a while on this matter," Spicer told reporters at the afternoon White House briefing.

The administration has postponed making a final decision on the agreement multiple times, as Trump's advisers are reportedly split over whether to reaffirm the commitment to the deal or ditch it.

The United States, alongside more than 100 other countries, signed onto the accord under former President Barack Obama, seeking to limit greenhouse gas emissions in member countries and fight back against climate change.

Some senior members of the Trump administration — including the president — have questioned the validity of climate science in the past. Scientists overwhelmingly agree that human activity is the main cause of the rise in global temperatures.

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### Obama: U.S. will keep moving in 'right direction' on climate [Back](#)

By Helena Bottemiller Evich | 05/09/2017 10:17 AM EDT

The Paris climate agreement may be on shaky ground in the Trump administration, but former

President Barack Obama said today he's hopeful the U.S. will keep making progress on climate change.

Obama, who played a pivotal role in striking the Paris accord, acknowledged during remarks at a conference in Italy that the Trump administration has a different take on climate policy, but pointed to significant changes happening in the private sector.

"It may be that some of the steps we put in place move more slowly than they otherwise would have, but I'm confident that the United States will continue to move in the right direction," Obama said, in his first public comments on the Paris accord since leaving office.

"The private sector has already made a determination that our future is in clean energy," Obama said. "Investments are already moving into clean energy."

"Those things are locked in now, into the economy," he said, during an onstage Q&A at Seeds & Chips, a major food technology summit in Milan.

He pointed to California fuel efficiency standards for cars as a prime example. Obama noted that the state — the largest market for cars in the U.S. — maintains strict emissions standards.

"Even if the rules change in Washington, there's no U.S. automaker that can afford to produce a car that's not fuel efficient enough to not be sold in California," Obama said.

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## **Obama on food and climate: People hate being told 'what to eat, how to grow' [Back](#)**

By Helena Bottemiller Evich | 05/09/2017 01:43 PM EDT

Barack Obama believes global agriculture must do more to reduce its contribution to climate change, but significant barriers exist — including our collective emotional attachment to food.

The former president delivered a keynote address Tuesday at Seeds & Chips, a major food technology summit in Milan, Italy, and his decision to focus on food and agriculture in one of his first major post-presidency speeches was seen as a sign that he intends to be active on these issues in coming years. During his speech and a question-and-answer session with Sam Kass, Obama said efforts to fulfill the Paris climate accord's goals will continue regardless of what the Trump administration chooses to do with the agreement, since the private sector has begun the shift and "locked it into the economy."

But reducing emissions from agriculture and adapting food production to rising temperatures will be critical, Obama said. Food production is already the second-largest contributor after energy production, though its effects are generally less well known. Obama said political leaders haven't talked enough about agriculture's role as a leading contributor of greenhouse gases.

"I think people naturally understand that big smoke stacks have pollution in them and they understand air pollution, so they can easily make the connection between energy production and the idea of greenhouse gases," he said during the Q&A with Kass, who quarterbacked food policy during much of the Obama administration.

Kass noted that when he was in Paris during the COP 21 negotiations barely anyone was talking about food and agriculture — talk of energy predominated. "People aren't as familiar with the impact of cows and methane," Obama said, with a slight chuckle — perhaps wanting to avoid direct reference to bovine flatulence. "Unless you are a farmer, and then you know what takes place there."

Another key impediment to action, Obama said, is that food is an emotional issue. "Because food is so close to us and is part of our families and what we do every single day, people, I think, are more resistant to the idea of government or bureaucrats telling us how to eat, what to eat, how to grow, etc.," he said.

Obama also spoke about the Paris accord from a geopolitical perspective, in his first comments on the agreement since leaving office. He argued that leadership from the U.S., China and the European Union is essential because the two economic superpowers and the regional bloc are the world's biggest greenhouse gas emitters. The timing of Obama's



comments was intriguing, given that a [meeting](#) of White House advisers on Tuesday to discuss the Paris agreement was put off, marking the second time a Trump administration Paris-related meeting was delayed.

As Obama sees things, even if the Trump administration were to reverse course, it would not mean an end to efforts in the U.S. to curb climate change.

"The key to the Paris agreement is not that it solved climate change — the agreement did not set high enough standards," he said. "But what it did was put together the architecture, the mechanism, where each country could progressively do more to reduce its carbon emissions, and as technology improved, you would steadily see a reduction in greenhouse gases."

Obama acknowledged the Trump administration has a different stance on climate policy and conceded that change may "move more slowly" than many would like, but said he was "confident the United States will continue to move in the right direction," because the private sector and global economic forces have already begun to evolve on the subject.

"The private sector has already made a determination that our future is in clean energy," Obama said. "Investments are already moving into clean energy. ... Those things are locked in now, into the economy."

In the U.S., however, there are significant challenges to tackling agriculture's contribution to greenhouse gases, in part because of the political clout of the ag lobby, Obama said.

"The truth is that the agricultural communities in every country are very strong, politically," he said. "Historically, in the United States, the one area where Democrats and Republicans agree is on the agriculture committee because they usually come from agricultural states and they're very good at joining across party lines to protect the interests of food producers."

Still, Obama said he thinks the agricultural sector is making progress in reducing its environmental footprint and will continue to do so as long as policies take into account the interests of food producers.

"Obviously, a large portion of agriculture is dominated by large agribusiness, but I think that you can show small and medium-sized farmers ways to do things better, that will save them money, or at least doesn't cost them money; they're happy to adopt some of these new processes and systems," Obama said. "But if what they see is you putting the environmental issues as a priority over their economic interest, then they'll resist."

That comment comes as the Trump administration makes a concerted deregulatory push away from Obama-era policies, an effort that is supported by many farmers.

During the discussion, Kass asked Obama if consumers needed to tweak their eating habits to be "climate-smart," perhaps by cutting back on beef, but the president stopped short of urging major changes.

Obama suggested he is under no illusion that the world is going to cut back on meat consumption over concerns about climate change. "No matter what we are going to see an increase in meat consumption, just by virtue of more Indians, Chinese, Vietnamese and others moving into middle-income territory," he said.

"That doesn't mean that we can't teach you and me to have a smaller steak, for our own

health," he added. "It doesn't mean we can't make progress in educating the advanced world about the need to reduce — just for dietary reasons — the amount of meat that we consume at any given meal, particularly if it's wasted; but what it does mean is that we're also going to have to find ways to produce protein in a more efficient way."

Obama's White House made a determined, if ultimately unsuccessful, push to include sustainability language in the dietary guidelines, a move the meat industry saw as an existential threat. After a protracted war on Capitol Hill, the language was kept out of the 2015 guidelines.

The conversation with Kass also touched on Obama's own eating habits. Kass said he'd made thousands of steaks for Obama during a decade of cooking for him. "I don't know about thousands," Obama said. "Maybe hundreds."

"What is true is I am not a vegetarian," he added. "I respect vegetarians, but I am not one of them."

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## **Thune: 'Most' ethanol holdouts now ready to back methane CRA [Back](#)**

By Anthony Adragna | 05/09/2017 03:14 PM EDT

Sen. [John Thune](#) (R-S.D.) said most of the corn state holdouts in the Senate were now ready to back a Congressional Review Act resolution to nullify an Obama-era methane rule after receiving assurances from Republican leadership that they would have a legislative path for a waiver to allow sales of 15 percent ethanol blended fuel year-round.

"I think most of us who are interested in that issue are probably in a place now where we're confident that we're going to get this dealt with," Thune said of the ethanol waiver. "I think most will be on board [with the methane CRA] but I can't speak for them all."

Thune has been part of a small bloc of Republicans, led by Sen. [Chuck Grassley](#) (R-Iowa), pushing for the waiver and withholding their support for the resolution axing BLM's rule aimed at curbing methane emissions from oil operations on public lands.

But he cautioned that "it'll be close" when asked about whether the GOP-led Senate had the votes to pass the CRA.

Even with the corn-state bloc, several key senators — [Cory Gardner](#) (R-Colo.) and [Heidi Heitkamp](#) (D-N.D.), chief among them — remained publicly undecided today.

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## Democratic senators seek probe of Icahn over biofuel profit [Back](#)

By Eric Wolff | 05/09/2017 02:43 PM EDT

[Elizabeth Warren](#) (Mass.), [Debbie Stabenow](#) (Mich.) and other Senate Democrats are calling on federal regulators to probe whether President Donald Trump's billionaire adviser Carl Icahn broke the law by influencing the administration's biofuel policies and reaping tens of millions of dollars for one of his companies.

Icahn, who owns CVR Refining, has called for altering the rules under the Renewable Fuel Standard, the decade-old law that requires the blending of ethanol and other biofuels into the nation's fuel mix.

Icahn, an activist shareholder Trump named as an unpaid "special adviser," has complained that his company was paying hundreds of millions of dollars to buy biofuels credits called RINs to comply with the law — until this year, when CVR reported that it had made \$50 million by betting the value of those RINs would decline.

"We are writing to request that your agencies investigate whether Carl Icahn violated insider trading laws, anti-market manipulation laws, or any other relevant laws based on his recent actions in the market for renewable fuel credits," Warren, Stabenow and six other senators said in a letter to the heads of the Securities and Exchange Commission, EPA, and the Commodities Futures Trading Commission.

The letter said prices for the RINs dropped after Trump appointed Scott Pruitt to head the EPA, as Icahn had urged. And the prices for RINs fell further on news that Icahn had presented a proposal to the White House to change the biofuel program and move the obligation for complying with the law from refiners to fuel wholesalers.

The senators' letter contends that Icahn's CVR took an unusual gamble by betting the RIN prices would fall, and that "Mr. Icahn was in a unique position to know and impact the direction of government policy — and evidence suggests that he did so."

Icahn and his company CVR are one of a handful of companies including Valero Energy that have been pressing to change EPA regulations, though they have been opposed by large oil companies and biofuels producers.

Icahn did not reply to a request for comment.

The letter was signed by [Sheldon Whitehouse](#) (R.I.), [Tom Carper](#) (Del.), [Sherrod Brown](#) (Ohio), [Tammy Baldwin](#) (Wis.), [Tammy Duckworth](#) (Ill.) and [Amy Klobuchar](#) (Minn.). The letter is the third inquiry from Democrats on the Agriculture and Banking committees into Icahn's role in the White House and his influence on the RFS.

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**White House memo gives more detail on Trump's energy order** [Back](#)

By Alex Guillén | 05/09/2017 08:18 AM EDT

A new [memo](#) from the White House's Office of Information and Regulatory Affairs includes new guidance for agencies to carry out President Donald Trump's [energy executive order](#).

Trump's order gave agencies until this Friday, May 12, to submit to the White House a plan to carry out their regulatory reviews. It includes independent agencies with energy oversight, including FERC, and specifies that agencies should identify rules or actions that directly impact energy production, as well as those actions that "limit the use of certain sources of energy, such that the development of domestically produced energy resources from a certain sector may be negatively affected."

The new memo, dated Monday, identifies five specific aspects such plans should contain, starting with identifying actions that "potentially burden the development or use of domestically produced energy resources" and ending with recommendations to "alleviate or eliminate the potential burden."

The memo also provides seven guidelines for a draft report due by July 26, per Trump's order. That report should include further information on how long regulatory reforms might take and what those actions' costs and savings are.

The final reports, due Sept. 24, are to be published in the Federal Register.

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**Sources: Trump admin aiming for new WOTUS rule by year's end** [Back](#)

By Annie Snider | 03/30/2017 05:01 AM EDT

The Trump administration is pressing EPA to replace the Obama administration's Waters of the U.S. rule by the end of this year, according to multiple sources with knowledge of the plan — a lightning-speed timeline that legal experts say could shortcut key steps and make the effort vulnerable in court.

EPA Administrator Scott Pruitt recently convened a meeting on the future of the WOTUS rule, where he told agency water staffers to have an initial rewrite ready by this summer, according to one source with knowledge of his instructions. Agency employees have been telling states, environmentalists and industry groups to expect things to move "on a very fast pace." The source called the expectation to issue a proposed rule within a few months "mind-boggling."

Pruitt's predecessors took a much more deliberate approach, knowing that any rule attempting to clarify the legal morass of Clean Water Act jurisdiction would almost certainly end up at Supreme Court.

The Obama administration spent years grappling with where to draw the lines, crafting a legal rationale, and building a mass of scientific and technical reports to back up their approach before ultimately proposing its rule in April 2014. EPA then took 14 months to collect and

[respond](#) to more than one million public comments, meet with more than 400 outside groups, draft changes to the rule and shepherd it all through the interagency review process.

The timeline being mulled by the Trump administration would give agency staff just a few months to put the foundation of the rule in place. An EPA spokeswoman said only that "discussions are ongoing."

Part of the reason the Obama administration took so long is because it produced lengthy supporting documents, even though most were not mandated by law. Those included a 90-page [regulatory impact analysis](#) and an exhaustive [scientific report](#) and [technical support document](#), both of which clocked in around 400 pages each.

Trying to finish a new rule this year means the Trump administration would have to skip most of those steps, potentially making its rule more vulnerable to being overturned in court, said Patrick Parenteau, a Vermont Law School professor.

"The more they start cutting corners and not going back through the same process they did to do the [Obama administration] rule, the greater risk they're going to be overturned," he said.

Making EPA's job even more difficult is the fact that the agency is being asked to base its new rule on a potentially shaky legal interpretation.

The last time the Supreme Court weighed the limits of the Clean Water Act's jurisdiction was in the 2006 case *Rapanos v. United States*, where justices failed to reach a majority decision. The late Antonin Scalia led the court's four conservative justices in a plurality opinion setting a restrictive test for waterways to fall under federal protection, while the court's four liberal justices voted for broad federal jurisdiction. Justice Anthony Kennedy, the court's traditional swing vote, joined the conservative justices in their ruling, but he wrote his own, stand-alone opinion setting a broader test that would make streams and wetlands jurisdictional if they have a "significant nexus" to larger downstream waters.

None of the nine federal appeals courts that have weighed the issue have decided that Scalia's line of reasoning would stand on its own. But President Donald Trump directed EPA to look to Scalia's opinion in his executive order requesting a WOTUS rewrite, and sources familiar with instructions to agency staffers say they've been told to rely solely on Scalia's test.

Courts have generally ruled that Kennedy's test is the one that must be followed, although a handful have concluded that if a waterway meets either the Kennedy or the Scalia test, it falls under federal power. The Obama administration wrote its rule to meet Kennedy's test, and the George W. Bush administration had also focused on Kennedy in its 2008 guidance on the topic.

Legal experts generally argue that it will take some fancy footwork for the Trump administration to argue that Scalia's test should take precedence.

But Reed Hopper, an attorney for the Pacific Legal Foundation who has successfully argued the *Rapanos* case before the Supreme Court, said that rewriting the rule doesn't have to be that complicated.

"I think there isn't going to be much of a problem: Look at the act, see what it says, recognize that there are constitutional constraints," he said. He also pointed out that the Supreme Court

has overturned lower courts on several recent wetlands cases, including one he argued last year in which the justices ruled that courts can review the federal government's jurisdictional determinations.

Reed argued that EPA could quickly rewrite WOTUS if it throws enough manpower into the effort.

But that could pose a challenge, since the Trump administration has been slow to staff up. Pruitt has only a small cadre of political allies at the agency so far, and key slots in the Office of Water and General Counsel's office are sitting empty. The Army Corps of Engineers, which will need to at least supply data for the rewrite effort, is likewise without a political leader.

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**EPA, Army Corps ask states to weigh in on WOTUS rewrite** [Back](#)

By Alex Guillén | 05/09/2017 11:42 AM EDT

EPA and the Army Corps of Engineers want the states to provide comments on their rewrite of the Waters of the U.S. rule, according to [letters](#) sent this week.

"Cooperative federalism is a guiding principle for us. We want to clearly understand what definition will work best for your state as we develop a new federal definition of 'waters of the United States' consistent with the Scalia opinion," the agencies wrote, [referencing](#) a framework previously laid out by the late Justice Antonin Scalia that has historically been disregarded in favor of a system described by Justice Anthony Kennedy.

"In addition, we are interested in understanding how your state might respond to a reduced scope of federal jurisdiction under the Clean Water Act," they wrote.

State and local governments have until June 19 to comment.

In February, President Donald Trump issued an executive order directing EPA and the Army Corps to revise the rule. The first step toward repealing the Obama administration's 2015 rule is currently under review at the White House Office of Management and Budget.

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**Court: Clean Water Act rulings can face suits** [Back](#)

By Alex Guillén | 03/21/2012 12:57 PM EDT

The Supreme Court dealt a blow to the EPA on Wednesday with a unanimous [ruling](#) that allows some of the agency's decisions under the Clean Water Act to be challenged in court.

Property owners previously had no way to ask a judge to strike down EPA's decisions on whether their property included wetlands. Instead, they had to refuse to comply with the agency's orders and face fines that increased daily until the EPA took them to court — by which time, critics said, the penalties could amount to millions of dollars.

But in *Sackett v. EPA*, the high court said Wednesday that owners can go to a judge to challenge the EPA's determinations under the Administrative Procedure Act. The justices didn't rule on the specifics of the Sacketts's case.

The case involved Chantell and Michael Sackett, who had graded their property in an Idaho residential community. The EPA ordered them to reverse the grading after determining that their property included wetlands, which meant the work — done without an agency permit — violated the Clean Water Act.

The Sacketts, believing their property did not include waters covered under the Clean Water Act, sued, saying the order was "arbitrary" and violated their right to due process.

That kind of lawsuit can go forward, the Supreme Court ruled.

"Nothing in the Clean Water Act expressly precludes judicial review under the APA or otherwise," Justice Antonin Scalia wrote for the court.

Scalia dismissed the Obama administration's argument that the government is less likely to issue compliance orders if judicial review is allowed.

"There is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into 'voluntary compliance' without the opportunity for judicial review — even judicial review of the question whether the regulated party is within the EPA's jurisdiction," Scalia wrote. "Compliance orders will remain an effective means of securing prompt voluntary compliance in those many cases where there is no substantial basis to question their validity."

In a concurring opinion, Justice Ruth Bader Ginsburg noted that, while she agrees that the Sacketts can challenge EPA's jurisdiction in court, Wednesday's ruling did not wade into the specifics of the case.

That leaves the door open "for another day and case" on whether property owners can challenge the "terms and conditions of the compliance order," Ginsburg wrote.

The justices sent the Sacketts's case back to a lower court for consideration under the Supreme Court's new guidance.

In his own fairly informal concurring opinion, Justice Samuel Alito slams the water law itself and calls on Congress for a long-term fix to "provide a reasonably clear rule regarding the reach of the Clean Water Act."

The administration's position "would have put the property rights of ordinary Americans entirely at the mercy of Environmental Protection Agency (EPA) employees," Alito wrote.

"Allowing aggrieved property owners to sue under the Administrative Procedure Act is better than nothing, but only clarification of the reach of the Clean Water Act can rectify the

underlying problem," he added.

*Erica Martinson contributed to this report.*

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## **Labrador to run for Idaho governor [Back](#)**

By Heather Caygle | 05/09/2017 12:58 PM EDT

Rep. Raúl Labrador, a conservative Republican who has frequently tangled with GOP leadership, will run for governor of Idaho in 2018.

A founding member of the hard-line House Freedom Caucus, Labrador filed to run for governor on Tuesday. He was first elected to represent Idaho's 1st District in the 2010 wave that gave Republicans a House majority.

"Idaho needs a proven conservative leader who will stand against the special interests and politicians that have picked the winners and losers in our state Capitol for too long," he said in a statement announcing his candidacy.

Labrador is expected to be one of several Republicans vying to replace Gov. Butch Otter, who has long said he wouldn't seek reelection in 2018. Labrador leaves behind a safe Republican seat — both he and President Donald Trump won roughly two-thirds of the vote in the district last year.

Labrador has frequently been a leader in the far-right's fights with House Speaker Paul Ryan. Most recently, Labrador joined with other Freedom Caucus members to sink the GOP's first Obamacare repeal effort in March. He eventually signed on to the revised bill, which passed the House last week, but not before being verbally flogged by Trump.

"If [@RepMarkMeadows](#), [@Jim\\_Jordan](#) and [@Raul\\_Labrador](#) would get on board we would have both great healthcare and massive tax cuts & reform," Trump [tweeted](#) after House Republicans' first attempt to dismantle Obamacare imploded.

Labrador [refused to vote](#) for then-Speaker John Boehner (R-Ohio) in 2013 as part of a conservative rebellion, sitting in the chamber during the speaker's election and ignoring his name being called when it was time to cast a vote.

In 2014, he launched a long-shot bid for House majority leader after Rep. Eric Cantor's (R-Va.) shocking primary defeat, positioning himself as the conservative candidate in the race before losing to Rep. Kevin McCarthy (R-Calif.).

He's also sparred with rank-and-file members of the caucus, most notably fellow Idaho GOP Rep. Mike Simpson, the only other House member in the state's congressional delegation. The two have been in an on-and-off feud since Labrador's 2013 rebellion against Boehner, with Labrador calling Simpson, a loyal Boehner ally, "a bully." The two went [more than a year](#) without speaking.



Labrador's gubernatorial announcement comes a few days after he made headlines by saying, "Nobody dies because they don't have access to health care" a town hall meeting while trying to defend the GOP's Obamacare repeal plan. He [issued a statement](#) Saturday attempting to clear up the remark, saying it "wasn't very elegant."

Labrador's departure from Congress isn't a total shock. Insiders have speculated for months he would run for the governor's mansion next year and Labrador did little to tamp down the rumors.

The Puerto Rico native [flirted with challenging](#) Otter in 2013 before deciding to stay in the House. His name was also floated as a potential pick for Interior secretary, going so far as to interview with Trump in New York in December.

An immigration lawyer by trade, Labrador was part of the 2013 "Gang of Eight" in the House, a bipartisan group of lawmakers attempting to hammer out an immigration reform bill. He eventually left the group after a disagreement over health care for immigrants, and the talks fell apart.

Lt. Gov. Brad Little, who is also running to be the GOP's 2018 gubernatorial nominee, signaled he was eager to take on Labrador. "Idaho is not Washington D.C., and I would like to welcome Congressman Labrador back home to the place where we balance our budget and conservative ideals guide us each day," he said Tuesday. "Idahoans, including myself, look forward to hearing from Congressman Labrador about the accomplishments he has made while being in Congress for over 6 years."

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## **EPA proposes letting North Dakota regulate carbon injection [Back](#)**

By Eric Wolff | 05/09/2017 11:14 AM EDT

EPA has proposed a rule to grant North Dakota primacy on regulating long-term storage of captured carbon, Sen. [John Hoeven](#) said in a statement today.

North Dakota has been among the leaders in developing policy to regulate the storage of captured carbon deep in rock formations, and the issue was a priority of Hoeven's when he was governor. The state passed legislation to address questions on carbon dioxide storage in 2009 and 2013. North Dakota first applied to become the primary regulator of long-term storage wells, called Class VI wells, in 2013.

"We've worked since 2008 to develop a states-first approach to regulating geological sequestration, which will help our energy industry, both traditional and renewable, to develop new technologies for storing CO<sub>2</sub>," Hoeven said in a statement. "This is important as we work to develop clean coal technologies, as well as projects to sequester CO<sub>2</sub> from ethanol production."

Carbon capture and storage is a long-term goal of the coal industry, as it would allow the

continued burning of coal should regulators step up carbon dioxide regulation.

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## **Senate Democrats pressed on poor diversity in hiring [Back](#)**

By Elana Schor | 05/09/2017 05:24 AM EDT

Senate Democrats are making headway toward fixing their staff diversity problem — and one of their own is looking to lead by example by publicly reporting the demographics of her payroll.

Sen. Catherine Cortez Masto, the chamber's first Latina, opened her books to Politico as the caucus works to rectify the meager number of minorities in senior staff positions. The Nevada lawmaker is also hosting meetings with aides who are women of color about strategies to ensure Democrats' offices look more like the diverse base of their party, starting with Latinas, and is planning talks with African-American and Asian-American staffers.

Democrats, Cortez Masto said in an interview, should make diversity a watchword not just in the hiring of senior staff but "in our committee makeup" and "in thinking, when we are bringing folks in to intern, about how to keep that diversity going."

Minorities hold six of the 16 senior staff positions in the senator's office, and 20 of 38 staff positions overall, according to her office. Five Asian-American, three African-American and 12 Hispanic aides are part of an overall staff that's also majority-female, including in the senior ranks.

Critics who had decried the Senate Democrats' overwhelmingly white payroll as the year began are crediting incoming Minority Leader Chuck Schumer for prioritizing diversity. Schumer in February offered new minority hiring rules that beef up the Senate Democratic Diversity Initiative created by his predecessor, former Sen. Harry Reid (D-Nev.). Discussions also are ongoing about minority hiring reports that could be similar to Cortez Masto's proactive effort.

"The Diversity Initiative is already having an impact on the Senate," Schumer said in a statement. "The more we can increase diversity in the Senate, the better this body can serve the American people."

The moves can't come too soon for the civil rights advocates and K Street consultants who have prodded Senate Democrats to do better — particularly given that two of their GOP counterparts, Kansas Sen. Jerry Moran and South Carolina Sen. Tim Scott, employ African-American chiefs of staff. Democratic Sens. Kamala Harris and Dianne Feinstein of California both hired black legislative directors this year, however. And Harris' office also reported to Politico that two-thirds of its staff positions are held by people of color, including a majority of its senior staff positions.

"I'm proud my staff reflects the Californians we serve, and I remain committed as ever to any effort to make the Senate workforce as a whole reflect the diversity of our country," Harris

said in a statement.

Cortez Masto employs minorities in two of three of her most senior positions and is open to using her seat on the Senate Rules Committee to pitch more proposals aimed at holding offices accountable on minority hiring, her office said.

Cortez Masto's move to release hiring statistics and meet staffers of color is "heartening, for sure," said Don Bell, director of the Black Talent Initiative at the nonprofit Joint Center for Political and Economic Studies. "Everything starts at the top, especially in the Senate, so having members be thoughtful and engage people is really significant."

Scott also lauded Democrats for adopting a modified version of the National Football League's Rooney Rule, designed to give minority applicants a way into the interviewing process for senior openings. "I think if we just start diversifying the applicants, we'll get better outcomes," he said in an interview.

The Joint Center helped galvanize the Democratic diversity debate in 2015 with a staff demographics report that found racial and ethnic minorities occupied 7 percent of senior Senate staff posts, even as they represent grew to compose a record 31 percent of the U.S. electorate in 2016.

The group's report limited its senior-staff census to chiefs of staff, legislative directors and communications directors to achieve a uniform snapshot. It noted, however, that different job descriptions among Senate offices, as well as the disparate makeup of leadership offices mean "there are other staff of color who have equivalent and sometimes more influence."

Senate Democrats have yet to formally agree to publish caucus-wide staff diversity statistics. But diversity-hiring advocates are still working behind the scenes to settle on a framework for that disclosure. Part of that discussion revolves around the appropriate definition of senior staff. Cortez Masto's office, for example, counts positions such as deputy chief of staff and counsel as senior aides.

"Every time I meet a young Latina, I know they're thinking, 'If she can do it, I can do it too,'" Cortez Masto said in an interview. "That's what this is about."

Diversity advocates don't want to miss that full picture by focusing on only the upper echelon of the Senate.

"If you only look at the top three [aides], you don't realize that right below those top positions" are staffers of color who should be recognized, said National Urban League Executive Vice President Don Cravins, who met last month with senior aides hashing out the hiring-disclosure issue.

"Reporting is key. It's the only way we'll be able to see successes," added Cravins, the most recent African-American Senate Democratic chief of staff during his time in former Louisiana Sen. Mary Landrieu's office.

Meanwhile, the Senate Democratic Diversity Initiative is preparing to open a new hiring database to better connect offices with minority applicants who meet their needs, according to a leadership aide. The initiative recently hired a new director and has conducted more than 320 interviews so far.

"We still have a long way to go," said Bell, who led the bipartisan Senate Black Legislative Staff Caucus before leaving the Hill in March, "but compared to when I first delivered recommendations to offices in November, we've come a long way."

Some proponents of the diversity effort, however, want to see the pace of change pick up. Schumer's efforts are "quite good," one former Senate Democratic staffer said in an interview, "but at the hiring level, I think it's moving at a snail's pace. There doesn't seem to be a sense of urgency."

The ex-staffer noted that in addition to the chiefs of staff in Scott's and Moran's offices, arguably the highest-ranking African-American staffer in Congress also works for a Republican: Jonathan Burks, chief of staff to Speaker Paul Ryan (R-Wis.).

"Good for Paul Ryan," the staffer said. "I totally disagree with him on a bunch of things, but — for all the crap Democrats give Republicans on this — they're playing with a much smaller pool of people they can hire and are actually doing a better job of filling the very top positions with people of color."

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## **Former presidents walk fine line in Trump's America** [Back](#)

By Aidan Quigley | 05/09/2017 05:37 AM EDT

During his "American carnage" inaugural address, President Donald Trump sent a clear message: all of the presidents in recent memory have failed the American people.

The harsh rhetoric of Trump's inaugural address made an impression on his predecessors, with George W. Bush [reportedly calling it](#) "some weird s--t" and Jimmy Carter saying he "flinched" when Trump appeared to back off America's commitment to human rights.

In Trump's America, the five living former presidents are walking a fine line, attempting to defend their legacies while also trying to respect the "unwritten rule" that former presidents avoid undermining their successors.

"The immediate former presidents have been more active in their criticism of the current president," George C. Edwards, a presidential historian at Texas A&M, said. "This kind of thing has been going on throughout history, but normally it's not very much. This is very early in a tenure and to have former presidents being critical of the president... is pretty unusual."

As Obama returns to the public spotlight, [his former aides](#) have made it clear he has no intention of talking much about Trump. However, he's made his displeasure clear.

Obama, who campaigned heavily for Hillary Clinton, said he was "heartened" by the protests following Trump's immigration ban targeting Muslim-majority countries. He also released a lengthy statement defending the Affordable Care Act against Trump's attempts to repeal it.

At a speech in Boston on Sunday night, Obama avoided mentioning Trump by name, but

again forcefully defended his signature health care legislation and mentioned immigration reform. "I expect to be busy, if not with a second career, at least a second act," Obama said Sunday.

And on Monday, Obama's aides aggressively pushed back against Trump for trying to blame his predecessor for the woes associated with Trump's disgraced former national security adviser Michael Flynn. While Trump and White House press secretary Sean Spicer have repeatedly denounced Obama for not revoking Flynn's security clearance, Obama aides told reporters that Obama tried to warn Trump about Flynn's erratic nature.

George W. Bush, meanwhile, has lobbed thinly veiled critiques of Trump on his approach to the press and the travel ban from some Muslim-majority countries. "I consider the media to be indispensable to democracy," Bush said in an interview with "Today" in February. "We need an independent media to hold people like me to account."

As for the travel ban, Bush was restrained but clear in his concern. "I am for an immigration policy that's welcoming and upholds the law," Bush said.

Carter also voiced concerns after Trump's inauguration. During an early April appearance at Emory University, he said he wanted to avoid addressing politics but he hoped the women's movement would be "invigorated" by Trump and that he didn't see "any glimmer of hope" from the administration on race and gender issues.

Bill Clinton, who was harshly critical of Trump during the Manhattan businessman's presidential campaign, didn't mince words about Trump when he ran into a local newspaper editor while holiday shopping. "He doesn't know much," Clinton said in late December. "One thing he does know is how to get angry white men to vote for him."

George H.W. Bush, who has been in and out of the hospital, remains the only living president to avoid any political commentary.

Criticism of the current president by former presidents is not completely unprecedented, however. For example, Herbert Hoover criticized Franklin D. Roosevelt, his successor.

"We've seen some criticism already of the incumbent president, but that's not really unprecedented," Tim Naftali, a presidential historian at New York University, said. "If it continues at a drumbeat from former presidents, then it will be something new."

Current and former aides to the living former presidents say their former bosses are careful in criticizing the current occupant of the West Wing. Stuart Eizenstat, Carter's chief domestic policy adviser and a former ambassador, said it usually takes an extraordinary occurrence for a former president to criticize a sitting president.

"There's a recognition that there is something so unique and special about the presidency, that, notwithstanding what might be very deep and serious policy differences and personal understandings, you simply bite your tongue," he said. "You don't try to undercut the president because you know what impact that would have had when you were president."

While in office, former presidents occasionally turn to their predecessors for guidance. Former aides say particularly on foreign policy issues, previous presidents and statesmen can be a valuable resource.

"Most of the time President Clinton reached out to former heads of state, or people like Henry Kissinger or James Baker, they were usually foreign policy issues, where you had a perspective there that was pretty unique on dealing with a similar situation," Mack McLarty, Clinton's former chief of staff, said.

For example, Carter worked with former President Gerald Ford on the treaties which turned control of the Panama Canal over to Panama. Eizenstat said Carter instructed negotiator Sol Linowitz to call Ford immediately after the deal was ratified.

Others primarily use their predecessors for humanitarian trips. Harry Truman famously sent Hoover to address the post-World War II famine, and George W. Bush had his father and Clinton help with relief efforts for the tsunami in Southeast Asia and Hurricane Katrina. Most recently, Obama sent the younger Bush and Clinton to Haiti to help after the 2010 earthquake.

"What would be really unusual is if no former president undertook any missions on behalf of the incumbent president," Naftali said. "If we see that none of the former presidents want anything to do with the Trump administration, that would be a first in the modern history of the American presidency."

All in all, most presidents have made an effort to remain engaged socially with their predecessors. Clinton and H.W. Bush are particularly close despite their hard-fought 1992 election, with Clinton tweeting pictures of the two in April.

But Trump is no normal president. Trump, who rose politically for questioning the legitimacy of his predecessor, at first appeared to have forged a working relationship with Obama, receiving advice both in person and over the phone. Obama even said he was "encouraged" by their first post-election meeting.

Trump has since leveled unfounded wiretapping accusations against Obama, and the president abruptly ended a recent interview with CBS' John Dickerson after Dickerson pressed him on his comments about Obama.

"He was very nice to me, but after that, we've had some difficulties," Trump said before referencing his debunked wiretapping allegation and saying that the alleged wiretapping was "inappropriate."

Historically speaking, Trump's relationship with the living former presidents is more fraught than any of his predecessors' had been, Laura Belmonte, a presidential historian at Oklahoma State University, said. "That one I think may be a category where Trump is on his own," she said

And Trump hasn't shied away from criticizing those who came before him. As president, Trump called Obama a "bad (or sick) guy!" as part of his debunked wire-tapping claim. He called George W. Bush "not nice" during the campaign, said the Bush administration "lied" about the Iraq War and called Bill Clinton "the WORST abuser of women in U.S. political history."

George H.W. Bush and Carter weren't excluded from Trump's slights. "Enough is Enough- No More Bushses!" Trump tweeted during the campaign. He also [criticized Carter](#) as unpresidential for carrying his own luggage.



Steven Hochman, an aide to Carter at the Carter Center who helped the 92-year-old former president write his memoirs, said Carter hopes he and his center will be able to work with the Trump administration.

And Carter hasn't always seized opportunities to knock Trump. The former president appeared with Sen. Bernie Sanders (I-Vt.) Monday to discuss human rights, and — while revealing that he voted for Sanders — Carter said the "downturn" of human rights "preceded 2016."

"President Carter, I think he hopes that he won't need to speak out but I would assume that if there were something he needed to say, he would say it," Hochman said. "Actually, I'm sure he would."

Both Bushes are more focused on their nonprofit work than engaging in politics, said Samuel Skinner, who served as the senior Bush's chief of staff. He's spoken to both since the inauguration, and neither has mentioned Trump.

"They may have personal opinions, but they're not going to express them," Skinner said. "Both 41 and 43 are very measured people, so I think they've been both very cautious about what they say."

McLarty, Clinton's former chief of staff, predicted his former boss will continue to weigh in on the politics of the day. "I wouldn't be surprised at all if he expresses serious differences of opinion on economic, domestic and international policies," he said.

Getting seriously involved in politics is a no-win scenario for former presidents, Skinner said, adding that the legacies of the former presidents are being shaped by historians, not today's events in Washington.

"I think any time and energy they have could be better spent working in nonprofits and their libraries," he said.

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