COLUMBIA LAW SCHOOL

SABIN CENTER FOR CLIMATE CHANGE LAW

U.S. CLIMATE CHANGE LITIGATION IN THE AGE OF TRUMP: YEAR ONE

By Dena P. Adler

February 2018

The Sabin Center for Climate Change Law develops legal techniques to fight climate change, trains law students and lawyers in their use, and provides the legal profession and the public with up-to-date resources on key topics in climate law and regulation. It works closely with the scientists at Columbia University's Earth Institute and with a wide range of governmental, non-governmental and academic organizations.

Sabin Center for Climate Change Law
Columbia Law School
435 West 116th Street
New York, NY 10027
Tel: +1 (212) 854-3287
Email: columbiaclimate@gmail.com
Web: http://www.ColumbiaClimateLaw.com
Twitter: @ColumbiaClimate
Blog: http://blogs.law.columbia.edu/climatechange

About the Author: Dena P. Adler is a Postdoctoral Research Scholar at Columbia Law School and a Climate Law Fellow at the Sabin Center for Climate Change Law.

EXECUTIVE SUMMARY

In its first year, the Trump Administration undertook a program of extensive climate change deregulation. The Administration delayed and initiated the reversal of rules that reduce greenhouse gas (GHG) emissions from stationary and mobile sources; sought to expedite fossil fuel development, including in previously protected areas; delayed or withdrew energy efficiency standards; undermined consideration of climate change in environmental review; and hindered adaptation to the impacts of climate change. However, the Trump Administration's efforts have met with constant resistance, with those committed to climate protections bringing legal challenges to many, if not most, of the rollbacks.

This paper seeks to give shape to the current moment in climate change litigation, categorizing and reviewing dozens of climate change cases filed during 2017 to understand how litigation countered—and at times courted—the influx of climate change deregulation during the first year of the Trump Administration. The analysis focuses specifically on "climate change cases," defined as cases that raise climate change as an issue of fact or law. From the U.S. Climate Change Litigation database, maintained by the Sabin Center for Climate Change Law and Arnold & Porter, this analysis identified eighty-two climate change cases as responsive or relevant to federal deregulation of climate change policy in 2017. **To explain the effects of climate change litigation in 2017, this paper sorted cases into five categories:**

1. **Defending Obama Administration Climate Change Policies & Decisions;**
2. **Demanding Transparency & Scientific Integrity from the Trump Administration;**
3. **Integrating Consideration of Climate Change into Environmental Review & Permitting;**
4. **Advancing or Enforcing Additional Climate Protections through the Courts; and**
5. **Deregulating Climate Change, Undermining Climate Protections, or Targeting Climate Protection Supporters.**

The first four categories are "pro" climate protection cases—if their plaintiffs or petitioners are successful they will uphold or advance climate change protections. The fifth category contains

"con" cases—if their filing party or parties are successful, these cases will undermine climate protection or support climate policy deregulation. Sixty of the reviewed cases were "pro" climate protection and twenty-two were "con."

Top-Level Highlights from the Analysis:

- ***Lawsuits Advancing Climate Protections Exceeded those Opposing Climate Deregulation*:** The pro cases outweigh the con cases roughly 3:1 (73% to 27%).
- ***Direct Defense of Obama Administration Climate Policies Is Supplemented by a Wide Range of Other Lawsuits Supporting Climate Protection*:** Fourteen of the sixty pro climate cases (23%) concerned "Defending Obama Administration Climate Change Policies and Decisions." The other forty-six pro cases concerned transparency, environmental review and permitting, or advancing other climate protections. These cases reflect existing trends in climate change litigation, such as enforcing obligations to consider climate change effects under the National Environmental Policy Act (NEPA). They also indicate new developments, such as a surge of municipalities suing fossil fuel companies under state common law and a suite of Freedom of Information Act (FOIA) lawsuits seeking transparency from the Trump Administration.

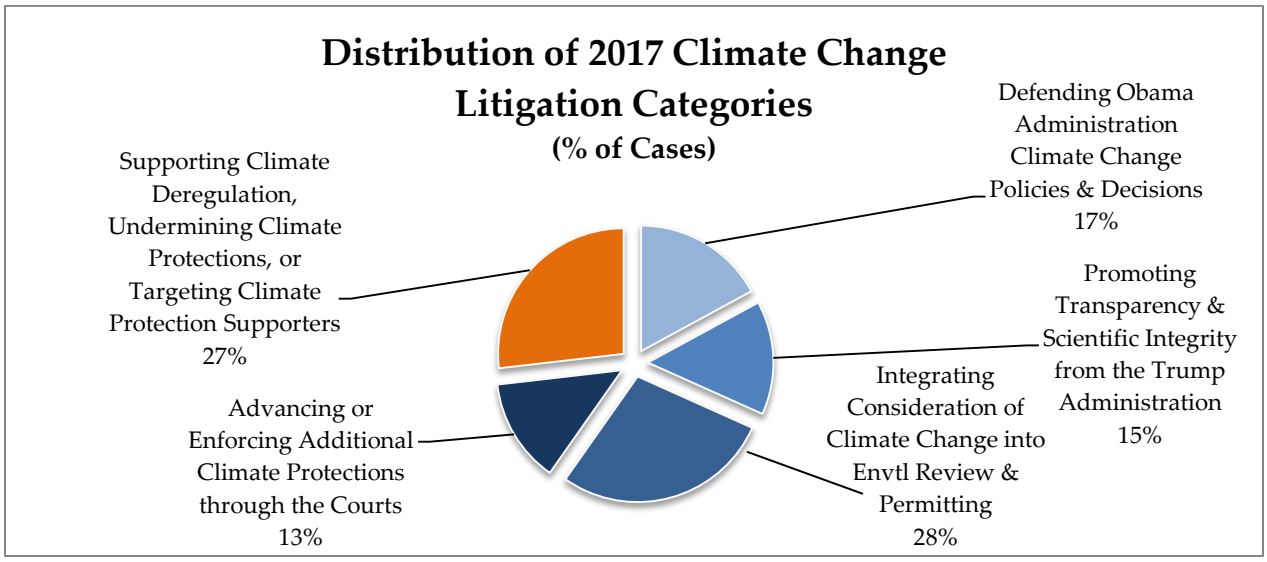

Figure 1: Cases were assigned to a single category. Blue indicates "pro" cases in favor of climate-related protections and orange indicates "con" cases opposing climate-related protections.

- ***About a Quarter of Cases Worked in Favor of Climate Policy Deregulation:*** Additionally, a little more than a quarter (27%) of reviewed cases advanced climate change deregulation, undermined climate protections, or attacked supporters of climate protections. These challenges ranged from petitions to review Obama Administration climate rules to contestations over state-level denials of environmental permits for fossil fuel infrastructure to charges of defamation against critics of the fossil fuel industry.
- ***The Courts Struck Down Illegal Delays and Litigation Pressured Publication of Withheld Rules; Among Cases in the Data Set, No Climate Policy Rollbacks Were Upheld on the Merits in 2017***: Of the fourteen cases directly defending Obama Administration climate change policies and decisions, six reached some form of resolution. Federal courts found both an administrative delay and a compliance postponement to be illegal. Another administrative delay case was voluntarily dismissed after the stay terminated and the agency withdrew its plans to delay the rule. Three cases pressured publication of two delayed rules by the relevant agencies (two cases concerned the same rule). Each of these six cases concerned delay of climate policies; none of the climate change cases concerning a revocation or implementation of new deregulatory practices had advanced to judicial or other resolution by the end of 2017.

The Parties & Their Legal Claims

- ***NGOs, Sub-National Governments, and Industry Actors Were Far and Away the Most Frequent Plaintiffs and Petitioners*:**
    - Pro cases brought by NGOs represent more than half (43/82 cases or 52%) of the reviewed climate change litigation. Looking within the pro category, NGOs brought 72% of the pro litigation items. A handful of national and international environmental NGOs were involved in more than half (55%) of all pro cases, but many more local, regional, and national NGOS played a role in climate litigation.

Municipal, state, and tribal government entities were plaintiffs or petitioners in 28% of pro cases, including actions from more than a dozen states.

  - Industry actors, (primarily private companies and trade groups), brought 20% of total cases and 68% of con cases. These numbers do not include conservative think tanks closely aligned with industry interests—such groups participated in 6/7 of the con NGO cases or 27% of con cases.

- ***EPA and DOI Were the Most Frequent Defendants:*** The federal government is the defendant in a vast majority of cases (78% of reviewed cases filed in 2017, see Part 3 for details on this figure). While more than a dozen federal entities were sued, more than half (55%) of the climate cases filed against federal defendants in 2017 challenged the DOI, EPA, their respective sub-entities, or their officials.
- ***Claims Employed a Variety of Laws with Frequent Use of Environmental Statutes*:** Claims fell under a variety of administrative, statutory, constitutional, and common law. Forty-two cases involved environmental statutes and at least one of four major environmental statutes—the Clean Air Act (CAA), the Clean Water Act (CWA), the Endangered Species Act (ESA), and NEPA—played a role in 41/42 of the cases involving environmental law. Thirty-six cases involved the Administrative Procedure Act and another fourteen involved FOIA.

Though courts have issued a few decisions and litigation has pressured agencies to publish some outstanding rules, the "stickiness" of these outcomes remains uncertain. Neither of these results preclude an agency from subsequently rolling back the policies at issue through the rulemaking process. Already, agencies have initiated the regulatory repeal process for several rules. As the regulatory process progresses in 2018, more climate change litigation will likely seek to enforce the substantive judicial standards for deregulation. Meanwhile, lawsuits challenging delays will keep policies in effect during the months or years it takes to complete regulatory repeals and prevent any illegal rollbacks from establishing new precedent.

CONTENTS

1. INTRODUCTION

Donald Trump claims to have delivered on deregulation in his first year as President.[1] While some independent reporting questions the veracity of his assertions,[2] climate change is one arena where the Trump Administration's regulatory rollbacks have been both visible and real. The Administration delayed and initiated the reversal of rules that reduce greenhouse gas (GHG) emissions from stationary and mobile sources; sought to expedite fossil fuel development, including in previously protected areas; delayed or reversed energy efficiency standards; undermined consideration of climate change in environmental review; and hindered adaptation to the impacts of climate change.[3] In total, the Sabin Center's U.S. Climate Deregulation Tracker identifies a total of 64 actions taken by the executive branch in 2017 to deregulate climate change.[4] These actions correspond to at least two dozen climate-related protections "on the way out under Trump."[5]

---

[1] The Trump Administration reports that it has undertaken 67 "deregulatory actions" and 1,579 withdrawals. *President Donald J. Trump is Delivering on Deregulation*, White House Fact Sheets (Dec. 14, 2017), https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-delivering-deregulation/.

[2] *See* Alan Levin and Ari Natter, *Trump Stretches Meaning of Deregulation in Touting Achievements*, Bloomberg Politics (Dec. 29, 2017), https://www.bloomberg.com/news/articles/2017-12-29/trump-stretches-meaning-of-deregulation-in-touting-achievements; Alan Levin and Jesse Hamilton, *Trump Takes Credit for Killing Hundreds of Regulations That Were Already Dead*, Bloomberg BusinessWeek (Dec. 11, 2017), https://www.bloomberg.com/news/features/2017-12-11/trump-takes-credit-for-killing-hundreds-of-regulations-that-were-already-dead; Maxine Joselow, *Critics See Hole in Trump Touting Rollbacks*, E&E Daily (Dec. 15, 2017), https://www.eenews.net/eedaily/stories/1060069109. *See also*, *Tracking Deregulation in the Trump Era*, Brookings (Oct. 20, 2017), https://www.brookings.edu/interactives/tracking-deregulation-in-the-trump-era/ (Showing a more modest suite of deregulatory activity).

[3] *See infra* Part 2.1.

[4] The deregulation tracker includes 86 total actions across federal government for 2017 of which 23 were congressional actions, including President Trump's approval of a Congressional Review Act (CRA) resolution. The above count of 64 actions includes President Trump's CRA approval and the other 63 deregulatory actions taken by the executive branch. These 64 actions do not reflect a corresponding number of rule rollbacks. Some actions, like E.O. 13783, contain multiple deregulatory actions. In other cases, multiple actions may advance rollback of the same, single rule; for example, the tracker includes at least seven deregulatory actions from 2017 that affect the Clean Power plan. Climate Deregulation

Donald Trump is not the first President to wage war against regulation, generally, or to seek to roll back newly established environmental protections, in particular. President Ronald Reagan famously sought to undermine a suite of environmental statutes established in the decade before his first term,[6] in many instances the very same statutes governing the climate regulations now under fire.[7] However, the Reagan Administration's environmental agenda was brought to a "stalemate" by several critical factors, including a Democrat-controlled Congress, court challenges, and public pressure.[8] Although President Trump enjoys a Republican-controlled Congress that has thus far failed to curtail the Administration's climate agenda, and public pressure from anyone outside the fossil fuel industry seems to have had little impact on the Administration's climate policy, the courts have already functioned as a check on the deregulatory push.

Tracker, the Sabin Center for Climate Change Law, http://columbiaclimatelaw.com/resources/climate-deregulation-tracker/ (last visited Feb. 4, 2018).

[5] Nadja Popvich, Livia Albeck-Ripka, and Kendra Pierre-Louis, *67 Environmental Rules on the Way Out Under Trump*, N.Y TIMES, *available at* https://www.nytimes.com/interactive/2017/10/05/climate/trump-environment-rules-reversed.html?_r=1 (updated Jan. 31, 2018) (listing 60 climate and environmental rules on the way out under the Trump Administration). Some deregulatory actions affect multiple rules or in other cases it takes multiple deregulatory actions to rollback a single rule. Hence, the clarification concerning that at least two dozen climate rules are affected.

[6] *See* Maxine Joselow, *Why Trump Outpaced Reagan on Regulatory Rollbacks*, Greenwire (Nov.10, 2017), https://www.eenews.net/greenwire/2017/11/10/stories/1060066245; CHRISTOPHER SELLERS ET AL., ENVIRONMENTAL DATA & GOVERNANCE INITIATIVE, THE EPA UNDER SIEGE: TRUMP'S ASSAULT IN HISTORY AND TESTIMONY (June 2017), *available at* https://envirodatagov.org/wp-content/uploads/2017/06/Part-1-EPA-Under-Siege.pdf.

[7] *See* Richard Lazarus, *The Greening of America and the Graying of United States Environmental Law: Reflections on Environmental Law's First Three Decades in the United States*, 20 VA. ENVTL. L.J. 75, 85-90 (2001), *available at* http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1149&context=facpub (describing the Reagan Administration's attack on environmental statute and other environmental law developments during the 1980s).

[8] *Id.*, Philip Shabecoff, *Reagan and Environment: To Many, a Stalemate*, N.Y TIMES, Jan. 2, 1989, *available at* http://www.nytimes.com/1989/01/02/us/reagan-and-environment-to-many-a-stalemate.html?pagewanted=all; Sellers et al., *supra* note 6 (describing the regulatory rollbacks of the Trump and Reagan Administrations).

New Presidential administrations have always advanced and disassembled the policy regimes of their predecessors.[9] Yet, the principles and statutes governing administrative law, applied by judges reviewing agency action, check the agencies of new administrations from reversing existing policies unless an agency reasonably justifies its action,[10] observes proper procedures for public input,[11] and fulfills its statutory obligations. Though courts are deferential to agencies' policy decisions and interpretations of ambiguous statutes they do not grant them "unbridled discretion."[12] Already, courts have blocked multiple Trump Administration attempts to roll back climate change protections through illegal stays and delays.[13] Moreover, more than a dozen lawsuits filed by states, cities, and non-governmental organization (NGOs)

[9] Political scientist Stephen Skowronek discusses cycles of policy creation in presidential history. STEPHEN SKOWRONEK, THE POLITICS PRESIDENTS MAKE: LEADERSHIP FROM JOHN ADAMS TO BILL CLINTON (1997)(discussing cycles of authority through presidential history); *See also* Richard Kreitner, *What Time Is It? Here's What the 2016 Election Tells Us About Obama, Trump, and What Comes Next*, THE NATION, Nov. 22, 2016, *available at* https://www.thenation.com/article/what-time-is-it-heres-what-the-2016-election-tells-us-about-obama-trump-and-what-comes-next/ (applying Skowronek 's theories to explain the election of President Trump).

[10] *See e.g.*, F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 537, 129 S. Ct. 1800, 1823, 173 L. Ed. 2d 738 (2009)("Congress passed the Administrative Procedure Act (APA) to ensure that agencies follow constraints even as they exercise their powers. One of these constraints is the duty of agencies to find and formulate policies that can be justified by neutral principles and a reasoned explanation."); Organized Vill. of Kake v. U.S. Dep't of Agric., 795 F.3d 956, 968 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 1509, 194 L. Ed. 2d 585 (2016)("Elections have policy consequences. But, *State Farm* teaches that even when reversing a policy after an election, an agency may not simply discard prior factual findings without a reasoned explanation.").

[11] *See* the Administrative Procedure Act (APA) § 3, 5 U.S.C. § 553.

[12] *See* Fox Television Stations, Inc., 556 U.S. at 536("[I]f agencies were permitted unbridled discretion, their actions might violate important constitutional principles of separation of powers and checks and balances. To that end the Constitution requires that Congress' delegation of lawmaking power to an agency must be specific and detailed.") (Internal citation omitted).

[13] *See* .Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017)(Vacating the EPA's administrative stay of methane standards for new sources in the oil and gas sector was beyond its authority), State v. United States Bureau of Land Mgmt., No. 17-CV-03804-EDL, 2017 WL 4416409, at *1 (N.D. Cal. Oct. 4, 2017) (Holding that BLM's acting beyond its authority in postponing of the effective date of certain provisions of the methane waste rule).

in 2017 directly challenge removal or delay of climate-related protections—most of which are still pending.[14]

The full scope of climate change litigation extends even wider than these challenges to rollbacks, stays, and delays. More than one hundred cases filed in the U.S. in 2017 raised claims concerning either the impacts of climate change or reducing GHG emissions.[15] From the U.S. Climate Change Litigation database maintained jointly by the Sabin Center for Climate Change Law and Arnold & Porter, eighty-two climate change cases were identified as pertinent to federal deregulation of climate change policy in 2017 and selected for analysis in this paper.[16] Many of these cases concern environmental review and permitting decisions for individual programs and projects that cumulatively shape national climate policy. Some seek to increase transparency and expose allegedly illegal workings within the federal government. Still others seek to fill the void of federal climate change leadership—a "litigate-to-mitigate"[17] strategy.

Of course, there are limitations on the extent and manner in which the courts can constrain deregulation. Rulings on illegal stays and delays do not permanently halt deregulation, even if they do force it through the required legal process of notice and comment rulemaking and subject it to judicial review. Additionally, the courts can also be a tool for deregulation; industry and its allies have sought review of existing climate protections, sued

---

[14] *Infra* Part 4.1.

[15] *Sabin-AP U.S. Climate Change Litigation Database*, http://climatecasechart.com/us-climate-change-litigation/ (last visited Jan. 31, 2018) (listing 106 cases for 2017). The number may change as cases are consolidated in the courts and consequently combined into single entries in the database or additional items are added. A comparable number of cases were filed in 2016—Sabin-AP U.S. Climate Change Litigation database lists 109 cases for 2016—but the tenor and focus of these cases have shifted in key ways to respond to the wave of climate change deregulation under the Trump Administration. As discussed in Part 3.1, 11 "cases" in the 2017 database did not constitute litigation and were removed from this analysis. (A similar screening was not conducted for 2016.) However, after reviewing the database and counting individual cases filed, prior to consolidation, there were clearly more than 100 cases filed in 2017 in the database.

[16] *Infra* Part 2.1 for further details on how these cases were selected for the data set.

[17] *See e.g.*, Jonathan Watts, *'We should be on the offensive' – James Hansen calls for wave of climate lawsuits* (Nov. 17, 17), THE GUARDIAN, *available at* https://www.theguardian.com/environment/2017/nov/17/we-should-be-on-the-offensive-james-hansen-calls-for-wave-of-climate-lawsuits.

their critics, and challenged permit denials for fossil development and infrastructure. Further, once administrative processes produce new rules and finalize repeals, climate change litigation will almost certainly shift to ensure adequate procedures and substantive reasoning underlie the rules and that the rules fulfill statutory obligations. Still, such litigation is not ripe until agency actions are finalized, and courts cannot halt deregulation that falls within the bounds of agency discretion and procedurally complies with the law.[18]

This paper seeks to give shape to the current moment in climate litigation, categorizing and reviewing dozens of climate change cases filed during 2017 to understand how litigation countered—and at times courted—the influx of climate change deregulation during the first year of the Trump administration. [19] The paper identifies and discusses five major categories:

1. Defending Obama Administration Climate Policies & Decisions,
2. Demanding Transparency & Scientific Integrity from the Trump Administration,
3. Integrating Consideration of Climate Change into Environmental Review & Permitting,
4. Advancing or Enforcing Additional Climate Protections through the Courts, and
5. Deregulating Climate Change, Undermining Climate Protections, or Targeting Climate Protection Supporters.

The first four categories are "pro" climate cases—if their plaintiffs or petitioners are successful they will uphold or advance climate change protections. The fifth category contains "con" cases—if their filing party or parties are successful, these cases will undermine climate protection. To understand how federal climate change litigation is shaping national climate policy in the absence of federal leadership, this paper looks across and within these categories

[18] *E.g., Vermont Yankee v. NRDC* (1978) (holding that courts cannot impose upon the agency its own notion of which procedures are 'best' or most likely to further some vague, undefined public good."). For further discussion *see also infra* Part 2.B.

[19] This study relies on the compilation of cases in the U.S. Climate Change Litigation Database maintained by the Sabin Center and Arnold & Porter, and it employs the same definition of "climate change case" used there.

to further examine: 1) who are the litigants, 2) what laws are they utilizing, and 3) how far have these cases progressed in year one of the Trump Administration.

This account of the first year of climate change litigation in the Trump Administration proceeds in four parts. First, Part 2 reviews critical background information, including the scope of federal climate change deregulatory activity in 2017 and the judicial standards for reviewing deregulation. Part 3 summarizes the methodology underlying the paper and provides a high-level snapshot of how climate change litigation is responding to deregulation. It reviews the major categories of response, the parties occupying the federal climate change law field by challenging and defending climate change deregulation, the laws and sectors in which these cases occur, and the status of these cases. Part 4 provides a deeper analysis of each category of litigation response and a review of specific cases. Part 5 examines in detail how recent litigation has targeted and defended major Obama Administration climate rules. The paper concludes with a brief review of the outcomes of climate change litigation in 2017 and anticipated future directions for climate change litigation.

2. EXTENT & LIMITATIONS OF THE TRUMP ADMINISTRATION'S DEREGULATION OF CLIMATE CHANGE

The Trump Administration's effort to deregulate climate change is remarkable in its wholesale reversal of an entirely new administrative regime established by the President's immediate predecessor. The Obama Administration ushered in the first major wave of climate change regulation, developing and implementing a systematic approach to reducing GHG emissions and enhancing adaptation to climate impacts.[20] The Obama Administration recorded over 100 climate, energy, and environmental accomplishments along these lines,[21] including:

- Final rules to cut GHG emissions from power plants,[22] transportation,[23] landfills,[24] and the oil & gas sector.[25]

---

[20] President Obama's 2013 Climate Action Plan summarizes some of the more modest progress of his first term and lays out the more ambitious climate change agenda of his second term to cut carbon pollution, prepare the U.S. for the impacts of climate change, and lead international efforts on climate change. THE WHITEHOUSE, THE PRESIDENT'S CLIMATE ACTION PLAN (June 2013), https://perma.cc/SB7B-PEKG (revoked), Laws prior to the Obama Administration did reduce GHG emissions by promoting energy efficiency and conservation, renewable energy, and fuel economy standards, e.g., EPCA and EISA, but this is substantially different than the regulatory regime initiated by the Obama Administration. Compare the Climate Action Plan with the policies of the Clinton Administration, *see e.g.*, Amy Royden, *U.S. Climate Change Policy Under President Clinton: A Look Back*, 32 GOLDEN GATE U. L. REV. 415, note 4-5 (2002), *available at* http://digitalcommons.law.ggu.edu/ggulrev/vol32/iss4/3.

[21] THE WHITEHOUSE, THE RECORD: PRESIDENT OBAMA ON CLIMATE & ENERGY (Jan. 9, 2017), *available at* https://obamawhitehouse.archives.gov/sites/obamawhitehouse.archives.gov/files/achievements/theRecord_climate_0.pdf [hereinafter *The Record*].

[22] The Clean Power Plan, 80 Fed. Reg. 64661 (Oct. 23, 2015)(to be codified at 40 C.F.R. pt. 60), *available at* https://perma.cc/UN4C-MP8W (regulating GHG emissions from existing power plants); Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64509 (Oct. 23, 2015)(to be codified at 40 C.F.R. pts.60, 70, 71, 98), *available at https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf* (regulating GHG emissions from new power plants).

[23] 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62624 (Oct. 15, 2012) (to be codified at 49 CFR Parts 523, 531, 533, 536, and 537), *available at* https://perma.cc/EC6T-VERE.

[24] Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59276 (Aug. 29, 2016), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17700.pdf; Standards of Performance for Municipal Solid Waste Landfills, 81 Fed. Reg. 59332 (Aug. 29, 2016), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17687.pdf.

- Final rules and new programs increasing energy efficiency and conservation measures for appliances and equipment, collectively estimated to avoid 2.5 billion metric tons of carbon emissions by 2030.[26]
- Integration of climate change mitigation into federal actions by directing the agencies to cut their GHG emissions by 40% by 2025,[27] publishing guidance on consideration of climate change during environmental review under the National Environmental Policy Act (NEPA), and developing the Social Cost of Carbon, Nitrous Oxide, and Methane metrics.[28]
- Reduction of fossil fuel development through issuing a moratorium on leasing federal lands for coal production,[29] preventing the Dakota Access pipeline from moving forward without further environmental review,[30] rejecting the Keystone XL pipeline,[31] and banning offshore drilling from large areas of the Arctic and Atlantic.[32]

[25] Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35824 (June 3, 2016), *available at* https://www.federalregister.gov/documents/2016/06/03/2016-11971/oil-and-natural-gas-sector-emission-standards-for-new-reconstructed-and-modified-sources (limiting emissions of VOCs and methane leakage); Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 Fed. Reg. 83008 (Nov. 18, 2016), *available at* https://perma.cc/22R6-C2AL.
[26] *The Record*, *supra* note 23.
[27] Exec. Order No. 13,693, 80 Fed. Reg. 15871 (March 19, 2015), *available at* https://perma.cc/NE3N-XLTV.
[28] The U.S. EPA, The Social Cost of Carbon Estimating the Benefits of Reducing Greenhouse Gas Emissions, *available at* https://perma.cc/NEQ5-QC87 (captured March 28, 2017).
[29] The Department of the Interior, Secretary's Order 3338 (Jan. 15, 2016), *available at* http://www.documentcloud.org/documents/2691724-Secretarial-Order-3338-Coal.html.
[30] Notice of Intent To Prepare an Environmental Impact Statement in Connection With Dakota Access, LLC's Request for an Easement To Cross Lake Oahe, North Dakota, 82 Fed. Reg. 5543 (Jan. 18, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00937.pdf.
[31] The White House, Statement by the President on the Keystone XL Pipeline (Nov. 6, 2015), *available at* https://obamawhitehouse.archives.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline.

- Advancement of international solutions by signing the Paris Agreement on climate change;[33] cultivating joint-leadership on climate change with China, India, Mexico and Canada;[34] and securing amendments to the Montreal Protocol which reduces production of hydrofluorocarbons (HFCs), a potent GHG.[35]
- Incorporation of climate change adaptation into federal agency planning[36] and establishment of interagency bodies to drive forward climate change adaptation planning through coordination between different levels of government.[37]
- Improved flood risk management standards and incorporation of climate resilience into international development work.[38]

---

[32] The White House, Presidential Memorandum, Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska from Leasing Disposition (Jan. 27, 2015), *available at* https://obamawhitehouse.archives.gov/the-press-office/2015/01/27/presidential-memorandum-withdrawal-certain-areas-united-states-outer-con; The White House, Presidential Memorandum -- Withdrawal of Certain Areas off the Atlantic Coast on the Outer Continental Shelf from Mineral Leasing (Dec. 20, 2016), *available at* https://obamawhitehouse.archives.gov/the-press-office/2016/12/20/presidential-memorandum-withdrawal-certain-areas-atlantic-coast-outer.

[33] The U. N. Framework Convention on Climate Change, Paris Agreement - Status of Ratification, *available at* http://unfccc.int/paris_agreement/items/9444.php, (last visited Feb. 8, 2018).

[34] *See e.g.*, The White House, U.S.-China Climate Change Cooperation Outcomes (Sept. 3, 2016), *available at* https://obamawhitehouse.archives.gov/the-press-office/2016/09/03/fact-sheet-us-china-cooperation-climate-change.

[35] The White House, Leaders from 100+ Countries Call for Ambitious Amendment to the Montreal Protocol to Phase Down HFCs and Donors Announce Intent to Provide $80 Million of Support (Sept. 22, 2016), *available at* https://obamawhitehouse.archives.gov/the-press-office/2016/09/22/leaders-100-countries-call-ambitious-amendment-montreal-protocol-phase. In 2017, the D.C. Circuit vacated an EPA rule that would have restricted manufacturers from making certain products containing hydrofluorocarbons (HFCs). Mexichem Fluor, Inc. v. Envtl. Prot. Agency, 866 F.3d 451, 453 (D.C. Cir. denied rehearing Jan. 26, 2017).

[36] For analysis of the approximately 40 plans or other agency actions spurred by this directive see JANE LEGGETT, CONG. RESEARCH SERV, R43915, CLIMATE CHANGE ADAPTATION BY FEDERAL AGENCIES: AN ANALYSIS OF PLANS AND ISSUES FOR CONGRESS (2015).

[37] Exec. Order No. 13,514, 74 Fed. Reg. 52117 (Oct. 5, 2009); Exec. Order No. 13,653, 78 Fed. Reg. 66819 (Nov. 1, 2013).

[38] Exec. Order No. 13690, 80 Fed. Reg. 6425 (Jan 30, 2015), *available at https://perma.cc/67A6-654X* (establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input); Exec. Order No. 13677, 79 Fed. Reg. 58231 (Sept. 23, 2014), *available at* https://perma.cc/SD2S-YQCN.

As described in Section 2.1, below, the Trump Administration has undertaken a program to systematically delay, revise, revoke, and otherwise undo President Obama's signature climate change achievements, through both systemic deregulation of which climate change protections are a casualty and specific efforts to dismantle climate change regulations.[39] This section does not seek to provide a comprehensive account, but rather to provide an overview of how the Trump Administration's deregulatory activities have impacted climate change protections so as to provide context for the litigation that has ensued.

2.1 The Extent of Climate Change Deregulation in 2017[40]

From day one in office, President Trump has sought a wholesale reduction of regulation through a series of presidential memoranda and executive orders. First, he issued the "Regulatory Freeze Pending Review"("the Regulatory Freeze"),[41] which indefinitely postponed publication of otherwise complete regulations, including four Department of Energy (DOE) energy efficiency regulations and the Environmental Protection Agency's (EPA's) renewable fuel standards.[42] Over the following weeks, agencies and departments withdrew or postponed many of these not yet finalized Obama-era rules, including those related to climate change adaptation, GHG emissions standards for vehicles, fuel efficiency, energy efficiency, and

[39] *See e.g.*, N.Y. Times, *supra* note 5; Climate Deregulation Tracker, *supra* note 4.

[40] This section summarizes data and analysis in the Climate Deregulation Tracker, *supra* note 4, in addition to other sources.

[41] The White House, Memorandum for the Heads of Executive Departments and Agencies (Jan. 20, 2017), *available at* https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies.

[42] Climate Deregulation Tracker, *Regulatory Freeze Delays New Energy Efficiency, Renewable Fuel Standards* (Jan. 20, 2017), *available at* http://columbiaclimatelaw.com/climate-deregulation-tracker/regulatory-freeze-delays-new-energy-efficiency-renewable-fuel-standards/. These rules are the Energy Conservation Standards for Portable Air Conditioners (RIN 1904-AD02), the Energy Conservation Standards for Walk-in Cooler and Freezer Refrigeration Systems (RIN 1904-AD59), the Energy Conservation Standards for Commercial Packaged Boilers (RIN 1904-AD01), and theEnergy Conservation Program: Energy Conservation Standards for Dedicated Purpose Pool Pumps (RIN 1904-AD52). The memorandum also postpones the effective date of renewable fuel standards recently promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register. Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018, 81 Fed. Reg. 89746 (Dec. 12, 2016).

transportation planning.[43] While the "freeze" itself was not directly litigated, many of the resulting delays and withdrawals of climate rules have been challenged, as detailed later in this report.

Next, President Trump issued Executive Order 13771, also referred to as the "2-for-1" Order, directing executive branch agencies and departments to repeal two regulations for every new regulation adopted.[44] The Order requires that in fiscal year 2017, agencies offset costs imposed by new regulations by eliminating existing regulations. (It makes no reference to the benefits conferred by the regulations.) Executive Order 13777, titled "Enforcing the Regulatory Reform Agenda," began implementation of the 2-for-1 Order by requiring each agency to establish a "Regulatory Reform Task Force" to evaluate existing regulations and make recommendations to the agency head regarding the repeal, replacement, or modification of

[43] *See e.g.*, Deregulation Tracker, *Small Business Administration Withdraws Proposed Rule Applying Federal Flood Risk Management Standards to Disaster Loan Program* (Jan. 26, 2017), *available at* https://perma.cc/LZ8N-BGGA (Affecting a proposed rule to apply the federal flood risk management standards to the disaster loan program, RIN: 3245-AG77); Deregulation Tracker, *Department of Transportation Withdraws Proposed Rule Establishing a National Tire Fuel Efficiency Consumer Information Program* (Jan. 26, 2017), *available at* https://perma.cc/8SV8-534A (Affecting a proposed rule to establish a national tire fuel efficiency consumer information program, RIN: 2127-AK76); Deregulation Tracker, *Department of Energy Withdraws Final Rule Implementing Energy Efficiency Standards for Manufactured Housing* (Jan. 31, 2017), *available at* https://perma.cc/L373-F54M (Affecting a final rule to implement energy efficiency standards for manufactured housing, RIN: 1904-AC11); National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program; National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 10441 (Feb. 13, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-02-13/pdf/2017-02860.pdf (Affecting rule establishing GHG reporting standards for federal highway projects). *See also* Notice of Intention to Reconsider the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light Duty Vehicles ("NOI to Reconsider Light Duty Vehicle GHG Standards"), 82 Fed. Reg. 14671 (Mar. 22, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-03-22/pdf/2017-05316.pdf.

[44] Exec. Order No. 13771, 82 Fed. Reg. 9339 (Feb. 3, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02451.pdf.

regulations.[45] On September 7, the Office of Information and Regulatory Affairs (OIRA), further directed agencies to develop regulatory allowances for FY2018, pursuant to the 2-for-1 Order.[46] Though the 2-for-1 Order was almost immediately challenged in court by consumer advocacy, labor, and environmental organizations, but with no decision yet,[47] these deregulatory actions continue to control agency action in the interim.

President Trump has further used executive orders and other directives to specifically target measures that mitigate the extent and impacts of climate change. In several cases, these executive orders directly revoke climate-related protections; in others, the President instructs the relevant agency or official to initiate review, modification, withdrawal, and/or reversal of an existing climate change protection.

Within his first two weeks in office, President Trump issued a Presidential Memoranda instructing the Secretary of the Army to "take all actions necessary and appropriate" to expedite the approval of the Keystone XL and Dakota Access Pipelines[48]—reversing the Obama Administration's refusal to permit these projects. Subsequently, the Department of State authorized the construction and operation of the Keystone XL pipeline segment at the U.S.-Canadian border[49] and the Army Corps of Engineers granted an easement for construction of the Dakota Access Pipeline in North Dakota.[50] President Trump also issued Executive Order

---

[45] Exec. Order No. 13777, 82 Fed. Reg. 12285 (Feb. 24, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-03-01/pdf/2017-04107.pdf.

[46]Office of Management & Budget, Memorandum for Regulatory Reform Officers at Executive Departments and Agencies (Sept. 7, 2017), *available at* https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/FY%202018%20Regulatory%20Cost%20Allowances.pdf.

[47] Public Citizen, Inc. v. Trump, No. 1:17-cv-00253 (D.D.C. filed Feb. 7, 2018).

[48]Presidential Memorandum Regarding Construction of the Dakota Access Pipeline, 82 Fed. Reg. 8661 (Jan. 30, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02032.pdf; Presidential Memorandum Regarding Construction of the Keystone XL Pipeline, 82 Fed. Reg. 8263 (Jan. 30, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02035.pdf.

[49] Notice of Issuance of a Presidential Permit to TransCanada Keystone Pipeline, L.P., 82 Fed. Reg. 16467 (April 4, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-04-04/pdf/2017-06646.pdf.

[50] U.S. Army Corps. of Engineers, Corps Grants Easement to Dakota Access, LLC, News Release No.17-015 (Feb. 8, 2017), *available at* http://www.nwo.usace.army.mil/Media/News-

13766, titled "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects," instructing federal agencies to "streamline permitting and review processes for certain high priority infrastructure projects."[51]

In March, President Trump issued Executive Order 13783, titled "Promoting Energy Independence and Economic Growth," directing agencies to: 1) roll back key Obama-era climate rules that limit GHG emissions from major sources, 2) eliminate guidance for integrating the costs and impacts of climate change into their reviews, and 3) remove barriers to fossil fuel development.[52] Specifically, the order:

- Directs the EPA to "review" the Clean Power Plan, which would limit carbon dioxide (CO_2) emissions from existing fossil fuel-fired power plants, and "if appropriate," to suspend, revise, or rescind the plan through notice and comment rulemaking. (It also directs the Attorney General to request a stay of the Clean Power Plan litigation pending EPA's reconsideration of the rule.)
- Instructs the EPA to review and, "if appropriate," to rescind or rewrite the emission standards for new coal-fired power plants. (The order also directs the Attorney General to request a stay of litigation involving these standards while the EPA reconsiders the rule.)
- Calls upon the EPA and the Bureau of Land Management (BLM) to review and potentially rescind or re-write several regulations aimed at reducing methane emissions from oil and gas operations. This affects the EPA's new source performance standards for the oil and gas sector and the BLM's methane waste rule,

---

Releases/Article/1077134/corps-grants-easement-to-dakota-access-llc/. *See also* Notice of Termination of the Intent To Prepare an Environmental Impact Statement in Connection With Dakota Access, LLC's Request for an Easement To Cross Lake Oahe, North Dakota, 82 Fed. Reg. 11021 (Feb. 17, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-02-17/pdf/2017-03204.pdf.

[51] Exec. Order No. 13766, 82 Fed. Reg. 8657 (Jan. 30, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02029.pdf.

[52] Exec. Order No. 13783, 82 Fed. Reg. 16093 (Mar. 30, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-03-31/pdf/2017-06576.pdf.

intended to curb methane emissions from oil and gas development on federal lands. (The order also directs the Attorney General to request a stay of cases involving these rules pending their reconsideration.)

- Disbands the Interagency Working Group on the Social Cost of Carbon and rejects further use of the social cost metrics, designed to help monetize and estimate the range of public health and other costs associated with emissions of carbon, methane, and nitrous oxide. The order directs agencies to follow the guidelines in OMB (Office of Management and Budget) Circular A-4 in the event that they need to monetize the costs of greenhouse gas emissions. The circular contains general instructions on conducting cost-benefit analysis for rulemakings, but no specific protocol concerning greenhouse gas emissions.
- Revokes the Council on Environmental Quality (CEQ)'s guidance on climate change and National Environmental Policy Act (NEPA) reviews.
- Directs the Department of Interior (DOI) to lift the moratorium on federal coal leasing and amend or withdraw programmatic environmental review and modernization of the federal coal leasing program.
- Revokes President Obama's Climate Action Plan and the accompanying Strategy to Reduce Methane Emissions, Presidential Memorandum on Power Sector Carbon Pollution Standards (2013), Executive Order 13653, Preparing the United States for the Impacts of Climate Change (2013), Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment (2015), and the Presidential Memorandum on Climate Change and National Security (2016).

The direct revocations of executive orders, strategies, and presidential memoranda went into immediate effect. Federal agencies have followed through on each of the other six

directives.[53] In addition, Section 2 of the order instructs agencies to "immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law." In early May, the OMB issued guidance for how agencies should implement the Section 2 requirements to review their existing regulations and mandated agencies submit plans for their review to OMB. Agencies have relied on this provision to justify further decisions, including DOI's Secretarial Order rescinding climate mitigation policies throughout the department and directing BLM to review the Draft Regional Mitigation Strategy for the National Petroleum Reserve-Alaska.[54]

At the end of April, President Trump issued two more executive orders to directly and indirectly expedite fossil fuel development. Executive Order 13795, titled "Implementing an America-First Offshore Energy Strategy"(the Offshore Energy Order") established a national policy "to encourage energy exploration and production, including on the Outer Continental Shelf," revoked presidential memoranda withdrawing certain areas of the Outer Continental Shelf in Alaska and along the Atlantic Coasts from leasing pursuant to Outer Continental Shelf Lands Act (OCSLA), and issued a variety of other directives to promote fossil fuel development in federal waters.[55] Though less explicit in advancing fossil fuel development, Executive Order 13792, titled "Review of Designations Under the Antiquities Act," effectively initiated the process of opening protected areas up to oil & gas development.[56] The order directed the

---

[53] *Infra* Part 5 for examples that have been litigated. *See also* Climate Deregulation Tracker *supra* note 4.
[54] Dept. of the Interior, Order No. 3360: Rescinding Authorities Inconsistent with Secretary's Order 3349, "American Energy Independence" (Dec. 22, 2017), *available at* https://assets.documentcloud.org/documents/4343673/3360-20-20Rescinding-20Authorities.pdf.
[55] Exec. Order No 13795, 82 Fed. Reg. 20815 (May 3, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-05-03/pdf/2017-09087.pdf.
[56] Exec. Order No. 13792, 82 Fed. Reg. 20429 (April 26, 2017), *available at* https://www.govinfo.gov/content/pkg/FR-2017-05-01/pdf/2017-08908.pdf. Fossil fuel development undoubtedly motivates this action. *See e.g.*, Valerie Volcovici, *Interior Head Says Public Lands Can Make U.S. a 'Dominant' Oil Power*, REUTERS (June 19, 2017), *available at* https://www.reuters.com/article/us-usa-

Secretary of the Interior to review whether national monument designations from the past 21 years contradict the objectives of the Antiquities Act or "create barriers to achieving energy independence, restrict public access to and use of Federal lands, burden State, tribal, and local governments, and otherwise curtail economic growth."[57] On August 24, 2017, Secretary Zinke submitted a final report on his review of 22 monuments and 5 marine monuments recommending shrinking or changing the management plans for 10 monuments.[58] On December 4, 2017, President Trump issued a proclamation drastically reducing the size of two national monuments—Bears Ears and Grand Staircase-Escalante.[59] Bears Ears, established by President Obama, was reduced from 1.35 million acres to 201,786 acres—an approximately 85% reduction, and Escalante, established by President Clinton, was reduced from 1.87 million acres to a little over a million acres—an approximately 46% reduction.[60]

---

interior-zinke/interior-head-says-public-lands-can-make-u-s-a-dominant-oil-power-idUSKBN19A1KG (Zinke going on record about how advancing fossil fuel production informs his review of national monuments). For more information on fossil fuel and mineral resources in the areas cut out of the Bears Ears and Escalante National Monuments see Laris Karklis, Bonnie Berkowitz and Tim Meko, *Areas Cut Out of Utah Monuments Are Rich in Oil, Coal, Uranium*, WA. POST (Dec. 7, 2017), *available at* https://www.washingtonpost.com/graphics/2017/national/utah-monuments/?utm_term=.96e497c23da2. For further review of fossil fuel resources in national monuments see Michael Burger and Nadra Rahman, *The Zinke-Trump Attack on National Monuments Is Motivated by Fossil Fuel Interests*, the Sabin Center for Climate Change Law (June 20, 2017), *available at* http://blogs.law.columbia.edu/climatechange/2017/06/20/the-zinke-trump-attack-on-national-monuments-is-motivated-by-fossil-fuel-interests/comment-page-1/ (reviewing the literature on fossil fuel resources in national monuments put under review by Secretary Zinke).

[57] Modifying the Bears Ears National Monument, 82 Fed. Reg. 58081 (Dec. 8, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-12-08/pdf/2017-26709.pdf; Modifying the Grand Staircase-Escalante National Monument, 82 Fed. Reg. 58089 (Dec. 8, 2017), *available at* https://www.whitehouse.gov/presidential-actions/presidential-proclamation-modifying-grand-staircase-escalante-national-monument/.

[58] Dept. of Interior, Memorandum for the President, Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act (Aug. 24, 2017), *available at* https://www.doi.gov/sites/doi.gov/files/uploads/revised_final_report.pdf. The report was not released publicly until December 2017.

[59] Modifying the Bears Ears National Monument *supra* note 57; Modifying the Grand Staircase-Escalante National Monument *supra* note 57.

[60] Mark Squillace, *The Looming Battle over the Antiquities Act*, Harv. L. Rev. Blog (Jan. 6, 2018), *available at* https://blog.harvardlawreview.org/the-looming-battle-over-the-antiquities-act/.

In June 2017, President Trump announced his intention to withdraw from the Paris Agreement on climate change, and by August 2017, his administration sent notification to the United Nations confirming intention to withdraw the U.S. once it becomes legally possible to so—which is not until 2020.[61] Also in August, shortly before Hurricanes Harvey, Maria and Irma wreaked roughly $265 billion of damages in Texas, Puerto Rico, Virgin Islands and Florida,[62] the Trump Administration issued Executive Order 13807, revoking the Federal Flood Risk Management Standard.[63] President Obama had sought to increase the resiliency of federal investments located in or near floodplains by requiring all federal investments involving floodplains to meet higher flood risk management standards. Subsequently, the Department of Housing and Urban Development (HUD) issued notice of its plans to withdraw a rule that would have implemented the Obama Administration's floodplain and building standards.[64]

E.O. 13807 further tasked agencies "with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years."[65] The progeny of this executive order include a DOI memo instructing that the department's environmental impact statements "shall not be more than 150 pages or 300 pages for unusually complex projects."[66] A week after this order, the Trump Administration also terminated the National Climate Assessment Advisory Committee, a panel which has

---

[61] U.S. Dept. of State, Communication Regarding Intent to Withdraw from Paris Agreement (Aug. 4, 2017), *available at* https://www.state.gov/r/pa/prs/ps/2017/08/273050.htm.

[62] National Oceanic and Atmospheric Administration, National Centers for Environmental Information (NCEI), U.S. Billion-Dollar Weather and Climate Disasters (2018), *available at* https://www.ncdc.noaa.gov/billions/.

[63] Exec. Order No. 13807, 82 Fed. Reg. 40463 (Aug. 24, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-08-24/pdf/2017-18134.pdf.

[64] Withdrawal of Proposed Rules to Reduce Regulatory and Financial Burden, 82 Fed. Reg. 60693 (Dec. 22, 2017), *available at* https://www.federalregister.gov/documents/2017/12/22/2017-27615/withdrawal-of-proposed-rules-to-reduce-regulatory-and-financial-burden.

[65] Exec. Order No. 13807, *supra* note 63.

[66] Michael Doyle, *Order Limits Most NEPA Studies to a Year, 150 Pages*, Greenwire (Sept. 6, 2017), *available at* https://www.eenews.net/stories/1060059865.

previously helped engage local governments and businesses prepare for climate change based on the best available science.[67]

Not all climate change deregulation has been directed by executive order. In response to industry petitions, the Trump Administration has further agreed to review standards limiting GHG emissions from light-duty vehicles[68] and repeal application of certain standards to new trucks with refurbished engines called "gliders."[69] In 2017, industry also asked the courts for reconsideration of Obama-era refrigerant standards[70] and renewable fuel standards.[71] Congress revoked updates to the BLM's public land use planning process which would have improved considerations of climate change, which President Trump then signed into law.[72] In 2017, congress also opened the Arctic National Wildlife Refuge to drilling,[73] and proposed several bills that would remove climate-related protections.[74]

---

[67] Deregulation Tracker, Administration Disbands Climate Science Advisory Committee (Aug. 21, 2017), *available at* http://columbiaclimatelaw.com/climate-deregulation-tracker/noaa-disbands-climate-science-advisory-committee/.

[68] NOI to Reconsider Light Duty Vehicle GHG Standards *supra* note 43.

[69] Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53442 (Nov. 16, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-11-16/pdf/2017-24884.pdf; *see also* Petition for Reconsideration of Application of the Final Rule Entitled "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Final Rule" to Gliders, submitted to EPA (July 10, 2017), *available at* http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170710_docket-na_petition-for-reconsideration.pdf.

[70] National Environmental Development Association's Clean Air Project v. EPA, No. 17-1016 (D.C. Cir. filed Jan. 17, 2017).

[71] Coffeyville Resources Refining & Marketing, LLC v. EPA, 17-1044 (D.C. Cir.).

[72] Deregulation Tracker, *Trump Signs Resolution to Repeal BLM Planning 2.0 Rule* (Mar. 27, 2017), *available at* http://columbiaclimatelaw.com/climate-deregulation-tracker/trump-signs-resolution-to-repeal-blm-planning-2-0-rule/.

[73] An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, § 20001, 131 Stat 2054 (2017) ("The Secretary shall establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain.")

[74] *See* Deregulation Tracker, *available at* http://columbiaclimatelaw.com/climate-deregulation-tracker/explanation/congressionalaction/ (listing congressional actions related to increasing fossil fuel production and/or removing climate-related protections).

2.2 Judicial Standards for Deregulatory Activities

While the Trump Administration's climate deregulation may set a high-water mark, incoming Presidential administrations have commonly sought to distinguish their policy from that of their predecessors. The law provides a set of tools to moderate these transitions, constraining the activities of different actors in different contexts to different extents. On the one hand, Presidents enjoy a large degree of discretion and face very few procedural requirements for certain decisions that set policy direction for the executive branch—provided those decisions fall within the President's constitutional or statutory powers.[75] On the other hand, federal agency actions are subject to both the statutes that delegate agencies' regulatory authority and the Administrative Procedure Act (APA), including its requirements for meaningful public participation in rulemaking[76] and "formulat[ing] policies that can be justified by neutral principles and a reasoned explanation."[77] While agencies enjoy a great degree of flexibility in reversing guidance documents, administrative law more tightly governs how an agency can reverse or modify final rules or regulations.[78] This section summarizes the judicial standard for deregulatory activities affecting final rules or regulations.

An agency's deregulatory activities can take a number of forms, including not only repeal, modification, replacement, but also delay or suspension of a rule. If a rule is promulgated through notice and comment rulemaking, any reversal or amendment to that rule must go through the same process.[79] Since the effective date "is an essential part of any rule,"

---

[75] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).
[76] The Administrative Procedure Act (APA) § 3, 5 U.S.C. § 553.
[77] F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 537 (2009). For an extensive discussion of the standards of review and the procedural requirements on deregulation, see BETHANY DAVIS NOLL AND DENISE GRAB, DEREGULATION: PROCESS AND PROCEDURES THAT GOVERN AGENCY DECISIONMAKING IN AN ERA OF ROLLBACKS, Institute for Policy Integrity (Nov. 2017), *available at* http://policyintegrity.org/files/publications/Energy_Law_Journal_Deregulation_DG_BDN.pdf.
[78] Of course, agencies can undo the rules of their predecessors, but they must do so within the scope of the law. Sprint Corp. v. FCC, 315 F.3d 369, 373-374 (D.C. Cir. 2003).
[79] NLRB v. Bell Aerospace Co., 416 U.S. 267, 294 (1974). *See* Am. Fed'n of Gov't Emps. v. NLRB,

suspensions which change this date are also subject to the same requirements.[80] In specific circumstances, the APA or a statute will authorize an agency to issue a short-term administrative delay to push back the effective date without going through notice and comment rulemaking.[81] An agency must point to a specific section of the APA or its authorizing statute if it seeks an administrative stay that avoids notice and comment rulemaking.[82] Counterbalancing this opportunity for delay, the APA also authorizes courts "to compel agency action unlawfully withheld or unreasonably delayed" if those actions are obligated by statute.[83]

Even when delays and reversals go through the rulemaking process, they must adhere to further criteria. The APA establishes a default rule that agency rules promulgated through the notice and comment process—among other types of "agency action, findings, and conclusions"—must be set aside if they are found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[84] The U.S. Supreme Court refined the application of this standard[85] to deregulation cases during the Reagan-era, when the Court

777 F.2d 751, 759 (D.C. Cir. 1985). *See also*, the Administrative Procedure Act § 1 inclusively defining rulemaking to "mean[] agency process for formulating, amending, or repealing a rule."

[80] NRDC v. EPA, 683 F.2d 752, 762 (3d Cir. 1982); Envt'l Def. Fund, Inc. v. Gorsuch, 713 F.2d 802, 818 (D.C. Cir. 1983)

[81] *See e.g.*, APA, 5 U.S.C. § 706; the Clean Air Act (CAA), 42 U.S.C. § 7607(d)(7)(B).

[82] *See e.g.*, Clean Air Council v. Pruitt, 862 F.3d 1, 12 (D.C. Cir. 2017). ("EPA must point to something in either the Clean Air Act or the APA that gives it authority to stay the methane rule, and as we explain below.").

[83] The APA, 5 U.S.C. § 706(1) (authorizing courts to "compel agency action unlawfully withheld or unreasonably delayed" even on actions that are not yet final). However, this action can only be compelled when it is required by statute. Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 63 (2004). *See also* Stephen Hylas, Final Agency Action in the Administrative Procedure Act, 92 N.Y.U. L. REV. 1644, 1675-77 (2017).

[84] The APA, 5 U.S.C. § 706(2)(A). Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 414, 91 S.Ct. 814, 822, 28 L.Ed.2d 136 (1971); Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co. (*State Farm*), 463 U.S. 29, 41, 103 S. Ct. 2856, 2865, 77 L. Ed. 2d 443 (1983).

[85] Prior to *State Farm*, the Supreme Court had similarly required an agency provide a "reasoned analysis" for a change of course. Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (CADC), *cert. denied*, 403 U.S. 923 (1971) ("An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis.").

confronted a "tidal wave"[86] of cases that "constituted the nation's first conscious experiment with deregulation."[87] In *Motor Vehicles Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.* ("*State Farm*"), the Court considered whether it was arbitrary and capricious for an agency to rescind a seatbelt regulation that the agency had under the previous administration found would save thousands of lives annually.[88] The Court determined that when agencies reverse their previous policies they "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts founds and the choice made.'"[89] As the Ninth Circuit recently explained, "[e]lections have policy consequences, But *State Farm* teaches that an agency may not simply discard prior factual findings without a reasoned explanation."[90] This "reasoned explanation" standard applies to suspensions as well as repeals and modifications.[91]

For decades after *State Farm*, courts have struggled to determine what a "reasoned explanation" entails in the context of rule changes, whether it is greater or equal to the justification required for a new rule promulgated on a blank slate, and what other standards affect whether an agency is bound to its previous determinations and interpretations. Agencies enjoy wide latitude to change their policies and can, in succession, reach even opposite conclusions—provided they justify their actions and follow the required procedures.[92] However, an "unexplained inconsistency" can still indicate an arbitrary and capricious change in violation of the APA.[93] Depending on the type of reason underlying the change, different

[86] Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413, 1443 (D.C. Cir. 1983).
[87] Merrick B. Garland, *Deregulation and Judicial Review*, 98 HARV. L. REV. 505, 509 (1985).
[88] *State Farm* at 38.
[89] *State Farm* at 43. *See also* the Supreme Court describing *State Farm* as a case in which the Court "found the agency's rescission arbitrary and capricious because the agency did not address its prior factual findings.'" F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 587 (2009) (citing *State Farm,* 463 U.S. at 49–51).
[90] Organized Vill. of Kake v. U.S. Dep't of Agric., 795 F.3d 956, 968 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 1509, 194 L. Ed. 2d 585 (2016).
[91] *See e.g.*, Sierra Club, 833 F. Supp. 2d at 18. Club v. Jackson, 833 F. Supp. 2d 11, 27 (D.D.C. 2012).
[92] *See e.g.*, Sprint Corp. v. FCC, 315 F.3d 369, 373-374 (D.C. Cir. 2003).
[93] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 981 (2005).

levels of justification are necessary, and in some cases no level of justification may prove sufficient. The standards for several types of reversals underlying policy changes are considered below: 1) an alteration of factual findings or alteration of a prior policy engendering serious reliance interests, 2) an alteration of policy conclusions based on the same factual findings, and 3) a different legal conclusion about what is or is not permissible.

(1) *Alteration of Factual Findings or of Prior Policy Engendering Serious Reliance Interests*: Today, the *State Farm* case is still known "[a]s a paradigm of the rule that a policy change violates the APA "if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so.""[94] The Supreme Court attempted to clarify when to apply this standard in its 2009 decision in *Federal Communications Commission v. Fox Television Stations, Inc.*, concerning whether the Federal Communications Commission (FCC)'s new practice to consider "fleeting expletives" as indecent language, a reversal of prior policy, was arbitrary and capricious.[95] *Fox* held that "sometimes" the agency must articulate "a more detailed justification" for a change in policy than for a new one, such as when a "new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account."[96] In such circumstances, the agency must give "a reasoned explanation" "for disregarding facts and circumstances that underlay or were engendered by the prior policy."[97]

---

[94] Organized Vill. of Kake v. U.S. Dep't of Agric (*Vill of Kake*)., 795 F.3d 956, 966–67 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 1509 (2016) (As a paradigm of the rule that a policy change violates the APA "if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so," Justice Kennedy cited *State Farm* at 537).

[95] F.C.C. v. Fox Television Stations, Inc. (*Fox Televisions Stations*), 556 U.S. 502 (2009).

[96] *Fox Television Stations* at 515 (citation omitted). The Court continued to elaborate "It would be arbitrary or capricious to ignore such matters."

[97] *Fox Television Stations* 556 U.S. at 515–16. Upheld in Perez v. Mortg. Bankers Ass'n, 135 S. Ct. 1199, 1209, 191 L. Ed. 2d 186 (2015) ("As we held in *Fox Television Stations,* and underscore again today, the APA requires an agency to provide more substantial justification when 'its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters.'").

The "reasoned explanation" standard applies even if no new facts influence the agency's shift in policy. This was illustrated in the en banc Ninth Circuit decision, *Organized Village of Kake v U.S. Dept. of Agriculture*, which concerned a reversal of course by the U.S. Forest Service (USFS) on whether it would exempt the Tongass National Forest from a land management action. The Ninth Circuit affirmed that an agency was entitled to reweigh costs and benefits to reach a different conclusion, "even on precisely the same record," but it still must provide a reasoned explanation for finding that an action which the agency believed posed "a prohibitive risk to the . . . environment only two years before now poses merely a 'minor' one."[98] Even though the courts apply a high level of deference to an agency's interpretation of the "statutory scheme it is entrusted to administer"[99] and an even greater deference "when reviewing scientific judgments and technical analyses within the agency's expertise,"[100] this does not absolve an agency of the "reasoned explanation" requirement.[101] Agency actions that fail the "reasoned explanation" test receive no Chevron deference and are arbitrary and capricious.[102]

As noted above, a heightened reasoning requirement also applies when a "prior policy has engendered serious reliance interests." In recent years, the Supreme Court and D.C. Circuit have both articulated and applied this standard. In *Encino Motorcars, LLC v. Navarro*, the Supreme Court quashed a new policy from the Department of Labor because its "summary discussion" of the change was insufficient given the "decades of industry reliance on the Department's prior policy."[103] Conversely, in *United States Telecom Association v. Federal Communications Commission*, the D.C. Circuit upheld a new policy from the FCC for adequate

---

[98] *Vill. of Kake*, 795 F.3d at 969.
[99] The courts have granted agencies a high degree of deference under the Chevron Doctrine when the intent of Congress is ambiguous. Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984).
[100] N. Plains Res. Council, Inc. v. Surface Transp. Bd., 668 F.3d 1067, 1075 (9th Cir.2011).
[101] Motorcars, LLC v Navarro (*Motorcars*), 136 S. Ct. 2117 (2016). *See also Vill. of Kake*, 795 F.3d. 956.
[102] *Motorcars*, 136 S. Ct. at 2126 ("[A] reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy. It follows that an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.").
[103] *Id.*

consideration of a prior policy that had "indirect effect (along with many other factors) on investment" and had only been "settled for only a short period of time."[104]

(2) *Alteration of Policy Conclusions Based on the Same Factual Findings*: A heightened "reasoned explanation standard" does not apply to all agency reversals of policy. In *Fox*, the majority concluded that an "agency need not always provide a more detailed justification [for a change in policy] than what would suffice for a new policy created on a blank slate."[105] Specifically, it is only required 1) that the agency must "display awareness that it *is* changing position, 2) that "the new policy is permissible under the statute," 3) "that there are good reasons for it," and 4) "that the agency *believes* it to be better, which the conscious change of course adequately indicates."[106] Still as with any new rule, the agency must justify its position, and further it must address alternatives in the original rulemaking record.[107]

(3) *Different Legal Conclusions about What Is or Is Not Permissible*. Agency decisions subject to judicial review are sometimes based on legal interpretations of statutory language, or the U.S. Constitution, rather than factual determinations or policy choices. "When agency action is based on a flawed legal premise, it may be set as aside as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[108] That is, a change in opinion on the legality of a given rule, if wrong, cannot justify the change. Invoking this principle, the U.S. District Court for the Northern District of California recently set aside an order from the Trump Administration's Department of Homeland Security which had terminated the enforcement of

---

[104] United States Telecom Ass'n v. FCC, 825 F.3d 674, 709 (D.C. Cir. 2016).
[105] F.C.C. v. Fox Television Stations, Inc. (*Fox Televisions Stations*), 556 U.S. 502, 515 (2009).
[106] *Id*. (clarifying that in regards to prong 4, the agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one."
[107] Noll & Grab at 279-281. *See also* Public Citizen v Steed, 733 F. 2d. 93 (D.C. Circuit 1984); Int'l Ladies Garment Workers' Union v Donovan, 722 F.2d. 795 (D.C. Cir. 1983).
[108] Regents of Univ. of California v. United States Dep't of Homeland Sec., No. C 17-05211 WHA, 2018 WL 339144, at *1 (N.D. Cal. Jan. 9, 2018) (Setting aside a Department of Homeland Security order that the enforcement of the Deferred Action for Childhood Arrivals (DACA) fell within the agency authority (citing *Massachusetts*, 549 U.S. at 532 (for "setting aside the EPA's denial of a petition for rulemaking under the Clean Air Act for supposed lack of authority"); *Safe Air for Everyone v. EPA*, 488 F.3d 1088, 1101 (9th Cir. 2007))).

the Deferred Action for Childhood Arrivals (DACA) on the premise that DACA exceeded statutory authority.[109]

Under the Chevron doctrine,[110] courts generally grant agencies a high degree of deference for their statutory interpretations. In the 1980's and 90's the Supreme Court went back and forth on whether to grant agencies Chevron deference when they switch their legal interpretation.[111] In the Supreme Court's currently prevailing decision on the matter, *National Cable & Telecommunications Association v. Brand X Internet Services*, the Court said that "[a]gency inconsistency is not a basis for declining to analyze the agency's interpretation under the *Chevron* framework," but noted that an "unexplained inconsistency" can still indicate an arbitrary and capricious change in violation of the APA.[112]

The courts have not yet had much opportunity to apply the above substantive standards for judicial review to any of the Trump Administration's climate deregulatory activities.

---

[109] *Id*. at *17 (finding that the Obama Administration's "order holds that DACA fell within the agency's enforcement authority. The contrary conclusion was flawed and should be set aside.")

[110] *Chevron v. Natural Resources Defense Council*, 467 U.S. 837. 843-44 (1984) ("[f]irst, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, . . the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous . . . the question for the court is whether the agency's answer is based on a permissible construction of the statute").

[111] *See also* Yehonatan Givati & Matthew C. Stephenson, Judicial Deference to Inconsistent Agency Statutory Interpretations, 40 J. LEGAL STUD. 85, 87-92 (2011). In dicta, the Supreme Court acknowledged in Chevron that "initial agency interpretation is not instantly carved in stone," (*Chevron v. Natural Resources Defense Council*, 467 U.S. at 863), but a couple of years later said that "agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is 'entitled to considerably less deference' than a consistently held view" (*Immigration and Naturalization Service v. Cardoza-Fonseca* (480 U.S. 421, 446 (note 30) (1987)). Over the next decade, the Supreme Court embraced both positions, at times even during the same term. In *Rust v. Sullivan* (500 U.S. 173 (1991)), the Supreme Court said a reversal gets Chevron deference, but *Pauley v. BethEnergy Mines* (501 U.S. 680 (1991)) said that the case for deference proved less compelling when an agency acts inconsistently. In *Good Samaritan Hospital v. Shalala* (508 U.S. 402 (1993)), the Supreme Court said that "the consistency of an agency's position is a factor in assessing the weight that position is due" (508 U.S. at 417).

[112] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 981 (2005).

Usually, only "final agency actions" are subject to judicial review[113] and the Trump Administration only finalized its first climate rule—a delay of standards to limit methane leaks from the oil and gas sector—in December.[114] The final rule was promptly challenged, but the case had not yet reached a decision on the merits at the end of 2017.[115] As the Trump Administration finalizes climate rules and repeals in 2018 and beyond, these judicial standards will likely feature more commonly in climate change litigation.

In the interim, litigants have found other ways to challenge deregulation—directly and indirectly. As described in the following sections, climate cases filed in 2017 have, among other claims, directly challenged presidential activities for exceeding statutory and constitutional authority; challenged unreasonable delays that would otherwise circumvent the procedural requirements of notice and comment rulemaking and/or violate statutory obligations; sought to increase transparency through FOIA and compel enforcement of legal obligations to consider climate change during environmental review; and have advanced new theories of liability under tort law. Rather than summarize all of the relevant standards of review here, they are addressed specifically as relevant to case analysis later in the paper.

---

[113] *See* 5 U.S.C. § 704 (2012) ("Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review."). *See also* Stephen Hylas, *Final Agency Action in the Administrative Procedure Act*, 92 N.Y.U. L. REV. 1644, 1675-77 (2017).

[114] Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements, 82 Fed. Reg. 58050 (Dec. 8, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-12-08/pdf/2017-26389.pdf.

[115] State v. United States Bureau of Land Mgmt. (Methane Waste Prevention Rule Case), No. 17-CV-03804-EDL, 2017 WL 4416409, at *1 (N.D. Cal. Oct. 4, 2017) (Holding that BLM's acting beyond its authority in postponing of the effective date of certain provisions of the methane waste rule).

3. OVERVIEW OF CLIMATE CHANGE LITIGATION IN THE FIRST YEAR OF THE TRUMP ADMINISTRATION

This analysis takes stock of how climate change litigation has countered—and at times courted—deregulation in the first year of the Trump Administration. Domestic climate change litigation shapes national climate policy in a variety of ways, encompassing not only high-profile matters, but also everyday environmental review and permitting decisions that incrementally and cumulatively shape the law.[116] In fact, claims concerning "procedural monitoring, impact assessment, and information reporting," have composed a dominant volume of climate change litigation matters in the United States.[117] Recognizing 1) that many of the Trump Administration deregulatory climate actions are not yet ripe for direct review under the judicial standards discussed in Part 2.2, and 2) that climate change litigation shapes national policy through a variety of avenues, this paper identifies five major ways that climate litigation may be influencing Trump-era deregulation, directly and indirectly, at the national level.

3.1 Defining and Categorizing a Climate Change Litigation Response to Deregulation

This analysis reviewed cases collected in the "U.S. Climate Change Litigation Database" maintained through a partnership of the Sabin Center for Climate Change Law and the law firm Arnold & Porter ("Sabin-AP database"). The database includes only cases that explicitly discuss GHG emissions or climate change impacts in relation to their claims.[118] Other cases unquestionably have important impacts on reducing GHG emissions and adapting to the effects of climate change—for examples, litigation concerning mercury and other non-GHG emissions

[116] David Markell and J.B. Ruhl, *An Empirical Assessment of Climate Change In The Courts: A New Jurisprudence Or Business As Usual?*, 64 FLA. L. REV. 15, 31, 41-46,57-65 (2012).
[117] *Id*. at 16-18.
[118] Ongoing discussions between Nov. 2017-Feb. 2018 with those responsible for the Sabin-AP U.S. Climate Change Litigation Database *supra* note 15.

from power plants, coal ash discharge rules, and royalty rates for federal coal, oil and gas—but these cases are not included unless climate change is an issue of fact or law. Of course an increase in the prevalence of these "non-climate change" cases is a likely response to climate change deregulation; nonetheless, this study focuses on analyzing claims that explicitly address climate change. Thus, for instance, lawsuits challenging President Trump's decision to shrink National Monuments, effectively opening protected areas to increased fossil fuel development, are discussed narratively, but they are not included in the data set. In contrast, lawsuits challenging leasing for fossil fuel extraction on public lands that explicitly raise a claim concerning failure to account for the direct or indirect impacts of climate change or GHG emissions are included in the data set.

The data set of 82 cases reviewed for this analysis was assembled in the following way. First, a preliminary review was conducted of all state and federal "climate cases" contained in the Sabin-AP database and filed in 2017.[119] From that database of 106 ligation matters filed in 2017, 77 cases were selected for the dataset based on their relevance to how federal climate change litigation has countered—and at times encouraged—deregulation during year one of the Trump Administration. These 106 litigation matters were winnowed to 77 relevant cases for the following reasons. Eleven cases were removed because they involved only administrative actions or pre-litigation proceedings. Another 17 cases were removed from the data set because they primarily concerned state policies.[120] Cases in state courts or adjudicatory bodies were only

[119] Sabin-AP U.S. Climate Change Litigation Database *supra* note 15. The Sabin-AP database lists 106 cases as filed in 2017 as of January 31, 2018. This number may shift as cases are subsequently consolidated or added. While possible that additional matters meet the definition of "climate case" used in this study, this study limited itself to cases in that database. Note also that "[t]he term "cases" in the U.S. chart comprises more than judicial and quasi-judicial administrative actions and proceedings. Other types of "cases" contained in the chart include rulemaking petitions, requests for reconsideration of regulations, notices of intent to sue (in situations where lawsuits were not subsequently filed), and subpoenas. In addition, one case may involve multiple complaints or petitions that have been consolidated, and the entry for a single case may include multiple decisions at the trial and appellate levels."

[120] These cases included such matters as state environmental plans, laws, and environment review. While an uptick in these cases could be a likely response to deregulation, this analysis focuses on cases that more directly shape and affect a national response to climate deregulation.

included in the data set if they involved federal law, common law tort claims, or state information acts. These types of cases fit within the categories analyzed in this paper to assess how litigation is shaping national climate policy within the current deregulatory environment. One additional case was removed from the data set for irrelevance and concerned a scientist challenging a journal where his work was published. Appendix B contains a full list of the 2017 cases in the Sabin-AP database but removed from the data set reviewed in this paper.

Five cases in the Sabin-AP database that were filed before 2017 were added to the data set because they involved litigation which pivoted in response to Trump Administration deregulatory activity.[121] In each of these cases, an agency that had previously defended an Obama-era rule sought abeyance of the litigation so that the Trump Administration could review the rule. While not creating a new docket, in each case a new action related to deregulation was filed that effectively constituted a "new case" for the analysis. Since these cases concern new deregulatory efforts in the courts to reverse Obama-era climate-related rules, this analysis would be remiss without including this litigation.

Collectively, the above criteria resulted in the final data set of 82 cases: 77 filed in 2017 and 5 filed previously. A full list of cases reviewed for this analysis is available in Appendix A. Each case was categorized as one of five major responses to climate change deregulation:

1. **Defending Obama Administration Climate Policies & Decisions:** In these cases, litigants challenge a revocation, delay, or other rollback of a climate change policy or climate-related decision of the Obama Administration.
2. **Demanding Transparency & Scientific Integrity from the Trump Administration:** These cases undermine climate change deregulation by filing challenges under FOIA and similar state laws to illuminate the Trump Administration's activities to reduce climate change protections and/or reveal actions that may be illegal or unethical.

[121] For list of cases see chart 6 in Appendix A. These suits concern the Clean Power Plan, new source performance standards for power plants, performance standards and emissions limits for landfills, and GHG emissions and fuel efficiency standards for medium- and heavy-duty engines, and new source performance standards for the oil and gas sector.

3. **Integrating Consideration of Climate Change into Environmental Review and Permitting:** These argue for greater consideration of climate change impacts or the effects of GHG emissions in adjudications over environmental permits, species listing/delisting under the Endangered Species Act, and/or other environmental review of individual projects. It also includes integrating consideration of climate change into agency policies related to environmental review and permitting, but it does not include challenges to major climate-related rules or decisions of the Obama Administration (which are categorized in "Defending Obama Administration climate-related policies & decisions.")
4. **Advancing or Enforcing Additional Climate Protections through the Courts:** These cases advance climate change protection through a mechanism other than the three more specific "pro" categories. Many advance novel theories involving constitutional law, common law, and statutory interpretation or implementation. A few seek to compel regulation or reporting not completed in the Obama-era.
5. **Deregulating Climate Change, Undermining Climate Protections, or Targeting Climate Protection Supporters:** This category encompasses any "con" climate litigation matters that if successful would support climate change deregulation, reduce climate protections generally or at the project-level, and/or target climate protection supporters through FOIA or other means.

Cases were sorted according to the effect of their climate-related claim on deregulation, not the case as a whole.[122] While described as "responses," some of these cases may very well have occurred even in the absence of the Trump Administration's deregulatory activities. These categories are meant to describe how litigation not only responds, but more broadly interacts with the Trump Administration's deregulatory activities on climate change policy.

[122] For example, California's challenge to the border wall is categorized in environmental review and permitting because its climate claim relates to a NEPA challenge. See Chart 3, Appendix A.

Every categorization scheme suffers trade-offs between aggregation and detail. This categorization does not seek to replicate the granularity of previous climate litigation empirical studies,[123] but instead seeks to explain top-level developments in how litigation interfaces with climate change deregulation in 2017. As noted earlier, the focus of the categorization is not based purely on the substance of the claim, but on how the cases will affect climate change deregulation—either positively or negatively—if the filing party is successful. The first four categories deal with "pro" cases that, if the plaintiffs/petitioners are successful, will positively affect climate protections and/or oppose climate change deregulation. The fifth category deals with the "con" cases which if the filing party is successful will support deregulation, undermine climate protections, or create a chilling influence on climate protection supporters. The "pro" or "con" distinction is based on the objective of the filing party or parties and whether their success would support or undermine climate-related protections.[124]

To better explain how litigants are attempting to shape climate change law and policy in the absence of federal leadership, cases were further categorized according to their: (1) dominant sector, (2) category of plaintiff, (3) defendant, (4) adjudicatory body, (5) principal law(s) at issue, and (6) current status. This categorization is available in Appendix A for all cases reviewed in the analysis. For cases involving multiple litigants or claims, all litigant types and principal laws at issue were counted. Accordingly, the counts of claims and parties in the data tables of Part 3.2 exceed the total number of cases in the data set. One particularly thorny accounting issue concerns delineating what counts as a single case. Cases that were

[123] *E.g.*, Markell and Ruhl (2012).

[124] Markell and Ruhl (2012) at 66 make a similar distinction between "pro" and "con" cases, noting "what we refer to as "pro" and "anti" cases, with "pro" cases having the objective of increasing regulation or liability associated with climate change and "anti" cases being aimed in the opposite direction." One particularly difficult categorization concerned the five pre-2017 cases. Each of these cases represented an original suit to rollback Obama-era climate rules. However, they were included in this paper because of how their 2017 developments reflected a response to climate change deregulation. Thus, this paper uses these 2017 developments as the baseline for analysisThese five abeyance motions are categorized within "Supporting Deregulation" because they represent an agency's effort to ice Obama-era rules and better enable review, repeal, and/or replacement outside the courts.

consolidated or related prior to January 1, 2018 were counted as a single case. If a particular claim is being considered by both an agency adjudicatory body and a federal court that is also counted as a single case, e.g. a challenge to a pipeline authorization before both FERC and a federal court. This allows the data to more accurately represent the distribution of substantive issues, but less accurately represent the total volume of original cases filed.

3.2 Primary Features of the Climate Change Litigation Response to Deregulation

This section provides an overview of the defining features of how litigation has responded to climate change deregulation. It answers the following questions:

1. How do these cases respond to climate change deregulation?
2. Who are the litigants shaping the deregulation response?
3. What is the substance of the litigation?
4. How far have these cases progressed?

3.2.1 How Do These Cases Respond to Climate Change Deregulation?

As noted above, the climate change cases revealed five major categories. Four of these categories worked in favor of climate change protections, the "pro" cases, and are demarcated with blue wedges in Figure 1. Figure 1 depicts the "con" cases in orange—these cases seek to lessen climate change protections. The pro cases outweigh the con cases roughly 3:1 (73% pro cases to 27% con cases). The lower percentage of con cases reflects a strong defensive effort from climate protection advocates responding to deregulation, but may underrepresent the field of pending con litigation filed prior to 2017 to challenge the Obama Administration's policies.

The distribution of litigation responses across categories also indicates a significant indirect pro response to deregulation. Only about one quarter (23%) of pro cases directly challenged rollbacks and delays of climate-related protections, reflecting the early phase of deregulation brought in 2017, the limited number of matters that have reached the stage of

"final agency action" suitable for judicial review, and the broader litigation opportunities available to challenge the Trump Administration. Pro litigants have indirectly responded to deregulation by: 1) filing cases that promote transparency & scientific integrity, 2) requiring agencies to uphold their legal obligations to consider climate change as part of environmental review, and advancing other climate-related protections. These indirect efforts represent both long-standing and new trends. For example, environmental review has represented a significant portion of climate litigation prior to the Trump and even Obama Administrations. Conversely, FOIA or similar state-law claims appear to be growing—both in the pro and con categories. Fourteen of the thirty-six FOIA cases in the Sabin-AP database were filed in 2017.[125] The con cases include direct tactics to undermine climate-related rules and also less direct effects such as challenges to individual permitting decisions and attacks on critics of the fossil fuel industry. Section 4 discusses each major category and its subcategories in greater detail.

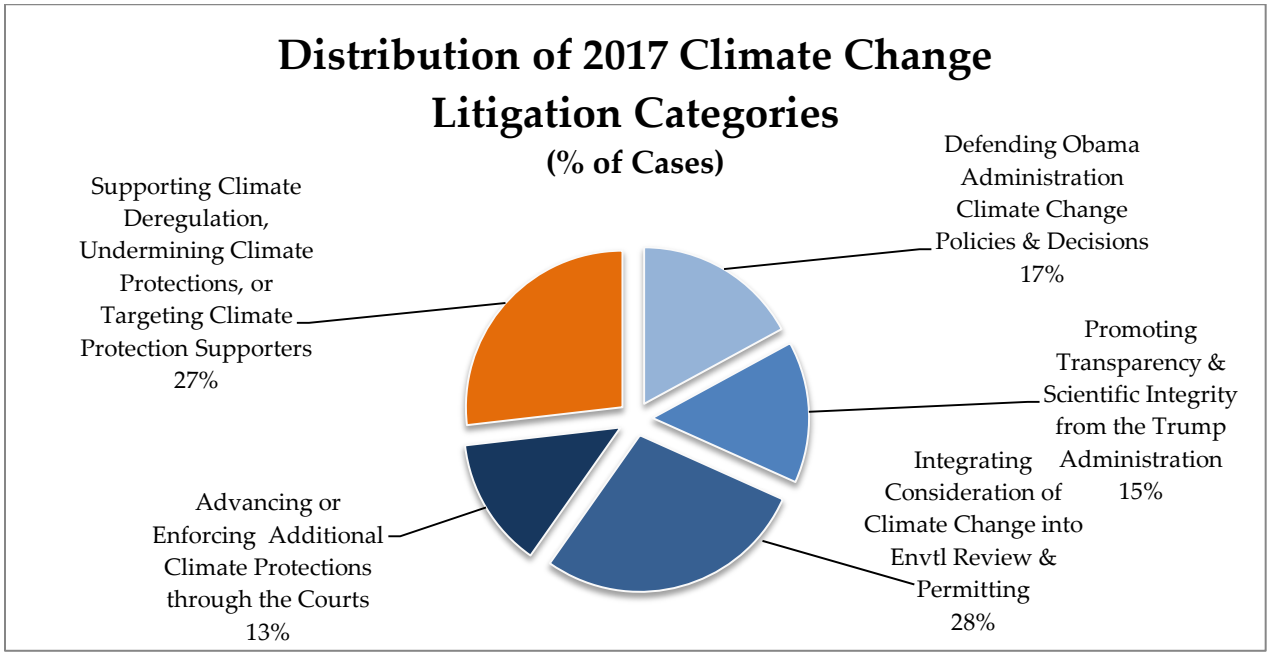

Figure 1: Cases were assigned to a single category. Blue indicates "pro" cases in favor of climate-related protections and orange indicates "con" cases opposing climate-related protections. See Part 4 for further description of the cases assigned to each category.

[125] Sabin-AP U.S. Climate Change Litigation Database, *available at* http://climatecasechart.com/search/?fwp_filing_year=2016%2C2017.

3.2.2 Who Are the Litigants?

Plaintiffs/Petitioners filed 60 pro and 22 con cases in the data set. Pro cases brought by NGOs represent more than half (43/82 cases or 52%) of the total climate litigation filed in 2017. Looking within the pro category, NGOs brought 72% of the pro litigation items. Only a handful of national and international environmental NGOs were involved in more than half (55%) of all pro cases. Municipal, state, and tribal government entities were plaintiffs or petitioners in 28% of pro cases which included actions from more than a dozen different states.

Industry actors (private companies and trade groups) brought 20% of total cases (16/82) and 68% of con cases (15/22). These numbers do not include conservative think tanks closely aligned with industry interests—such groups make up 6/7 of the con NGO cases. Even still, these figures may not fully capture the full influence of industry actors because 1) industry intervenes in a large volume of cases (not captured in this analysis), and 2) industry filed challenges to Obama-era climate rules prior to 2017. As noted above, pre-2017 filings are only included if 2017 where new abeyance activity in the docket brings new climate deregulation efforts into the case.

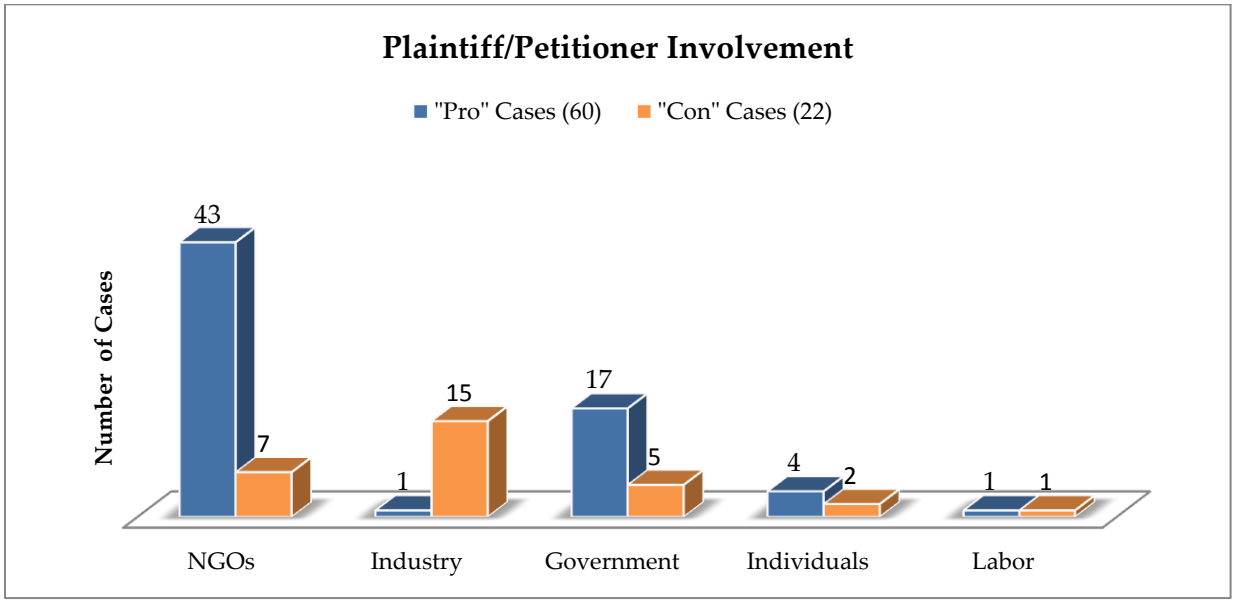

Figure 2: See Appendix A for data underlying figure. The numbers add up to more than the total number of cases because there are multiple parties in many of the cases. For the five pre-2017 cases included because of the abeyance actions taken in 2017, both the government party moving for the abeyance action and the original

plaintiffs/petitioners in the case supporting the abeyance motion were counted as "plaintiffs/petitioners." This was done on the basis that the "abeyance" action was the development that motivated inclusion of the case in the data set of 2017 cases.

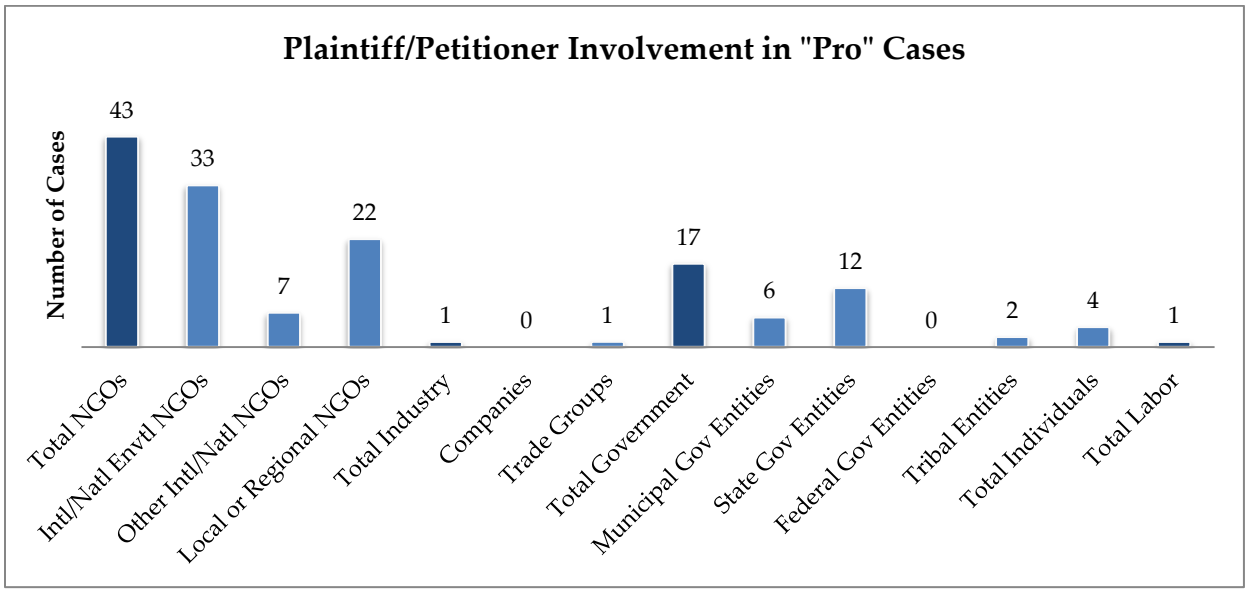

Figure 3: See Appendix A for data underlying figure. The numbers add up to more than the total number of cases because there are multiple parties in many of the cases.

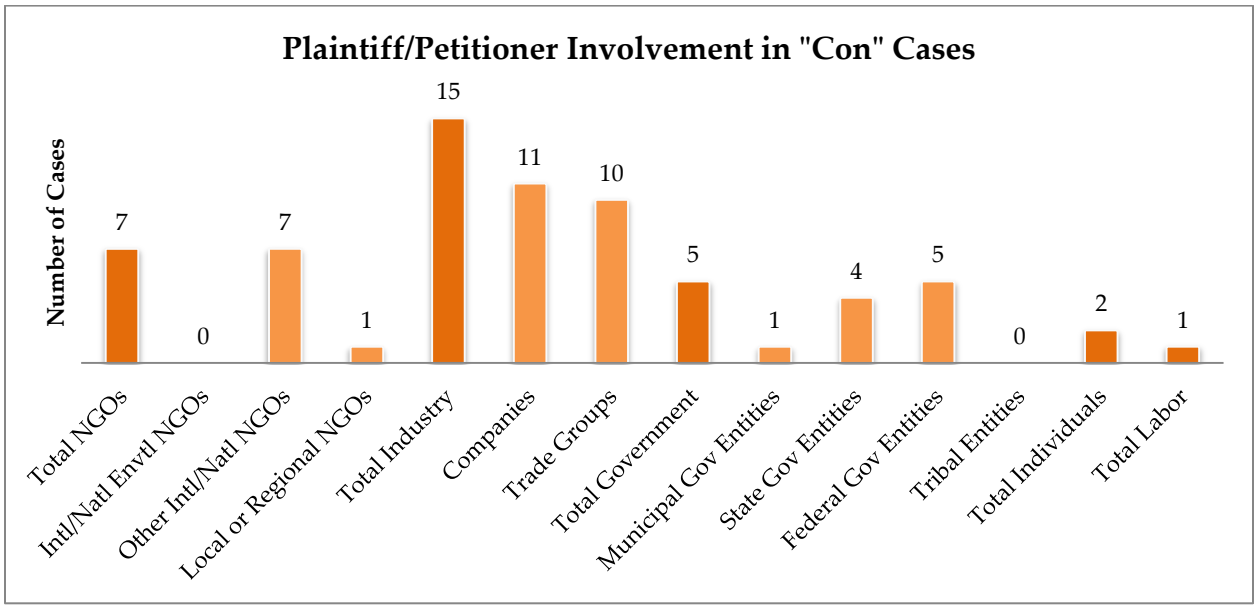

Figure 4: See Appendix A for data underlying figure. The numbers add up to more than the total number of cases because there are multiple parties in many of the cases. For the five abeyance actions taken in 2017, both the government party moving for the abeyance action and the original plaintiffs/petitioners in the case supporting the abeyance motion were counted as "plaintiffs/petitioners." This was done on the basis that the government

"abeyance" action was the new development motivating inclusion of the case in the data set of 2017 cases, but the original plaintiffs/petitioners are involved in pressing the case and the abeyance action forward.

The federal government is the defendant in a vast majority of cases (78% or 60/77 of the cases filed in 2017, not including the abeyance cases because of the complex nature of categorizing the defendants for those cases). Cases against federal government officials in their official capacities were categorized as against the official's respective agency or department. While more than a dozen federal entities were sued, more than half of the cases (55% or 33/60, not including the abeyance cases) against federal defendants challenged the DOI, EPA, their respective sub-entities, or their officials. Defendants also include state-level government entities, fossil fuel companies, and critics of fossil fuel companies. The abeyance cases are pulled out as a separate bar since the original defendant was the Obama Administration EPA, and while the EPA is still listed as the defendant in these cases, they are now working to challenge the rules in these cases rather than defend them, aligning their behaviors more closely with the petitioners.

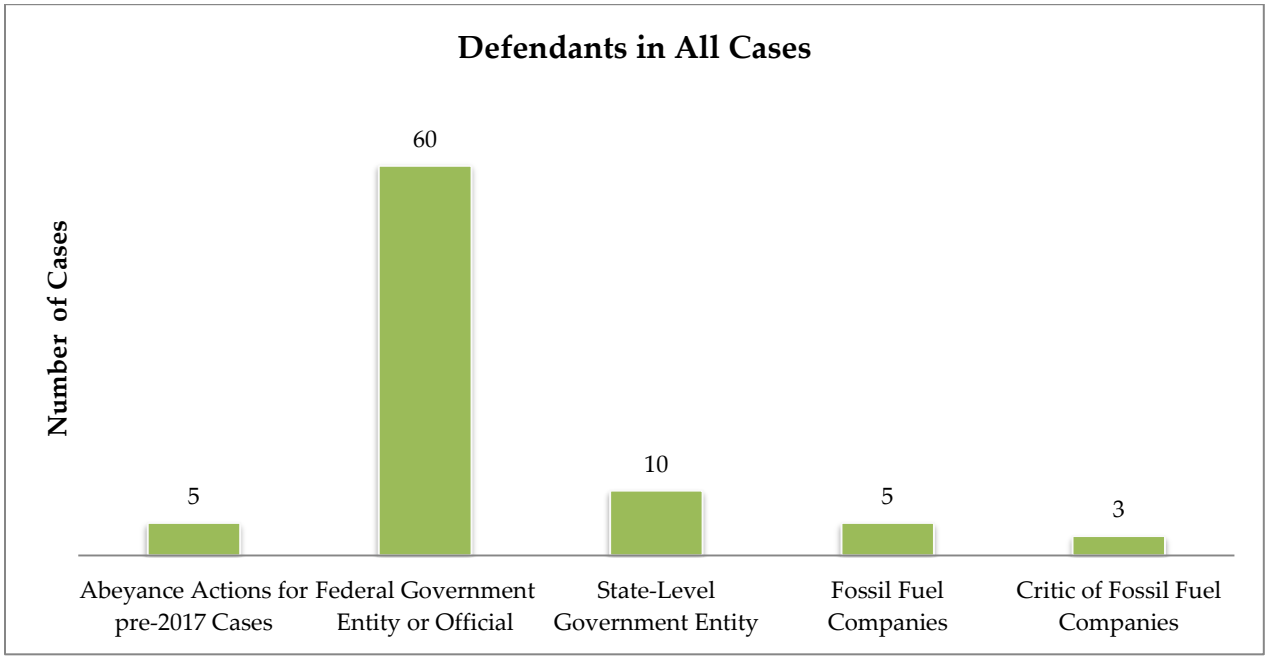

Figure 5: See Appendix A for data underlying figure. Abeyance actions are counted separately because of the complexities of categorizing the defendants as the government parties shifted stance after the election. In these cases

the original government defendants are now playing a role more akin to petitioners by filing the motion for abeyance. One case involved multiple categories of defendant.

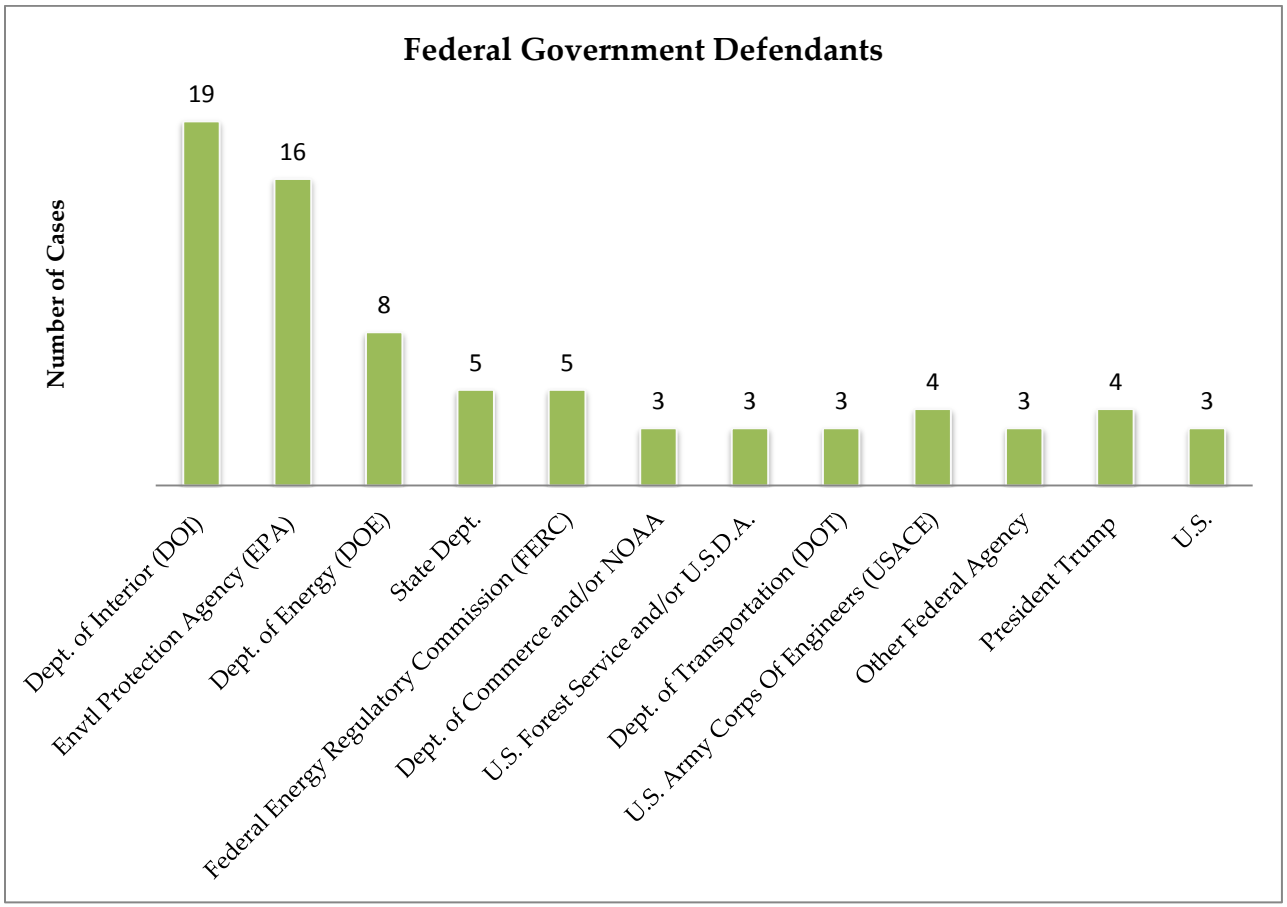

Figure 6: See Appendix A for data underlying figure. Each category includes suits against officials employed by the indicated government entity and subdivisions of that government entity. Many cases involved multiple defendants.

3.2.3 What is the Substance of the Litigation?

Climate litigation covered a wide spread of sectors in 2017. The volume of cases concerning "fossil fuel extraction and infrastructure" or "land, water, and wildlife" reflects in part the higher volume of adjudications over individual projects in these areas than in other sectors. A small number of cases concerning broad standards for transportation, power plant, and landfill emissions have the potential to influence a much greater total quantity of GHG emission reductions. Thus, the volume of cases in each sector should not be read as indicative of the impact each sector has on climate change law and policy. Cases were assigned to a single

dominant sector. All FOIA and other records-related cases were all grouped within the "government records or communications" sector even if they concerned an underlying substantive topic area to better distinguish these suits from other types of claims.

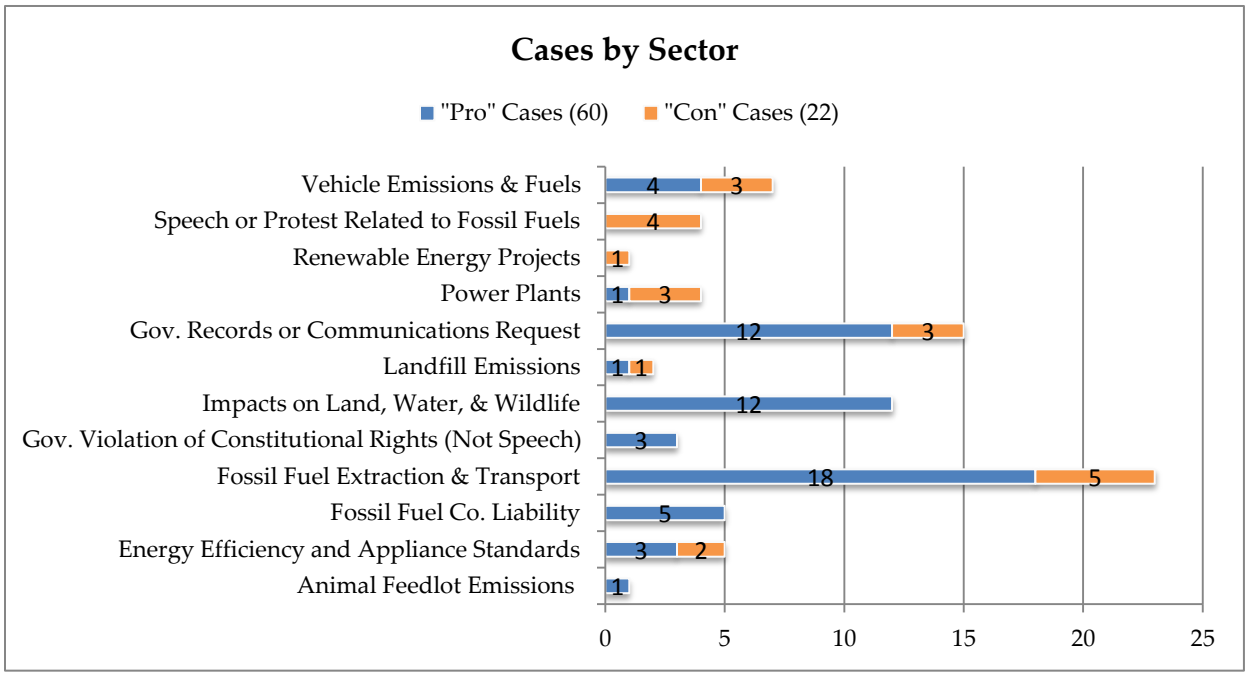

Figure 7: See Appendix A for data underlying figure. Each case was assigned a single dominant sector.

A vast majority of cases raised issues under federal environmental statutes and administrative law, often in combination. 42 cases involved environmental statutes and at least one of four major environmental statutes—the Clean Air Act (CAA), the Clean Water Act (CWA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA)—played a role in 41/42 of the cases involving environmental law. Again the exact distribution of cases does not indicate proportional influence. Many of the NEPA decisions concern individual project and permitting decisions and the relatively large share of Clean Water Act (CWA) cases is at least partially attributable to a set of NEPA challenges to state-level CWA permitting decisions for fossil fuel projects. The preponderance of NEPA and CAA "pro" cases help explain the attacks on those statutes by those who seek to advance climate change deregulation. However, climate change protection proponents continue to push for incorporation of climate change considerations throughout a wide variety of federal

environmental, natural resources, and energy law as well as raising claims under administrative, constitutional, and common law.

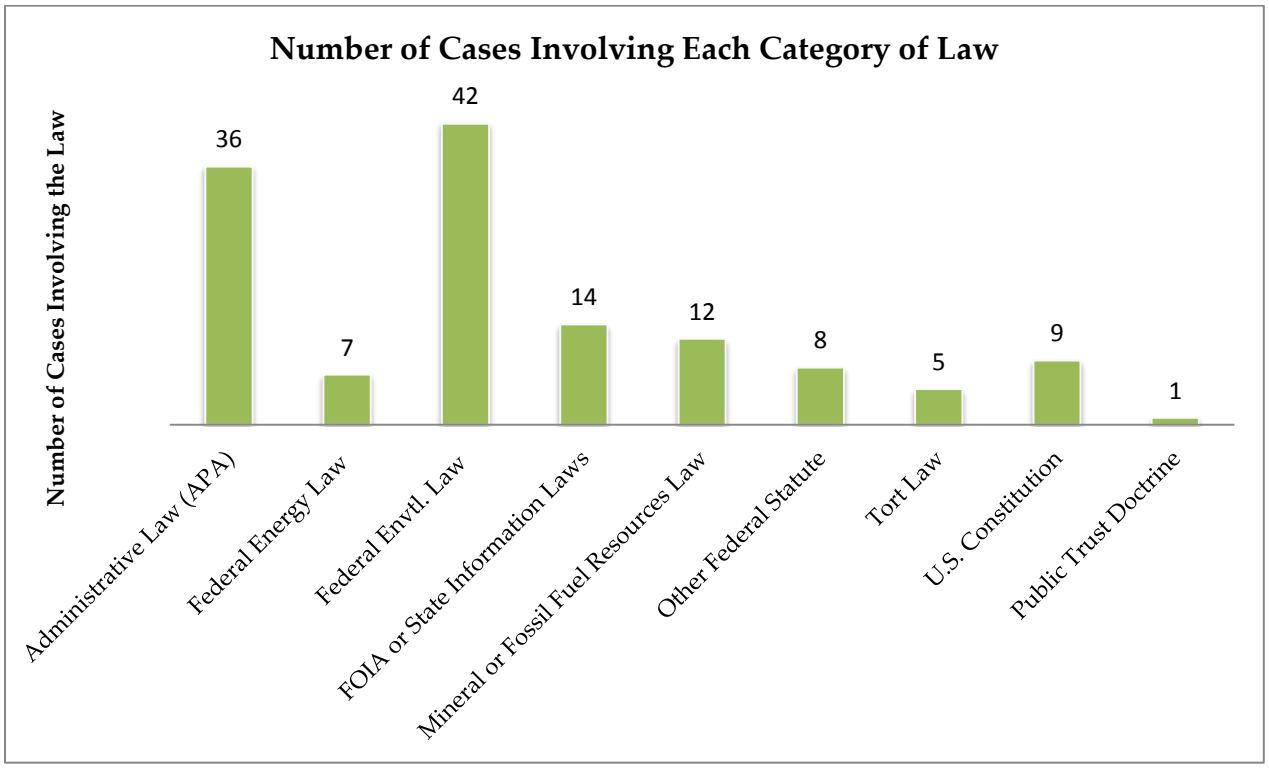

Figure 8: See Appendix A for data underlying figure. Laws were counted if they played a significant role in the case even if a claim was not brought specifically under that law. Many cases involved multiple laws.

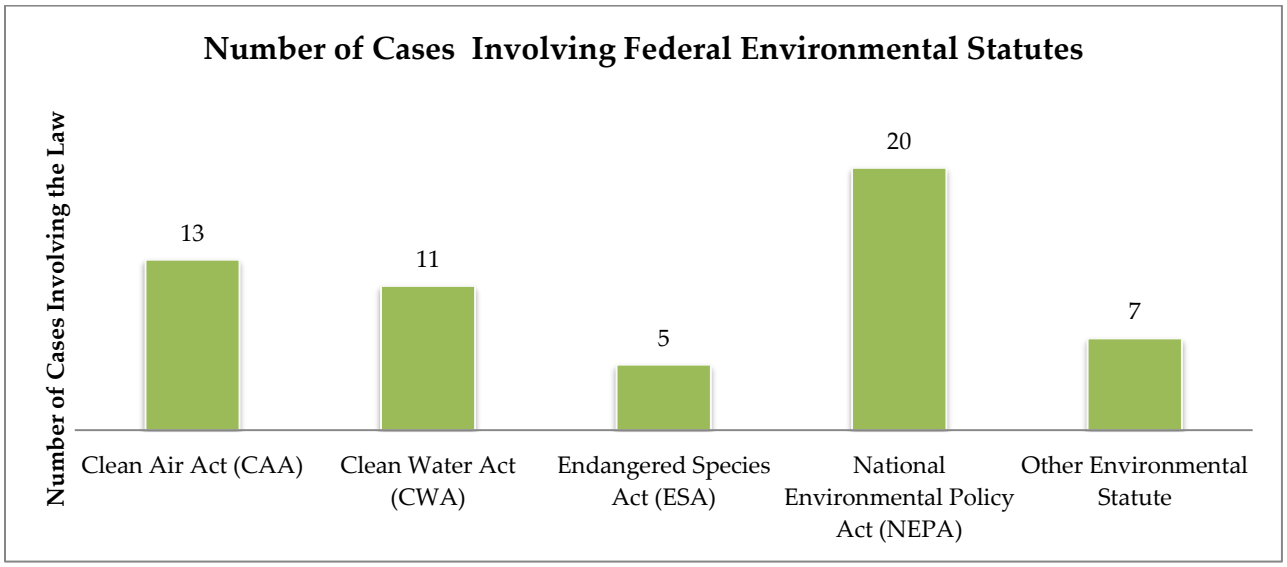

Figure 9: See Appendix A for data underlying figure. Counts represent number of cases involving a given law. Many cases involved multiple laws.

3.2.4 How Far Have These Cases Progressed?

The vast majority of cases are still pending, though these matters are constantly in flux. As of February 1, 2018 at least 20 of the 82 cases were identified to have reached some form of intermediate or final resolution through a judicial decision, dismissal, denial, withdrawal, and/or rulemaking response from the involved agency. Most dismissals or denials did not directly affect Obama-era climate rules. They included environmental review and permitting decisions for fossil fuel infrastructure, a pro se case, and free speech or other constitutional claims. Examining case progress across categories may prove misleading as the state-level denial to reconsider authorization of a pipeline or the dismissal of a pro se citizen complaint varies significantly in impact and posture from dismissal of a case concerning the merits of a national rule governing fossil fuel emission reductions. For this reason, a brief update on the progress of cases directly concerning Obama Administration climate policies is given here, but Part 4 provides a more targeted review of case status within each litigation category.

Of the fourteen lawsuits directly defending Obama Administration climate policies or decisions, six cases challenging different forms of delay reached some form of at least temporary resolution in 2017. Federal courts found an administrative delay and a compliance postponement to be illegal. One administrative stay case was voluntarily dismissed after the stay terminated and the agency withdrew its plans to delay the rule. Three cases provoked publication of two delayed rules by the relevant agency, (two cases concerned the same rule). However, these resolutions are not necessarily an end point. Appeal was denied to one administrative stay, but an appeal for the other stay has been filed and meanwhile new rulemaking seeks to enforce delay of the concerned rule. Of the two rules published after litigation, one has an effective date in 2020; the rulemaking process has begun to repeal the other. Of cases directly challenging Obama Administration climate policies and decisions, one was withdrawn after the agency agreed to review the rule in question and another was withdrawn upon agreement to settle. Another seven cases challenging Obama Administration climate rules are currently being held in abeyance (5 are the pre-2017 matters noted above).

4. ANALYSIS OF MAJOR CATEGORIES IN CLIMATE CHANGE LITIGATION IN 2017

This section unpacks each of the five key climate change litigation categories in greater detail. It includes a brief overview of what cases constitute each category, summarizes the involved parties and laws, identifies subcategories, and provides a brief update on the progress of the litigation.

4.1 Defending Obama Administration Climate Policies & Decisions

About 17% of cases in the data set defended existing climate change protections established by the Obama Administration. They contest revocations, repeals, delays, stays, and inactions that undermine climate change regulation. Some cases are defensive, fighting to keep active policies on the books, while others offensively push for delayed rules to be published or put into effect. Even though there were few "final agency actions" in 2017, these cases are still able to proceed forward under administrative, statutory, and constitutional legal theories. These cases have been brought primarily by municipal and state-level entities and environmental, public health, and consumer and other government watchdog groups. For a more detailed analysis of the litigation in this category, see Part 4 which summarizes the status of litigation in regard to significant climate policies and decisions of the Obama Administration.

By the Numbers:

- *Total Count*: The data set includes 14 cases meeting the above criteria.[126] About two-thirds involve delays or suspensions and the other third concern revocations, withdrawals, or new action that directs regulatory rollback.
- *Plaintiffs/Petitioners*: The cases have been brought by: state-level government entities (7), national or international environmental NGOs (8), local and regional organizations (6), municipalities (2), other NGOs (2), a tribe (1), and a union (1). Half

[126] See Appendix A for list of cases.

of the cases include state or municipal petitioners or plaintiffs and more than two thirds (71%) include NGOs.

- *Defendants*: Defendants include President Trump (2) and federal agencies, their sub-entities and officials: DOE (3), EPA (2), DOI (5), the State Department (2), and the Department of Transportation (DOT)(3).
- *Laws*: These cases involved: the APA (12), the CAA (2), the NEPA (2), the Energy Conservation Act (ECA)(2), the Energy Policy & Conservation Act (EPCA)(1), the Energy Independence & Security Act (EISA)(1), the ESA and the Migratory Bird Treaty Act & Golden Eagle Protection Act (1), the CWA (1), public lands and natural resources law (including the OCSLA, the Federal Land Policy & Management Act (FLPMA), the Mineral Leasing Act (MLA), and the Federal Oil & Gas Royalty Management Act)(2), and the U.S. Constitution (1).

Key Trends:

- *Presidential Authority:* Several cases claim that deregulatory actions were taken by President Trump outside of his allocated powers. One suit argues that the 2-for-1 Order violates the Take Care clause and the Separation of Powers doctrine which means the Order exceeds the President's constitutional authority.[127] Another suit argues that in purporting to open up areas of the Arctic and Atlantic oceans for oil and gas leasing that were formerly protected by President Obama, the Offshore Energy Executive Order exceeds the statutory authority delegated to the President under the Outer Continental Shelf Lands Act (OCSLA).[128]
- *Standards for Methane Emissions:* Several suits challenge stays and postponement of compliance dates for Obama Administration rules that reduce emissions of methane, arguing that these actions violate the APA and/or the CAA. These include challenges to the EPA's administrative stays of rules to reduce methane emissions from new oil

[127] Public Citizen, Inc. v. Trump, No. 1:17-cv-00253, (D.D.C. 2017).
[128] League of Conservation Voters v. Trump, No. 3:17-cv-00101, (D. Alaska 2017).

and gas sector sources[129] and landfills[130] as well as BLM's multiple postponements of the effective date for its rule to limit methane waste during natural gas production on federal and tribal lands ("the methane waste rule").[131]

- *The Regulatory Freeze:* Several suits challenge withdrawal, delay, and failure to publish final or draft final standards after the regulatory freeze took effect. These include standards related to energy efficiency of appliances and industrial equipment,[132] energy efficiency of manufactured housing,[133] a metric to measure GHG emissions from highways,[134] and penalties for violations of fuel economy standards.[135]
- *Fossil Fuel Development and Infrastructure:* A number of suits challenge agency actions that advanced major fossil fuel development, including approval of the Keystone XL

[129] Clean Air Council v. Pruitt, 862 F.3d 1, 4 (D.C. Cir. 2017).
[130] Natural Resources Defense Council v. Pruitt, No. 17-1157, (D.C. Cir. dismissed Feb. 1, 2018).
[131] California v. U.S. Bureau of Land Management, Nos. 17-cv-03804-EDL, 17-cv-3885-EDL (N.D. Cal. vacated Oct. 4, 2017) (challenging a June 15 Federal Register notice that purported to "to postpone the compliance dates for certain sections of the Rule."). The court vacated this postponement as outside of BLM's authority under the APA and in violation of the APA's notice and comment rulemaking procedures. The BLM has appealed this decision. California v. U.S. Bureau of Land Management, No. 3:17-cv-03804 (N.D. Cal. appeal filed Dec. 4, 2017). The BLM has also proceeded to try and postpone compliance dates through the notice and comment rulemaking. The final rule which would delay the most of the compliance dates under the rule by one year has subsequently been challenged. California v. U.S. Bureau of Land Management, No. 3:17-cv-07186 (N.D. Cal., filed Dec. 19, 2017).
[132] Natural Resources Defense Council v. Perry, No. 3:17-cv-03404 (N.D. Cal.) (challenging failure to publish final energy efficiency standards for five categories of appliances and industrial equipment); New York v. U.S. Department of Energy, No. 17-918 (2d. Cir. filed Mar. 31, 2017) (challenging delay of effective date for final energy conservation standards for ceiling fans).
[133] Sierra Club v. Perry, No. 1:17-cv-02700 (D.D.C., filed Dec. 18, 2017) (Challenging failure to promulgate energy efficiency standards for manufactured housing under statutory and administrative law). The draft final standards at issue were withdrawn after the regulatory freeze.
[134] Clean Air Carolina v. U.S. Department of Transportation, No. 1:17-cv-5779 (S.D.N.Y.) (challenging delays and/or suspension of a performance metric to track GHG emissions from on-road mobile sources on the national highway system); People of State of California v. U.S. Department of Transportation, No. 4:17-cv-05439 (N.D. Cal. filed Sept. 20, 2017) (bringing a similar challenge to the same metric). The metric was part of a final rule published just before the Regulatory Freeze and became subject to it.
[135] Natural Resources Defense Council, Inc. v. National Highway Traffic Safety Administration, No. 17-2780, (2d Cir.) (challenging delay of effective date for rule raising civil penalties for violations of fuel economy standards).

pipeline[136] as well as lifting the coal moratorium on federal lands and ending environmental review of the federal coal program.[137] The Keystone XL litigation relies on the NEPA, ESA, APA, and other wildlife statutes. The coal moratorium cases concern the NEPA, CWA, and APA.

Status:

The procedural postures of these cases are discussed in detail in Part 5, but their status and results are briefly summarized here. The majority of these cases remain pending. Only cases concerning administrative stays, suspensions, or other delays have resulted in a judicial decision on the merits or initiation of subsequent agency rulemaking. The two cases reviewed on the merits both concerned delays affecting methane emissions standards. The D.C. Circuit vacated an administrative stay of EPA's new source performance standards for the oil and gas sector and a federal district court in California ruled on summary judgment that BLM illegally postponed compliance dates for the methane waste rule.[138] While an appeal of EPA's methane standards for new oil and gas sources was denied,[139] the appeal of BLM's methane waste rule is still pending.[140] Meanwhile, the BLM has advanced new delays through notice and comment rulemaking that could precipitate further rulemaking to modify or replace the methane waste rule. This new delay has been litigated.[141] Despite its great similarly to the case concerning administrative stay of new source performance standards in the oil gas sector, the D.C. Circuit did not grant summary vacatur of an administrative stay of EPA's performance standards and emissions guidelines for municipal landfills.[142] That case was dismissed voluntarily after the

---

[136] Indigenous Environmental Network v. United States Department of State, No. 4:17-cv-00029 (D. Mont.) (bringing challenges under NEPA, ESA, and the APA).
[137] *Citizens for Clean Energy v. U.S. Department of Interior*, No. 4:17-cv-00030 (D. Mont. filed Mar. 29, 2017).
[138] State v. United States Bureau of Land Mgmt. (Methane Waste Prevention Rule Case), No. 17-CV-03804-EDL, 2017 WL 4416409 (N.D. Cal. Oct. 4, 2017).
[139] Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017), *rehearing denied* (D.C. Cir. Aug. 10 2017).
[140] *California v. U.S. Bureau of Land Management*, No. 3:17-cv-03804 (N.D. Cal. appealed Dec. 4, 2017).
[141] *See supra* note 131.
[142] Natural Resources Defense Council v. Pruitt, No. 17-1157, (D.C. Cir. 2017), *motion for summary vacatur denied* (D.C. Cir. Sept. 28, 2017), *dismissed voluntarily* (D.C. Cir. Feb. 1, 2018).

administrative stay terminated and the EPA withdrew its plans to delay the rule from review at the White House regulatory evaluation office.[143]

Some litigation results occurred outside of the court room. Prodded by litigation, the DOE withdrew its stay and published notice putting energy efficiency standards for ceiling fans into effect at the end of September 2017.[144] In response to another lawsuit, DOT published notice putting the metric for GHG emissions from highways into effect.[145] However, DOT also promptly published notice that it would repeal this metric.[146] The other four cases concerning delays and the five cases concerning revocations, withdrawals, or new actions to direct deregulation all remain pending. As demonstrated by this summary, even the cases resulting in a judicial decision or agency rule are subject to change through appeal or subsequent rulemaking.

4.2 Demanding Transparency & Scientific Integrity from the Trump Administration

A second vein of litigation pressures government agencies for higher levels of transparency and scientific integrity. These cases represent 15% of the cases in the data set. They were brought primarily by government watchdog and environmental groups contesting climate

[143] *Id*.
[144] Energy Conservation Program: Energy Conservation Standards for Ceiling Fans, 82 Fed. Reg. 23723, *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-05-24/pdf/2017-10633.pdf.
[145] National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 45179, *available at* http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170928_docket-417-cv-05439_Federal-Register-notice.pdf.
[146] National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 46427, *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-10-05/pdf/2017-21442.pdf.

change denial, unethical, and/or potentially illegal climate-related activity within the Trump Administration.

By the Numbers:

- *Total Count*: The data set includes 12 cases meeting the above criteria.[147]
- *Plaintiffs/Petitioners*: Cases were brought by environmental groups (8), government watchdog groups (3), the State of California (1), and a former federal employee (1).
- *Defendants*: FOIA violation suits involved a dozen different divisions or subdivisions of the administration, its agencies, and officials, including DOI, EPA, DOE, the State Department, National Ocean & Atmospheric Agency (NOAA), OMB, Bureau of Land Management, Department of Justice (DOJ), U.S. Fish & Wildlife Service (USFWS), and USFS. DOI and EPA received the most challenges with DOI, its sub-entities, and officials receiving 5 and EPA and its officials receiving 6. An additional case targeted Scott Pruitt in his position as Attorney General of Oklahoma.
- *Laws*: The claims were filed under FOIA (10) and two state information laws (2).

Key Themes:

- *Scott Pruitt's Potentially Illegal, Unethical, or Anti-Science Actions:* These FOIA lawsuits seek to scrutinize EPA Administrator Scott Pruitt for allegedly unethical practice, illegal conduct, and/or climate denial.[148]
- *Other Climate Science Denial and Suppression:* Litigants have sought to reveal unethical or illegal behavior more widely within the administration through FOIA requests for

[147] See Appendix A for list of cases.

[148] Center for Media & Democracy v. Hunter, No. 115,796 (Okla. 2017) (seeking records related to Scott Pruitt's alleged industry ties prior to his appointment); California v. EPA, 1:17-cv-01626 (D.D.C. 2017) (requesting records related to compliance with federal ethics requirements for appointing an interim authority when Administrator Pruitt needs to recuse himself or is disqualified from a matter); Sierra Club v. EPA, No. 1:17-cv-01906 (D.D.C. 2017) (requesting records "to shed light on secretive and potentially improper efforts by Mr. Pruitt and his core political team to nullify critical, lawful EPA regulations and policies"); Public Employees for Environmental Responsibility v. EPA, No. 1:17-cv-00652 (D.D.C. 2017) (requesting records underlying Administrator Pruitt's statements on a televised interview that disputed the role of human activity in causing climate change which the complaint alleged "stand in contrast to the published research and conclusions of the EPA").

records related to such matters as reassigning an employee who advocated for addressing climate change,[149] and communications between a federal agency and the transition team including what might reveal a secret, climate-denying member of the transition team.[150] Other cases requested records on directives or communications related to removing the words "climate change" from formal communications,[151] potentially biased objectives in a grid reliability study from DOE,[152] and on the decision to disband the review committee for the National Climate Assessment.[153]

- *Fossil Fuel Policy Development & Fossil Fuel Industry Influence:* Environmental groups requested information related to coal policy on federal land[154] and a secretarial order to increase onshore oil, gas, and mineral development.[155] Relatedly, California brought a FOIA claim for information on how federal ethics requirements would be

[149] Clement v. U.S. Department of Interior, No. 1:17-cv-02451 (D.D.C. 2017) (requesting records related to a former DOI employee's reassignment to a position he had no experience for after he raised the alarm regarding climate change threats to Alaskan communities and opportunities for the federal government to address those threats).

[150] Sierra Club v. EPA *supra* note 148; Natural Resources Defense Council v. U.S. Environmental Protection Agency, 1:17-cv-04084 (S.D.N.Y. 2017) (requesting records of certain federal agencies' communications with the Trump transition team); Protect Democracy Project, Inc. v. U.S. Department of Energy, No. 1:17-cv-00779 (D.D.C. 2017) (seeking Trump transition team questionnaires regarding climate change).

[151] Center for Biological Diversity v. U.S. Department of Interior, No. 1:17-cv-0974 (D.D.C. 2017) (requesting directives and communications related to removal of climate change-related words from formal agency communications); Sierra Club v. EPA, No. 1:17-cv-01906 (D.D.C. 2017) (seeking records related to the withdrawal of "formerly prominent information about climate change—a phenomenon that, the scientific consensus warns, gravely impacts public health and the environment, but that tends to pressure Mr. Pruitt's supporters in the fossil fuel industry to reduce carbon emissions"—from the EPA website).

[152] Sierra Club v. U.S. Department of Energy (requesting documents related to the objectivity of the U.S. Department of Energy's study of U.S. electricity markets and the reliability of the electrical grid).

[153] Center for Biological Diversity v. National Oceanic and Atmospheric Administration, No. 1:17-cv-02031 (D.D.C. filed Oct. 3, 2017) (seeking records related to the termination of the Advisory Committee for the Sustained National Climate Assessment).

[154] Center for Biological Diversity v. U.S. Bureau of Land Management, No. 1:17-cv-01208 (D.D.C. filed June 20, 2017) (seeking BLM to release documents related to the federal coal program).

[155] WildEarth Guardians v. U.S. Department of the Interior Office of the Secretary, No. 1:17-cv-02512 (D.D.C. 2017) (seeking DOI to release records related to Secretarial Order on onshore mineral leasing program).

upheld in determining who will replace Administrator Pruitt on matters for which he must recuse himself or for which he is disqualified.[156] As Attorney General of Oklahoma, Administrator Pruitt challenged 14 EPA rules.[157]

Status:

All of the 11 FOIA claims were still ongoing at the end of 2017, but at least some had progressed to the document production phase. Enforcement of a successful Oklahoma Records Act claim against Administrator Pruitt was stayed.[158]

4.3 Integrating Climate Change into Environmental Review & Permitting

Even before the Trump Administration took office, integrating climate change into federal environmental decision-making composed a major share of climate change litigation[159] and arguably would have continued to do so regardless of who assumed the Presidency. These cases encompass requirements to consider the direct and indirect GHG emissions of a federal project, policy, or decision; the impacts climate change might have on an agency action and the environmental consequences that might flow from them; and the ways in which projected changed conditions attributable to climate change are factored into agency analyses and decisions. These obligations stem from federal environmental statutes and natural resource laws, especially NEPA, CWA, CAA, and ESA. Many of these cases concern individual projects, such as approval of a pipeline, but other decisions, like national standards for shellfish permits, are more systemic. This set of cases composes 28% of the data set.

[156] California v. EPA, *supra* note 148.
[157] N.Y. Times, Pruitt v. EPA: A Compilation of 14 Challenges of EPA Rules Filed by the Oklahoma Attorney General, *available at* https://www.documentcloud.org/documents/3290872-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html (last visited Feb. 8, 2018).
[158] Center for Media & Democracy v. Hunter, *stayed from enforcement* (Okla. Feb. 28, 2017).
[159] *See* Ruhl & Markell (2012) at 31, 41-46, 57-65.

This set of cases reflects an ongoing series of "background battles" that cumulatively shape national climate change law and policy. This section summarizes only the cases seeking to enhance consideration of climate change impacts and GHG emissions (the "pro" cases). (See Category 5: Deregulating & Undermining Climate Protections for the "con" cases.) Collectively, these cases play out many of the concerns that the Obama Administration attempted to further integrate into climate change law through the CEQ's NEPA guidance; the estimates for the Social Cost of Carbon, Nitrous Oxide, and Methane ("social cost metrics"); and requiring agencies to review their rules in light of climate change adaptation. Though no cases filed in 2017 directly challenged the withdrawal of CEQ's NEPA guidance or the social cost metrics, the content of the rollbacks permeates these cases. Consequently, the outcomes of these cases have bearing on the efficacy of the rollbacks.

By the Numbers:

- *Total Count*: 23 cases filed in 2017 fell into this category. Thirteen of the twenty-three cases in this category concern inadequate consideration of how climate change will impact a federal project or decision ("climate impacts cases"). Thirteen cases concerned consideration of GHG emissions associated with fossil fuel extraction and infrastructure construction ("GHG emissions cases"). The cases concerning GHG emissions primarily involve development of fossil fuel and related infrastructure. Cases focusing on the impacts of climate change on a project chiefly involve decisions related to water, public lands, and wildlife. (Some cases concerned both climate impacts and GHG emissions.)
- *Plaintiffs/Petitioners*: Cases were brought by local and regional NGOs—including local environmental groups (14); international or national environmental NGOs (13); municipal, state, or tribal entities (5); and a commercial fishermen's trade group (1).
- *Defendants*: Defendants were all federal entities including: Dept. of Interior and its sub-entities including BLM, USFWS, and Office of Surface Mining & Reclamation (8); Federal Energy Regulatory Commission (FERC)(5); U.S. Army Corps of Engineers

(USACE)(4); EPA (3); USFS (3); Federal Emergency Management Agency (FEMA)(1); U.S. Department of Homeland Security (1); and U.S. Customs and Border Protection (1).

- *Laws:* Cases involved: the NEPA (16), the APA (15), the CWA or other federal water law (7), the Natural Gas Act (NGA)(7), the ESA (3), Coastal Zone Management Act (CZMA)(2), the CAA (1), and the Ocean Dumping Act (1), FLPMA (1), Mining and Minerals Policy Act of 1970 (1), Stock Raising Homestead Act (1), Las Cienegas National Conservation Area Act (1), Forest Service Organic Act (1), and the Pipeline Safety Act (1), the public trust doctrine (1), the Stafford Disaster Relief and Emergency Assistance Act of 1988 (1), and the National Historic Preservation Act (1).

Key Trends:

- *Endangered Species Act:* Litigants challenged the government's failure to adequately assess climate change impacts on species protected under the Endangered Species Act. These included challenges to delisting decisions[160] and decisions related to mining,[161] oil and gas leasing,[162] and other projects with impacts on listed species.
- *Water:* These cases alleged failure to adequately consider how climate change would reduce water availability or quality, typically under NEPA or the CWA. The claims targeted both more systemic integration of climate change considerations into agency practice, e.g. when issuing national shellfish permits[163] or updating the

[160] Crow Indian Tribe et al v. United States of America et al., No. 9:17-cv-00089 (D. Mont. 2017) (challenging delisting of Yellowstone grizzly DPS).
[161] Save the Scenic Santa Ritas v. U.S. Forest Service, No. 4:17-cv-00576 (D. Ariz. 2017) (challenging approvals for copper mine in Arizona).
[162] Center for Biological Diversity v. U.S. Forest Service, No. 2:17-cv-00372 (S.D. Ohio 2017) (challenging authorization of oil and gas leasing in the Wayne National Forest).
[163] Center for Food Safety v. U.S. Army Corps of Engineers, No. 2:17-cv-01209 (W. D. Wash. 2017).

USACE's Master Water Control Manual for federal dams,[164] and through approval of individual projects such as a copper mine.[165]

- *State Interests in Federal Climate Consideration:* State government entities argued federal agencies' decisions failed to consider future resilience projects or climate impacts affecting state-level entities.[166] California further challenged the Trump Administration's border wall for violating NEPA, CZMA, and other statutory law.[167]
- *Fossil Fuel Infrastructure:* Litigants challenged inadequate consideration of GHG emissions as part of environmental review and approval of natural gas pipelines.[168] In particular, this provides an avenue for state-level entities to challenge federal environmental decisions such as a case in which the New York State Department of Environmental Conservation (NYSDEC) sought to reopen the record on a November 2016 FERC approval of a pipeline for inadequate consideration of GHG emissions.[169]

---

[164] National Wildlife Federation v. U.S. Army Corps of Engineers, No. 1:17-cv-00772 (D.D.C. 2017).

[165] Save the Scenic Santa Ritas v. U.S. Forest Service, No. 4:17-cv-00576 (D. Ariz. 2017).

[166] *See e.g.*, Regents of University of California v. Federal Emergency Management Agency, No. 3:17-cv-03461 (N.D. Cal. 2017) (challenging FEMA's failure to renew wildfire mitigation grants); Rosado v. Pruitt, No. 1:17-cv-04843 (E.D.N.Y. 2017) (challenging decision approving ocean-dumping site in the Long Island Sound).

[167] People of State of California v. United States, No. 3:17-cv-01911 (S.D. Cal. 2017).

[168] *See e.g.*, In re Atlantic Coast Pipeline, LLC, No. CP15-554-000 (FERC 2017). While not filed in 2017, and thus not a part of the data set, several related cases had decisions come down in 2017. These include: *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (holding that FERC's "EIS for the Southeast Market Pipelines Project should have either given a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the pipelines will transport or explained more specifically why it could not have done so."). *Sierra Club v. United States Dep't of Energy*, 867 F.3d 189, 201–02 (D.C. Cir. 2017) (finding the Department of Energy did not need to consider export-induced increases in natural gas production).

[169] In re Valley Lateral Project, No. 3-3399-00071/00001 (NYSDEC 2017). NYSDEC asserted that FERC's environmental review of the project was insufficient in light of recent D.C. Circuit case law requiring consideration of downstream GHG emissions. FERC denied the request to reopen the record and stay or hold a rehearing and stay. The matter is now pending in the 2nd Circuit. New York State Department of Environmental Conservation v. Federal Energy Regulatory Commission, No. 17-3503, 17-3770 (2d. Cir. 2017).

Status:

Many of these cases are still pending, but some requests for review or rehearing have already been denied at the FERC level,[170] dismissed,[171] voluntarily dismissed by the moving party,[172] or had stays denied.[173] Since, these cases fall within a longstanding trend of litigation, decisions have come down during 2017 for cases filed pre-2017 and these may inform the outcome of at least some of the 2017 cases. (See Part 5.7)

4.4 Advancing or Enforcing Climate Protections through the Courts

Municipalities, states, citizens, and nonprofits have further responded to regulatory rollbacks through affirmative litigation to advance climate change protections. These suits include innovative claims under state common law, the public trust doctrine, the federal constitution, as well as administrative and statutory claims to prompt new regulation. They also include some efforts to compel performance of reporting or legal obligations under existing climate law that are not currently being executed—which also net or contribute to additional climate protection if successful. While at least some of these suits may have occurred in the absence of the Trump Administration's deregulation, they are arguably strongly motivated by and take on added significance in regard to the void of federal climate leadership. These cases represent 13% of the data set.

---

[170] The Third Circuit denied a pair of lawsuits related to state permitting under the CWA and Pennsylvania law for a natural gas pipeline. Delaware Riverkeeper Network v. Secretary of Pennsylvania Department of Environmental Protection; Delaware Riverkeeper Network v. U.S. Army Corps of Engineers. FERC has also denied a request from NYSDEC to reopen the record on a natural gas pipeline passing through New York, but NYSDEC is challenging FERC's decision in the 2nd Circuit. *Supra* note 169.

[171] E.g., Center for Biological Diversity v. EPA, No. 3:17-cv-720 (N.D. Cal. dismissed June 15, 2017) (dismissing a petition objecting to the Title V permit for natural gas plant in California).

[172] E.g., Sierra Club v. Federal Energy Regulatory Commission, No. 17-1236 (D.C. Cir. dismissed Dec. 13, 2017).

[173] E.g., New York State Department of Environmental Conservation v. Federal Energy Regulatory Commission, No. 17-3770, 17-3503 (2d Cir. stay denied Dec. 7, 2017).

By the Numbers:

- *Total Count*: This category contained 11 cases.[174]
- *Petitioners/Plaintiffs*: These cases were brought by municipalities (4), private citizens (3), national or international environmental NGOs (3), local/regional NGOs (3), and the Humane Society (1).
- *Defendants*: The defendants for these cases included fossil fuel companies (5), the EPA (3), the United States (2), DOE (1), the State of Colorado (1), and President Trump (2).
- *Laws*: These cases were brought under state common law (5), the CAA (2), the CWA (1), the EISA (1), other statutory law (3), the U.S. Constitution (3), and the APA (2).

Key Trends:

- *Common Law Claims:* Seven counties and cities in California seek new avenues of liability to hold fossil fuel companies liable for their GHG emissions through common law claims. These seven suits were consolidated or related into 4 cases by the end of 2017. Five of these local governments[175] pursued a variety of state tort claims including: public nuisance, strict liability for failure to warn, strict liability for design defect, private nuisance, negligence, negligent failure to warn, and trespass. They seek compensatory damages, abatement of the alleged nuisance, attorneys' fees, punitive damages, and disgorgement of profits. Another two cases, filed by the cities of Oakland[176] and San Francisco,[177] each seek to hold companies responsible for

[174] See Appendix A for a list of the cases.

[175] County of San Mateo v. Chevron Corp., No. 3:17-cv-04929-MEJ (N.D. Cal., removed to federal court Aug. 24, 2017) (consolidating claims from San Mateo, Marin, and Imperial Beach); City of Santa Cruz v. Chevron Corp., No. 17CV03243 (Cal. Super. Ct., filed Dec. 20, 2017); County of Santa Cruz v. Chevron Corp., No. 17CV03242 (Cal. Super. Ct., filed Dec. 20, 2017).

[176] People of State of California v. BP p.l.c. (Oakland), No. 3:17-cv-06011 (N.D. Cal. 2017) (removing cases filed by Oakland and San Francisco to federal court).

[177] *Id.*; *see also* People of State of California v. BP p.l.c. (San Francisco), No. CGC-17-561370 (Cal. Super. Ct. 2017).

funding climate change adaptation programs based on claims under state public nuisance law.

- *Statutory Claims for Failure to Adapt:* A regional environmental NGO alleges that a fossil fuel company violated the Clean Water Act by failing to prepare its energy infrastructure for the foreseeable impacts of climate change.[178]
- *Rights of Nature:* A NGO attempted to integrate climate change into existing law by seeking rights for the Colorado River and alleging the impacts of climate change as one of the risks faced by the river.[179]
- *Constitutional Claims:* Citizens and an NGO brought several constitutional challenges to advance climate change policies. These include a case alleging that federal officials and government entities violated due process and the public trust doctrine by advancing regulatory rollbacks that increase the frequency and intensity of climate change.[180] Individual and small groups of citizens have also sought to make their voices heard through constitutional claims, but these cases have been dismissed.[181]

---

[178] Conservation Law Foundation, Inc. v. Shell Oil Products US, No. 1:17-cv-00396 (D. R. I. filed Aug. 28, 2017). A recent ruling for a similar case found that CLF does have standing for present and imminent "injuries to its members' aesthetic and recreational interests. The U.S. District Court for the District of Massachusetts found that CLF has standing to sue for present and imminent "injuries to its members' aesthetic and recreational interests in the Mystic River." However, the court also separated out a component of the lawsuit finding that CLF lacks standing "for injuries that allegedly will result from rises in sea level, or increases in the severity and frequency of storms and flooding, that will occur in the far future, such as in 2050 or 2100."

[179] Colorado River Ecosystem v. State of Colorado, No. 1:17-cv-02316 (D. Colo dismissed Dec. 4, 2017).

[180] Clean Air Council v. United States, No. 2:17-cv-04977 (E.D. Pa. filed Nov. 6, 2017). The Clean Air Council and two children filed a federal lawsuit asserting claims of due process and public trust violations against the United States, the president, the Department of Energy, Secretary of Energy Rick Perry, the Environmental Protection Agency (EPA), and EPA Administrator Scott Pruitt. This case bears some similarity to the more well-known *Juliana v. United States*, 217 F. Supp. 3d 1224 (D. Or. 2016), but it is distinct in its specific focus on deregulatory activity.

[181] Holmquist v. United States, No. 2:17-cv-00046 (E.D. Wash. dismissed July 14, 2017). In this lawsuit, several citizens "who live or work in Spokane filed a lawsuit against the United States alleging that the Interstate Commerce Commission Termination Act of 1995 (ICCTA) was unconstitutional to the extent that it preempted local prohibitions on rail transportation of fossil fuels."

- *Statutory Claims for GHG Emissions Regulation:* Environmental and other NGOs sued EPA for a response to 2009 petition requesting that concentrated animal feeding operations be regulated under the Clean Air Act as sources of air pollution.[182] Several other petitions have sought to prod the federal government to issue additional climate change protections or fulfill reporting requirements, but have not yet been litigated.[183]

Status:

These cases are largely still pending. Two cases brought by citizens, including one pro se claim against more than 120 defendants for failure to address climate change, were dismissed.[184] The case arguing for the rights of the Colorado River was also dismissed.[185] The trend of municipalities challenging fossil fuel companies has already continued in 2018. On January 9, 2018, New York City filed a suit in the Southern District of New York quite similar to the Oakland and San Francisco cases.[186] On January 22, 2018, the City of Richmond, CA, filed a suit in California state court quite similar to the other California cases.[187]

[182] Humane Society of United States v. Pruitt, 1:17-cv-01719 (D.D.C. filed Aug. 23, 2017).
[183] *See e.g.*, Petition for Rulemaking Seeking Amendment of Locomotive Emission Standards (submitted to EPA on April 13, 2017) (California's Air Resource Board also petitioned for stronger GHG emissions standards for trains); Clean Air Act Notice of Intent to Sue for Failure to Establish Guidelines for Standards of Performance for Methane Emissions from Existing Oil and Gas Operations (notice of intent to sue submitted to EPA June 29, 2017).
[184] Lindsay v. Republican National Committee, No. 3:17-cv-00123 (W.D. Wisc. dismissed Oct. 2, 2017); Holmquist v. United States, No. 2:17-cv-00046 (E.D. Wash. dismissed July 14, 2017).
[185] Colorado River Ecosystem v. State of Colorado, No. 1:17-cv-02316 (D. Colo dismissed Dec. 4, 2017).
[186] City of New York v. BP p.l.c., No. 1:18-cv-00182 (S.D.N.Y filed Jan. 9, 2018).
[187] City of Richmond v. Chevron Corp., No. C18-00055 (Cal. Super. Ct. filed Jan. 22, 2018).

4.5 Deregulating Climate Change, Undermining Climate Protections, or Targeting Climate Protection Supporters

Representing 27% of the data set, this category of cases encompasses the different types of climate change cases that undermine climate change protections and advance or assist climate change deregulation. These include petitions to put Obama-era climate rules under review, requests to put litigation over Obama-era climate rules on hold while an agency reviews the rule, requests for records related to the Obama Administration's climate policies, and legal challenges against critics of the fossil fuel industry. It also includes cases challenging the denial of fossil fuel development permits for climate-related reasons (the opposite of cases in Category 3: Integrating Climate Change into Environmental Review and Permitting). Largely brought by a variety of industry plaintiffs—including individual companies, trade groups, and conservative think tanks—these cases not only support deregulation already underway by the Trump Administration, but drive agencies to undertake additional rollbacks. Several also concern EPA's efforts to pause litigation over Obama-era rules and thus use the courts to facilitate the current administration's review and deregulation.

By the Numbers:

- *Total Count*: The data set includes 17 cases filed in 2017 and an additional 5 cases filed pre-2017. (As noted above, the only continuing cases considered are those that where litigation has pivoted to address new acts from the Trump Administration to delay, weaken, modify, or rescind the rules or agencies failing to appeal remand of rules). They include petitions for reconsideration or rulemaking to undo or narrow Obama-era climate protections, FOIA actions seeking records related to Obama Administration officials or activities, suits against critics of fossil fuel companies, contests over denials of permits for fossil fuel infrastructure, and a few challenges to state renewable energy policies or projects that implicate federal statutory or constitutional law.

- *Plaintiffs/Petitioners*: These cases came predominantly from industry voices in fossil fuel-intensive sectors including from private companies either individually or in coalition (8), trade groups (4), conservative think tanks (4), and private citizen supporters of the fossil fuel industry (1). The five pre-2017 cases put into abeyance by Pruitt's EPA involve industry trade groups (5), companies (3), states (3), conservative think tanks (2), U.S. Chamber of Commerce (2), and others as petitioners.
- *Defendants*: The defendants in cases filed in 2017 included federal agency defendants at the EPA (3), the Dept. of State (3), and DOE (1). Others challenged state-level entities (7), critics of the fossil fuel industry (2), and a university that allegedly restricted speech of citizens who were advocating in favor of fossil fuels (1). EPA's motions to hold cases in abeyance are opposed by states, cities, and environmental NGOs that intervened in support of EPA's original regulations.

- *Laws*: The seventeen cases from 2017 fall under several categories. They involved the U.S. Constitution (5), FOIA or state information laws (4), the CAA (3), the APA (2), the CWA (3), the NGA (2), the EISA (1), the EPCA (1), the ESA or other wildlife law (1), the NEPA (1), the Racketeer Influenced and Corrupt Organizations Act (RICO)(1), other statutory law (1), and a defamation action under common law (1). The five cases filed pre-2017 each involved the EPA filing motions for abeyance in 2017 to pause litigation over Obama-era rules while the current administration reviews the rules. These cases involved the CAA (5), the APA (2), and the EISA (1).

Key Trends:

- *Petitions for Review of Obama Administration Greenhouse Gas Emissions Standards*: Industry actors, including trade groups and affected companies, petitioned EPA for review or reconsideration of rules concerning energy efficiency standards for

lamps,[188] refrigerant standards,[189] GHG and fuel efficiency standards for light-duty vehicles,[190] and renewable fuel standards.[191] Three out of four of these rules fall under the domain of the CAA. The fourth concerned federal energy statutes, the EPCA and the EISA. While not litigation and thus not part of the data set, the Competitive Enterprise Institute and Energy & Environmental Law Institute have petitioned for rulemaking to undo the EPA's Endangerment Finding and an industry trade group sought review of the application of the GHG tailpipe rules to gliders (new truck frames with refurbished engines) which the EPA subsequently proposed to undo.[192]

- *FOIA Actions Seek Obama Administration Records*: The Competitive Enterprise Institute and Energy & Environmental Law Institute initiated FOIA actions seeking records related to the Paris Agreement on climate change. These actions, each brought by the Competitive Enterprise Institute, requested records of communications related to coordination between climate change "activists" and China to develop post-Obama alternative diplomatic channels[193] and to whether the "legal form" of the Paris Agreement was an intentional choice to "cut the Senate out of the treaty process."[194]
- *Attack Critics of the Fossil Fuel Industry*: Fossil fuel companies took legal action against their critics. Dakota Access pipeline line developers filed a complaint under the Racketeer Influenced and Corrupt Organizations Act (RICO) against Greenpeace

[188] National Electrical Manufacturers Association v. United States Department of Energy, 17-1341 (4th Cir. dismissed July 10, 2017).
[189] National Environmental Development Association's Clean Air Project v. EPA, No. 17-1016 (D.C. Cir. filed Jan. 17, 2017).
[190] Alliance of Automobile Manufacturers v. EPA, No. 17-1086 (D.C. Cir. dismissed Mar. 29, 2017).
[191] Coffeyville Resources Refining & Marketing, LLC v. EPA, 17-1044 (D.C. Cir.).

[193] Energy & Environment Legal Institute v. United States Department of State, No. 1:17-cv-00340
[194] Competitive Enterprise Institute v. U.S. Department of State, No. 1:17-cv-02438, (D.D.C.). *See also* Competitive Enterprise Institute v. U.S. Department of State, No. 1:17-cv-02032 (D.D.C.) (seeking records related to U.S. Department of State officials' correspondence regarding climate negotiations).

International and other environmental activist groups.[195] Coal companies and a coal executive brought a defamation action in regard to statements made on the Last Week Tonight show with John Oliver.[196] The Energy & Environmental Law Institute sued the New York Attorney Eric Schneiderman under the New York State Freedom of Information Law for his private email correspondence with a former Vermont Attorney General, concerning what the Institute's press release described as Schneiderman's "climate-RICO scheme."[197] This is one of several such suits filed by EELI against state Attorneys General in recent years.[198]

- *Freeze Litigation over the Obama Administration Climate Rules*: The EPA asked the courts to put litigation concerning major Obama Administration climate-related rules on hold while the current administration reviewed the rules.[199] In the case of

---

[195] Energy Transfer Equity, L.P. v. Greenpeace International, No. 1:17-cv-00173 (D.N.D. filed Aug. 22, 2017) (alleging that defendants are part of "a network of putative not-for-profits and rogue eco-terrorist groups who employ patterns of criminal activity and campaigns of misinformation to target legitimate companies and industries with fabricated environmental claims").

[196] Marshall County Coal Co. v. Oliver, No. 5:17-cv-00099-JPB (N.D. W. Va. remand granted Aug. 10, 2017). Alleged defamatory statements included remarks that Mr. Murray had no evidence to support his declaration that an earthquake was responsible for a lethal mine collapse, and remarks that Mr. Murray and Murray Energy "appear to be on the same side as black lung." Such cases could have a chilling effect on fossil fuel critics.

[197] Energy & Environmental Law Institute, Press Release: E&E Legal Petitions NY Court to Release Schneiderman Gmails, Releases Video on His Climate Scheme (Oct. 17, 2017), *available at* https://eelegal.org/press-release-ee-legal-petitions-ny-court-release-schneiderman-gmails-releases-video-climate-scheme/; *See also* Energy & Environmental Legal Institute v. Attorney General of New York, (N.Y. Sup. Ct. filed Oct. 17, 2017).

[198] *See* Energy & Environment Legal Institute v. Attorney General of Vermont, No. 349-6-16WNCV (Vt. Super. Ct. filed June 13, 2016); Energy & Environmental Legal Institute v. Attorney General of Vermont, No. 558-9-16 (Vt. Super. Ct. filed Sept. 15, 2016).

[199] *See* National Waste & Recycling Association v. EPA, No. 16-1371 (D.C. Cir. filed Oct. 27, 2016) (concerning EPA's emission guidelines for municipal solid waste landfills); North Dakota v. EPA , No. 15-1381(D.C. Cir. filed Oct. 23, 2015) (concerning EPA's performance standards for GHG emissions from new, modified, and reconstructed power plants); Truck Trailer Manufacturers Association, Inc. v. EPA, No. 16-1430 (D.C. Cir. filed Dec. 22, 2016) (concerning GHG emissions and fuel efficiency standards for medium- and heavy-duty engines and vehicles); West Virginia v. EPA, No. 15-1363 (D.C. Cir. filed Oct. 23, 2015) (concerning EPA's Clean Power Plan). American Petroleum Institute v. EPA, No. 13-1108 (D.C. Cir. filed Dec. 16, 2014) (concerning new source performance standards for oil and gas sector).

the litigation over the Clean Power Plan, these abeyances are coupled with a judicial stay,[200] freezing the rule from taking effect and putting the EPA in violation of its statutory obligations under the CAA.[201]

- *Contest Denials of State Permits for Fossil Fuel Infrastructure*: Fossil fuel companies sought to advance their infrastructure projects by contesting state-level entities' permitting decisions and authorities.[202] Combined with the "pro" cases in the section on environmental decision-making, these cases are part of an ongoing battle playing out among fossil fuel infrastructure builders, state agencies responsible for water quality and other environmental permits, and federal agencies authorizing fossil fuel infrastructure projects. (Again, the only cases included in the data set were those where climate change was an issue of fact or law and so this is not a full representation of recent litigation over fossil fuel infrastructure development.)

Status:

These cases largely have not resulted in judicial decisions on the merits—at least not yet. Of the four petitions for rule review filed in 2017, two petitions have been withdrawn. One petition was withdrawn after the EPA agreed to review the Obama Administration's Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle

[200] W. Virginia v. E.P.A., 136 S. Ct. 1000, 194 L. Ed. 2d 17 (2016).

[201] In its August order to hold the case in abeyance for another 60 days, the court noted both the EPA's "affirmative statutory obligation to regulate greenhouse gases," and that the "[c]ombined with this court's abeyance, the stay has the effect of relieving EPA of its obligation to comply with that statutory duty for the indefinite future." West Virginia v. EPA, No. 15-1363 (D.C. Cir. filed Oct. 23, 2015).

[202] *See e.g.*, In re Constitution Pipeline Co., No. CP18-5 (FERC denied Jan. 11, 2018) (alleging that NYDEC waived jurisdiction by failing to act within in a reasonable time to review a water quality permit application for a proposed natural gas pipeline in New York, the Constitution Pipeline); Millennium Bulk Terminals-Longview, LLC v. Washington State Department of Ecology (Wash. Super. Ct. filed Oct. 24, 2017) (challenging denial of a water quality permit for a coal terminal); In re Millennium Bulk Terminals - Longview, LLC Shoreline Permit Applications, No. S17-17c (Wash. SHB filed Dec. 4, 2017) (challenging a Cowlitz County Hearing Examiner's denial of a shoreline permit application for a coal terminal).

Greenhouse Gas Emissions Standards Under the Midterm Evaluation.[203] The other, a petition for review of energy efficiency standards for lamps, was voluntarily dismissed upon the agreement of alternative means of resolution by the parties.[204] Though not part of the data set, another petition before the EPA resulted in that agency's proposal to repeal the application of fuel efficiency standards for medium- and heavy-duty engines and vehicles to "gliders."[205] Seven cases involving Obama-era climate rules are held in abeyance, including the five cases filed prior to 2017.

A few of the cases concerning individual projects or attacks on fossil fuel critics have also progressed. The suit against a university for allegedly restricting speech was dismissed[206] and the defamation action against John Oliver and others was remanded to state court.[207] On January 11, 2018, FERC denied a pipeline developer's petition for a declaratory order that the New York Department of Environmental Conservation had waived its jurisdiction in a permitting dispute.[208] The other cases were pending at the close of 2017 according to the Sabin-AP database.

---

[203] Relevant documents available from the hyperlinked case chart profile for Alliance of Automobile Manufacturers v. EPA, No. 17-1086 (D.C. Cir. dismissed Mar. 29, 2017).

[204] Relevant documents available from the hyperlinked case chart profile for National Electrical Manufacturers Association v. United States Department of Energy, 17-1341 (4th Cir. dismissed July 10, 2017).

[205] Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53442 (Nov. 16, 2017) (to be codified at 40 C.F.R. Pts. 1037 and 1068), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-11-16/pdf/2017-24884.pdf.

[206] Turning Point USA (TPUSA) v. Macomb Community College, No. 2:17-cv-12179 (E.D. Mich. dismissed Nov. 13, 2017).

[207] Marshall County Coal Co. v. Oliver, No. 5:17-cv-00099-JPB (N.D. W. Va. remand granted Aug. 10, 2017).

[208] In re Constitution Pipeline Co., No. CP18-5 (FERC denied Jan. 11, 2018).

5. STATUS OF LITIGATION OVER MAJOR OBAMA CLIMATE PROTECTIONS UNDER FIRE FROM THE TRUMP ADMINISTRATION

As summarized earlier in this paper, the Trump Administration has attempted to roll back the signature climate change achievements of the Obama Administration. But have they been successful? Part 4 acknowledges the wide scope of climate change litigation and the direct and indirect avenues for affecting deregulation. This section delves into the status of litigation over individual climate change policies. In 2017, climate-related deregulation was roundly challenged in the courts, but only a few of these cases advanced to a judicial decision before the end of 2017, and these cases both concerned administrative delays. Both struck down the Trump Administration's deregulatory actions. The following pages describe how recent litigation has countered, and sometimes coaxed, rollback of specific climate change policies established by the Obama Administration. The summaries are meant to illuminate the nuances, similarities, and differences between litigation challenging different types of deregulatory action: administrative delays, regulatory delays postponing compliance dates through notice and comment rulemaking, failure to publish final rules, revocations, and other reversals of policy.

5.1 Clean Power Plan

The Clean Power Plan (CPP) sets requirements for existing coal-fired power plants to reduce their CO_2 emissions by 30% below 2005 levels by 2030.[209] Opponents to the CPP immediately filed suit after the EPA finalized the rule in August 2015.[210] Over 40 states and a

[209] Final Rule, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units ("Final CPP Rule"), 80 Fed. Reg. 64661 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60), *available at* https://perma.cc/UN4C-MP8W.

[210] *See* Sabin-AP Litigation database docket for W. Virginia v. E.P.A., No. 15-1363 (D.C. Cir. filed Oct. 23, 2015) (listing all parties).

myriad of industry groups, power companies, and environmental and public health organizations joined the litigation as either petitioners or respondents and the case was consolidated as *West Virginia v EPA*.[211] On February 9, 2016 the U.S. Supreme Court took the unprecedented step of issuing a stay stopping the Clean Power Plan from taking effect, even after the D.C. Circuit Court of Appeals had denied motions asking for a stay just three weeks before.[212] The case was argued before an en banc court in the D.C. Circuit on September 28, 2016.

In March 2017, in fulfillment of executive order, the EPA filed a notice of the EPA's review of the CPP with the D.C. Circuit, noted the potential that the agency would repeal and/or revise the rule, and requested the court hold the CPP cases in abeyance.[213] The D.C. Circuit agreed, and has now renewed that abeyance twice.[214] Meanwhile, in October 2017, the EPA kicked off the formal process to rescind the CPP,[215] and in December 2017, the agency issued an advance notice of proposed rulemaking to replace it.[216] Meanwhile, implementation of the CPP remains halted under the Supreme Court stay.

The "repeal and replace" proposals are not yet ripe for judicial review, but two groups of respondent-intervenors have opposed the abeyance—the municipal and state actors group

---

[211] *Id*.

[212] W. Virginia v. E.P.A., 136 S. Ct. 1000, 194 L. Ed. 2d 17 (2016).

[213] The EPA via the Department of Justice filed a notice of the executive order, EPA's review of the regulations, and potential forthcoming rulemaking, and asked the court to hold the CPP cases in abeyance. Mot. to Hold Cases in Abeyance, ECF No. 1668274 (Mar. 28, 2017).

[214] *See* Orders Granting Abeyance Nov. 9, 2017 and Aug. 8, 2017 in the docket for W. Virginia v. E.P.A., No. 15-1363.

[215] Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units ("CPP Repeal"), 82 Fed. Reg. 48035 (Oct 16, 2017) (to be codified 40 C.F.R. Pt. 52), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-10-16/pdf/2017-22349.pdf.

[216] State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units, 82 Fed. Reg. 61507 (Dec. 28, 2017) (to be codified 40 C.F.R. Pt. 60), *available at* https://www.federalregister.gov/documents/2017/12/28/2017-27793/state-guidelines-for-greenhouse-gas-emissions-from-existing-electric-utility-generating-units.

and the environmental and public health organizations group.[217] Respondent-intervenors have advanced several arguments, including that abeyance creates a delay in violation of the APA's procedural and substantive requirements—letting the agency do indirectly through the courts what it could not do directly through an administrative stay.[218] The D.C. Circuit has continued to hold the case in abeyance, but also noted that while an indefinite abeyance is not in and of itself illegal it is problematic in the context of the EPA's statutory obligations to regulate GHGs under the Clean Air Act.[219] The abeyance keeps the rule in limbo, preventing a ruling on the merits or a remand to the EPA.

The EPA's proposed repeal of the CPP also raises concerns about mootness. Recently, the 10th Circuit refused to rule on the merits of a federal fracking regulation in light of the Trump administration's active efforts to rescind the rule.[220] However, since the EPA proposes repealing the Clean Power Plan on the basis of a new legal interpretation on the Clean Air Act[221]—a legal interpretation that is a wholesale reversal of the agency's previous interpretation and that effectively restates arguments made by challengers to the Clean Power Plan, including

---

[217] *See* opposition motions of Apr. 5, 2017 and response documents of Oct. 17, 2017 in the docket for W. Virginia v. E.P.A., No. 15-1363.

[218] *See* State and Municipal Respondent-Intervenors' Opposition to Motion to Hold Proceeding in Abeyance (April 5, 2017) in W. Virginia v. E.P.A., No. 15-1363 at 7 ("The practical effect of an abeyance would be to improperly delay the implementation of the Rule indefinitely without either timely completing the judicial review contemplated by the Supreme Court or engaging in the notice and comment procedures required to revoke or modify a regulation.") (citing Natural Resources Def. Council v. EPA, 683 F.2d 752, 763 n.23 (3d Cir. 1982) ("To allow the indefinite postponement of a rule without compliance with the APA, when a repeal would require such compliance, would allow an agency to do indirectly what it cannot do directly")).

[219] *See* Order Renewing Abeyance (Aug. 8, 2017) in the docket for W. Virginia v. E.P.A., No. 15-1363 at 2 ("As this court has held the case in abeyance, the Supreme Court's stay now operates to postpone application of the Clean Power Plan indefinitely while the agency reconsiders and perhaps repeals the Rule. That in and of itself might not be a problem but for the fact that, in 2009, EPA promulgated an endangerment finding, which we have sustained.")

[220] *State of Wyoming et al v. Zinke et al,* No. 16-8068 (10th Circuit dismissed Sept 21, 2017);*State of Wyoming et al v. DOI,* No. 16-8069 (10th Circuit dismissed Sept 21, 2017).

[221] CPP Repeal at 48036 ("Specifically, the EPA proposes a change in the legal interpretation as applied to section 111(d) of the Clean Air Act (CAA), on which the CPP was based. . . Under the interpretation proposed in this notice, the CPP exceeds the EPA's statutory authority and would be repealed.")

EPA Administrator Scott Pruitt when he was Attorney General of Oklahoma—litigants argue that it is in the interest of judicial economy to rule on the merits of the present litigation.[222] The original CPP defined a "best system of emissions reduction" (BSER) to include both emissions reductions achievable through heat-rate improvements and other efficiency measures at coal-fired power plants and replacing coal-fired generation with natural gas or renewable energy that generates fewer or zero emissions.[223] The proposed repeal interprets BSER to exclude, as a matter of law, emissions reductions that occur outside of the coal-fired plant.[224]

The EPA's final repeal of the Clean Power Plan will without question face legal challenges, as will any replacement the agency might eventually put forward. Assuming the final repeal adopts the legal interpretation offered in the proposal it will raise difficult questions

---

[222] Respondent-Intervenor Public Health and Environmental Organization' Opposition to Motion to Hold Cases in Abeyance (April 5, 2017), W. Virginia v. E.P.A., No. 15-1363 at 3, *available at* http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170405_docket-15-1363_opposition-2.pdf.

[223] Operating under the authority of section 111(d) of the Clean Air Act, the rules establish CO_2 emission performance rates that represent the "best system of emission reduction" for fossil fuel-fired electric utility steam generating units and stationary combustion turbines within each state. The Clean Power Plan defines a "best system of emissions reduction" to include measures to increase the efficiency of existing coal-fired power plants and to substitute increased electricity generation from lower-emitting or zero-emissions sources. These measures are described as three building blocks. Final CPP Rule at 64666-7. ("The three building blocks are: 1. Improving heat rate at affected coal-fired steam EGUs. 2. Substituting increased generation from lower-emitting existing natural gas combined cycle units for generation from higher emitting affected steam generating units. 3. Substituting increased generation from new zero-emitting renewable energy generating capacity for generation from affected fossil fuel-fired generating units.")

[224] *See* CPP Repeal at 9-16, 15 ("After reconsidering the statutory text, context, and legislative history, and in consideration of the EPA's historical practice under CAA section 111 as reflected in its other existing CAA section 111 regulations, the Agency proposes to return to a reading of CAA section 111(a)(1) (and its constituent term, "best system of emission reduction") as being limited to emission reduction measures that can be applied to or at an individual stationary source. That is, such measures must be based on a physical or operational change to a building, structure, facility, or installation at that source, rather than measures that the source's owner or operator can implementation behalf of the source at another location.")

regarding the appropriate level of deference to afford the agency.[225] Any new standard promulgated by the Trump Administration is bound to be less ambitious, and any new factual findings or policy decisions based on existing factual findings will be subject to the judicial review standards for an agency policy reversal discussed in Part 2.2.

5.2 New Source Performance Standards for Power Plants

Issued on October 23, 2015, the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Power Plants ("new source performance standards" or "NSPS") regulate carbon pollution from new and refurbished power plants.[226] They are considered sister rules to the CPP as the regulation of carbon from new power plants under section 111(b) of the CAA triggered requirements to issue corresponding regulations for existing power plants under section 111(d) of the CAA—resulting in the CPP.[227] Over two years of litigation many states, industry groups, and power companies have challenged the rule while numerous states, environmental and public health groups, and others have defended the standards.[228]

As with the CPP, the Pruitt EPA has asked the D.C. Circuit to hold the NSPS litigation in abeyance as it considers repeal and/or replacement of the NSPS. The EPA first filed notice of the executive order and its intent to review the rule along with a request to hold the litigation in abeyance.[229] Respondent-intervenors argued that the EPA did not provide good reasons for the

---

[225] *See e.g.*, Jack Beermann, *The Deregulatory Moment and the Clean Power Plan Repeal*, Harv. L. Rev. Blog (Nov. 30, 2017), *available at* https://blog.harvardlawreview.org/the-deregulatory-moment-and-the-clean-power-plan-repeal/.

[226] Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64510 (Oct. 23, 2015), *available at* https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22837.pdf.

[227] Clean Air Act § 111(d), 42 U.S.C. § 7411.

[228] *See* Sabin-AP U.S. Litigation Database docket for North Dakota v. EPA, No. 15-1381(D.C. Cir. filed Oct. 23, 2015).

[229] Notice of Executive Order, EPA Review of Rule and Forthcoming Rulemaking and Motion to Hold Cases in Abeyance (Mar. 28, 2017) in the docket North Dakota v. EPA , No. 15-1381.

abeyance, continuance of the litigation would not hinder review of the rule, and that to continue the litigation would be in the best interest of judicial economy and informing any subsequent rules that rescind or modify the NSPS.[230] The D.C. Circuit suspended oral argument and granted a 60-day abeyance with requirements for the EPA to provide status reports every 30 days.[231] In August, rather than renewing a time-limited abeyance as it did with the CPP, the D.C. Circuit granted, on its own motion, an indefinite abeyance with 90-day interval reporting requirements.[232] As of January 31, 2018, the EPA had yet to propose a repeal of or replacement for the NSPS.

The NSPS litigation differs from the CPP litigation in that the NSPS is in effect during the ongoing litigation because it is not subject to a Supreme Court stay. Since the rule is in effect the abeyance does not create the same implementation delay as in the CPP case, nor the associated potential violations of administrative and statutory obligations. While implementation may have relatively little impact on coal-fired plants which market forces do not currently favor, the NSPS also encompass new and reconstructed natural gas plants.

5.3 Methane Rules

Methane is a potent GHG with 28-36 more global warming potential than CO_2.[233] The Obama Administration finalized several rules to reduce methane emissions:

(1) The EPA issued new source performance standards for the oil and gas sector for several pollutants including methane ("New Source Oil & Gas Rule").[234]

---

[230] *See* Supp. Brief Filed by Power Company Respondent-Intervenors (May 15, 2017) in the docket North Dakota v. EPA , No. 15-1381.
[231] *See* Sabin-AP Litigation database docket for North Dakota v. EPA, No. 15-1381.
[232] *See Id.*
[233] E.P.A., Understanding Global Warming Potentials, *available at* https://www.epa.gov/GHGemissions/understanding-global-warming-potentials (last visited Feb. 12, 2018).
[234] Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35824 (June 3, 2016) (to be codified at 40 C.F.R. pt. 60), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11971.pdf.

(2) The EPA issued methane standards for landfills ("New Source Landfill Rule").[235]

(3) The BLM issued a final rule to reduce methane leakage, venting, and flaring during oil & gas production on federal and tribal lands ("Methane Waste Prevention Rule").[236]

All three of these Obama-Administration methane rules were stayed or delayed by the Trump Administration, and had the resulting stay or delay challenged. The challenges to the stays and delay are summarized below.

5.3.1 New Source Oil & Gas Rule

The EPA published notice in the federal register that it would reconsider and partially stay the New Source Oil & Gas Rule on June 5, 2017[237]—days after the first compliance deadline for the rule. Rather than go through the regulatory process, this administrative stay would last three months and not allow for public comment. Six environmental groups challenged the administrative stay and filed for an emergency stay or in the alternative summary vacatur.[238] The EPA defended that it had authority under the Clean Air Act to stay the rule for reconsideration and alternatively that the court did not have authority to review the stay.[239] The D.C. Circuit confirmed its jurisdictional authority and granted summary vacatur, finding that

[235] Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59276 (Aug. 29, 2016) (to be codified at 40 C.F.R. pt. 60), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17700.pdf; Standards of Performance for Municipal Solid Waste Landfills, 81 Fed. Reg. 59332 (Aug. 29, 2016) (to be codified at 40 C.F.R. pt. 60), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-08-29/pdf/2016-17687.pdf.

[236] Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 Fed. Reg. 83008 (Nov. 18, 2006) (to be codified at 43 C.F.R. pts. 3100, 3160 and 3170), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-11-18/pdf/2016-27637.pdf.

[237] Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Grant of Reconsideration and Partial Stay, 82 Fed. Reg. at 25730 (June 5, 2017) (to be codified at 40 C.F.R. pt. 60), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-06-05/pdf/2017-11457.pdf.

[238] Emergency Motion for a Stay or, in the Alternative, Summary Vacatur (June 5, 2017) in Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017). Dozens of states, state agencies, and oil & gas producers also joined the litigation as intervenors.

[239] EPA's Opposition to Petitioners' Emergency Motion for a Stay or, in the Alternative, Summary Vacatur (June 15, 2017) in Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017).

the stay was arbitrary, capricious, and in excess of authorized statutory under the CAA.[240] CAA section 307(d)(7)(B) grants authority for the EPA to issue a stay when reconsideration is "mandatory," such as when it is "impracticable" for an interested party to raise its concerns during the original notice and comment rulemaking.[241] In this case reconsideration was not mandatory because industry groups could have raised their concerns during the rulemaking process. The D.C. Circuit denied petitioner-intervenors' request for rehearing.[242]

While the rule currently remains in effect, the EPA has initiated regulatory rulemaking procedures to stay the rule for two years pending reconsideration of the rule.[243] Meanwhile, litigation challenging several iterations of the new source standards for the oil and gas sector remains in abeyance.[244] Also of note, two petitions took offensive action, challenging the agency for inaction and failure to issue performance standards for methane emissions from existing sources in the oil and gas sector.[245] They argued that section 111(d) of the CAA obligates standards for existing sources for any category of regulated, new sources. (These petitions are not litigation and thus not in the data set for this paper.)

---

[240] Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017).
[241] The Clean Air Act § 307(d)(7)(B), 42 U.S.C. 7607.
[242] Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017), *rehearing en banc denied*, No. 17-1145 (D.C. Cir. Aug. 10, 2017).
[243] Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements, 82 Fed. Reg. 27645 (June 16, 2017) (to be codified at 40 C.F.R. pt. 60), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-06-16/pdf/2017-12698.pdf.
[244] American Petroleum Institute v. EPA, No. 13-1108 (D.C. Cir. filed Dec. 16, 2014).
[245] Clean Air Act Notice of Intent to Sue for Failure to Establish Guidelines for Standards of Performance for Methane Emissions from Existing Oil and Gas Operations (June 29, 2017), *available at* http://climatecasechart.com/case/clean-air-act-notice-intent-sue-failure-establish-guidelines-standards-performance-methane-emissions-existing-oil-gas-operations/; Notice of Intent to Sue EPA for Failure to Promulgate Emission Guidelines for Methane and VOC Emissions from the Oil and Gas Sector (Aug. 28, 2017), *available at* http://climatecasechart.com/case/notice-intent-sue-epa-failure-promulgate-emission-guidelines-methane-voc-emissions-oil-gas-sector/.

5.3.2 New Source Landfill Rule

When the EPA similarly sought to halt the new source landfill rule through a 90-day administrative stay,[246] environmental groups petitioned for review[247] and subsequently filed a motion for summary vacatur—a "carbon copy" of the new source oil & gas rule litigation.[248] In a single page denial of environmental groups' motion for summary vacatur, the court asked parties to address in their briefs the issues raised in a motion for summary judgment filed by EPA and whether the case was moot because the administrative stay had already expired.[249] On January 11, 2018, the EPA withdrew its plans to delay implementing the rule. [250] The case was then voluntarily dismissed on February 1, 2018.[251] Meanwhile, the original challenge on the merits of the rule remains held in abeyance.[252]

5.3.3 Methane Waste Prevention Rule

The BLM's methane waste prevention rule went into effect on January 17, 2017, but nearly six months later, on June 15, 2017, the BLM attempted to postpone the compliance deadline until January 17, 2018.[253] Again, an administrative delay sought to postpone the rule without going through notice and comment rulemaking. The postponement was challenged,

---

[246] Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 82 Fed. Reg. 24878 (May 31, 2017) (to be codified 40 C.F.R. pt. 60), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-05-31/pdf/2017-10752.pdf.
[247] Petition for Review (June 15, 2017) in Natural Resources Defense Council v. Pruitt, No. 17-1157, (D.C. Cir. (D.C. Cir. dismissed Feb. 1, 2018).
[248] Motion for Summary Vacatur (Aug. 4, 2017) in Natural Resources Defense Council v. Pruitt, No. 17-1157, (D.C. Cir. (D.C. Cir. dismissed Feb. 1, 2018).
[249] Denial of Motion for Summary Vacatur (Sept. 28, 2017) in Natural Resources Defense Council v. Pruitt, No. 17-1157, (D.C. Cir. dismissed Feb. 1, 2018).
[250] Stipulation of Voluntary Dismissal (Jan. 31, 2018) in Natural Resources Defense Council v. Pruitt, No. 17-1157, (D.C. Cir. dismissed Feb. 1, 2018).
[251] Natural Resources Defense Council v. Pruitt, No. 17-1157, (D.C. Cir. dismissed Feb. 1, 2018).
[252] National Waste & Recycling Association v. EPA, No. 16-1371 (D.C. Cir. filed Oct. 27, 2016).
[253] Waste Prevention, Production Subject to Royalties, and Resource Conservation; Postponement of Certain Compliance Dates, 82 Fed. Reg. 27430 (June 15, 2017) (to be codified at 43 C.F.R. pts. 3170), available at https://www.gpo.gov/fdsys/pkg/FR-2017-06-15/pdf/2017-12325.pdf.

found illegal on summary judgment, and vacated.[254] In this decision, the federal district court for the Northern District of California held that the BLM had exceeded its authority under the APA and the delay of the compliance deadline was arbitrary and capricious. Under the APA Section 705, an agency can postpone an "effective date" of a rule without going through notice and comment rulemaking, but the court rejected the BLM's argument that Section 705 thus authorized delay of a "compliance date."[255] As a result, the court found that the BLM had violated procedural requirements to perform notice and comment rulemaking. Further, the court found that the BLM's delay of the rule was arbitrary and capricious because the BLM "entirely failed" to consider the rule's benefits and because pending litigation was not the true reason for the delay, as required by Section 705.[256] Echoing *State Farm* and *Kake*, the court stated: "New presidential administrations are entitled to change policy positions, but to meet the requirements of the APA they must give reasoned explanations for those changes and 'address [the] prior factual findings' underpinning a prior regulatory regime."[257] The BLM has appealed the decision.[258]

Following the court's decision, the BLM also proposed and finalized a rule, in line with the proper notice and comment procedures, to temporarily suspend or delay most compliance deadlines in the rule until January 17, 2019.[259] Two lawsuits quickly challenged this regulatory delay. One, filed by 16 conservation and tribal citizen organizations, argued that the regulatory delay violated the Mineral Leasing Act (MLA), NEPA, the Federal Land Policy and

---

[254] Order Granting Plaintiffs' Motions for Summary Judgment, California v. U.S. Bureau of Land Management, Nos. 17-cv-03804-EDL, 17-cv-3885-EDL (N.D. Cal. vacated Oct. 4, 2017).
[255] *Id*. at 12-18.
[256] *Id*. at 18.
[257] *Id*. at 19.
[258] Notice of Appeal, California v. U.S. Bureau of Land Management, No. 3:17-cv-03804 (N.D. Cal. appeal filed Dec. 4, 2017).
[259] Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements, 82 Fed. Reg. 58050 (Dec. 8, 2017) (to be codified at 43 C.F.R. pts. 3160 and 3170), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-12-08/pdf/2017-26389.pdf.

Management Act (FLPMA), and the APA.[260] The other, filed the same day by the attorneys general of California and New Mexico, raises challenges under these same statutes as well as the Federal Oil and Gas Royalty Management Act of 1982.[261] They argue that the suspension lacks a reasoned analysis, violates the BLM's statutory obligations, and inadequately considers environmental consequences.

5.4 Vehicle Emission Rules

Obama Administration standards measuring and limiting GHG emissions from cars and trucks have also been rolled back. Some of these rollbacks have been challenged in the courts, but the EPA has also acquiesced to industry petitions for rollbacks that so far have gone unchallenged by litigation.

5.4.1 Performance Metric for GHG Emissions from Highways:

On the final day of the Obama Administration, the Federal Highway Administration (FHWA) published a final rule establishing a performance measure for "tracking and setting reduction targets for carbon dioxide emitted from on-road mobile sources on the national highway system."[262] The rule was scheduled to go into effect on February 17, 2017, but was first postponed in compliance with the Regulatory Freeze[263] and then delayed again.[264] In May 2017,

[260] Sierra Club v. Zinke, No. 3:17-cv-07187 (N.D. Cal., filed Dec. 19, 2017).
[261] California v. U.S. Bureau of Land Management, No. 3:17-cv-07186 (N.D. Cal., filed Dec. 19, 2017).
[262] National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 5970 (Jan. 18, 2017) (to be codified at 23 C.F.R. 490), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00681.pdf.
[263] National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program; National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 10441 (Feb. 13, 2017) (to be codified at 23 C.F.R. pt. 490), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-02-13/pdf/2017-02860.pdf (delaying the rule containing the GHG metric and citing instructions from the Regulatory Freeze).

the FHWA published notice that it was suspending the GHG performance measure indefinitely.[265] None of these delays went through the rulemaking process. Lawsuits challenging the indefinite suspension of the metric were filed in district courts in the Second and Ninth circuits, where plaintiffs argued that the FHWA had violated the APA's requirements for notice and comment rulemaking prior to suspension.[266] On September 28, 2017, the FHWA published notice that the GHG performance measure would go into effect and then a week later published an advance notice of proposed rulemaking to repeal the GHG measure—initiating the rulemaking process.[267] Following these two notices, one case was terminated.[268] In the other,

[264] National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program; National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 14438 (Mar. 21, 2017) (to be codified at 23 C.F.R. pt. 490), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-03-21/pdf/2017-05518.pdf.

[265] National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 22879 (May 19, 2017) (to be codified at 23 C.F.R. pt. 490), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-05-19/pdf/2017-10092.pdf.

[266] Clean Air Carolina v. U.S. Department of Transportation; People of State of California v. U.S. Department of Transportation, No. 1:17-cv-5779 (S.D.N.Y 2017.) (challenging delays and/or suspension of a performance metric to track GHG emissions from on-road mobile sources on the national highway system.) People of State of California v. U.S. Department of Transportation, No. 4:17-cv-05439 (N.D. Cal. terminated Nov. 20, 2017).

[267] National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 45179 (Sept. 28, 2017) (to be codified at 23 C.F.R. pt. 490), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-09-28/pdf/2017-20804.pdf (announcing final rule and effective date); National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, 82 Fed. Reg. 46427 (Oct. 5, 2017) (to be codified at 23 C.F.R. pt. 490), *available at* https://www.federalregister.gov/documents/2017/10/05/2017-21442/national-performance-management-measures-assessing-performance-of-the-national-highway-system (proposing the repeal through a notice of proposed rulemaking).

[268] People of State of California v. U.S. Department of Transportation, No. 4:17-cv-05439 (N.D. Cal. terminated Nov. 20, 2017).

DOT argues for dismissal on mootness, but plaintiffs contend the case is not moot because DOT made no statement of wrongdoing and could choose to suspend the rule again at any time.[269]

5.4.2 Industry Petitions for Review of Fuel Efficiency Standards and Their Application

Industry has petitioned the federal government to revise fuel efficiency standards for certain vehicles and the Trump Administration has thus far complied. After receiving a petition from an industry group, the EPA agreed to review the Obama administration's Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards Under the Midterm Evaluation.[270] The EPA indicated that it plans to issue a new determination by April 1, 2018.[271] Subsequently, the EPA has invited comments on proposed new rulemaking to revise the standard.[272]

The EPA also proposed to repeal application of fuel efficiency standards to "gliders"—new truck bodies with refurbished engines[273]—after receiving a petition from industry.[274] In this

[269] Motion to Dismiss (Oct. 13, 2017) and Plaintiffs' Opposition to Defendants' Motion to Dismiss (Oct. 27, 2017), Clean Air Carolina v. U.S. Department of Transportation; People of State of California v. U.S. Department of Transportation, No. 1:17-cv-5779 (S.D.N.Y. 2017).

[270] Notice of Intention To Reconsider the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light Duty Vehicles ("Notice to Reconsider Light Duty Vehicle Standards"), 82 Fed. Reg. 14671 (Mar. 22, 2017) (to be codified at 49 C.F.R. pts. 523, 531, 533, 536 and 537), *available at* http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170322_docket-17-1086_Federal-Register-notice.pdf. *See also* Alliance of Automobile Manufacturers v. EPA, No. 17-1086 (D.C. Cir. dismissed Mar. 29, 2017)..

[271] Notice to Reconsider Light Duty Vehicle Standards at 14672.

[272] Request for Comment on Reconsideration of the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles; Request for Comment on Model Year 2021 Greenhouse Gas Emissions Standards, *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-08-21/pdf/2017-17419.pdf.

[273] *See* Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits ("Glider Repeal"), 82 Fed. Reg. 53442 (Nov. 16, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-11-16/pdf/2017-24884.pdf;

[274] *See* Petition for Reconsideration of Application of the Final Rule Entitled "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Final Rule" to Gliders, submitted to EPA (July 10, 2017), *available at* http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170710_docket-na_petition-for-reconsideration.pdf. Note that this request was not filed as litigation in a court and so is not part of the data set.

first step of the regulatory process, the EPA advanced a new interpretation of the CAA that it argued would put application of the rule to gliders beyond the EPA's statutory authority.[275] Meanwhile, underlying litigation over the application of GHG emissions and fuel efficiency standards for medium- and heavy-duty vehicles to truck trailers remains stayed by the D.C. Circuit and in judicial abeyance, pending agency review.[276]

5.5 Energy Efficiency Standards for Appliances and Industrial Equipment

Several finalized energy efficiency standards were halted by the Regulatory Freeze and subsequent delay.[277] A coalition of ten states and New York City first challenged DOE's delay of the effective date for final energy conservation standards for ceiling fans—one of the standards affected by aforementioned delays. They argued that the delays violated the APA and Energy Policy and Conservation Act (EPCA).[278] DOE subsequently published confirmation in the Federal Register that the rules would go into effect on September 30, 2017.[279] A few weeks later, both a coalition of eleven states and NYC, as well as a set of NGOs, each sued the DOE for failing to publish final energy efficiency standards for another five types of appliances and

[275] Glider Repeal at 53442-46.
[276] Truck Trailer Manufacturers Association, Inc. v. EPA, No. 16-1430 (D.C. Cir. filed Dec. 22, 2016).
[277] *Supra* note 42-43. These delays affect: Test Procedures for Walk-in Coolers and Freezers, 81 Fed. Reg. 95758 (Dec. 28, 2016) (delayed until June 26, 2017); Test Procedures for Central Air Conditioners and Heaters, 82 Fed. Reg. 1426 (Jan. 5, 2017) (delayed until July 3, 2017); Test Procedures for Compressors, 82 Fed. Reg. 1052 (Jan. 4, 2017) (delayed until July 3, 2017); Energy Conservation Standards for Ceiling Fans, 82 Fed. Reg. 6826 (Jan. 19, 2017) (delayed until September 30, 2017); Energy Efficiency Standards for the Design and Construction of New Federal Low-Rise Residential Buildings' Baseline Standards Update, 82 Fed. Reg. 2857 on January 10, 2017 (delayed until September 30, 2017).
[278] New York v. U.S. Department of Energy, No. 17-918 (2d. Cir. filed Mar. 31, 2017).
[279] Energy Conservation Program: Energy Conservation Standards for Ceiling Fans, 82 Fed. Reg. 23723 (May 23, 2017) (to be codified at 10 C.F.R, pt. 430), *available at* https://www.federalregister.gov/documents/2017/05/24/2017-10633/energy-conservation-program-energy-conservation-standards-for-ceiling-fans.

industrial equipment.[280] Collectively, these standards could lower annual GHG emissions by more than 26 million metric tons and save $24 billion over 30 years.[281] The plaintiffs again alleged that DOE had failed to take non-discretionary actions under the Energy Policy and Conservation Act (EPCA) and violated the APA and Federal Register Act by failing to publish the standards. The DOE subsequently published the final rule for one category of appliances, walk-in coolers and freezers, but the compliance date is not until 2020.[282] DOE had taken no further action to publish the other four categories of appliances as of January 15, 2018 and the lawsuit continues to move forward. In the final weeks of 2017, the Sierra Club filed a lawsuit to compel Secretary Perry to establish energy efficiency standards for manufactured housing which were withdrawn after the Regulatory Freeze.[283] Sierra Club alleged that failure to establish the standards violated the APA and failed to meet deadlines set by the Energy Independence & Security Act 2007 (EISA).

5.6 Obama Administration Decisions to Limit Major Fossil Fuel Development

Executive Orders have focused on advancing and expanding fossil fuel development by revoking key protections. Litigation has challenged the legality of these reversals directly, indirectly through FOIA litigation, and at the project implementation stage. Additional fossil fuel infrastructure and development cases are considered in the data set, but this subsection summarizes deregulation of notable Obama Administration climate decisions and policies.

---

[280] Natural Resources Defense Council v. Perry, No. 3:17-cv-03404 (N.D. Cal. filed June 13, 2017).
[281] New York State Attorney General, *Attorney General Schneiderman Announces Lawsuit And Other Legal Action Against Trump Administration For Illegally Blocking Cost-Saving, Pollution-Cutting Energy Efficiency Standards* (Apr. 3, 2017), *available at* https://ag.ny.gov/press-release/attorney-general-schneiderman-announces-lawsuit-and-other-legal-action-against-trump.
[282] Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps, 82 Fed. Reg. 32227 (July 13, 2017) (to be codified at 10 C.F.R. pts. 429 and 430), *available at* https://www.federalregister.gov/documents/2017/07/13/2017-14473/energy-conservation-program-test-procedures-for-central-air-conditioners-and-heat-pumps.
[283] Sierra Club v. Perry, No. 1:17-cv-02700 (D.D.C. filed Dec. 18, 2017).

5.6.1 Withdrawals of Beaufort and Chukchi Sea Outer Continental Shelf Areas from Leasing Disposition

Through the Offshore Energy Executive Order, President Trump attempted to directly reverse President Obama's Executive Order withdrawing certain areas of the Arctic and Atlantic Oceans from oil and gas development.[284] Though Presidents can generally replace the executive orders of their predecessors, litigation challenged President Trump for exceeding his statutory under the OCSLA. Section 12(a) of the OCSLA explicitly grants Presidents the authority to withdraw areas from drilling; no provision is made for the revocation of those withdrawals.[285] This litigation is still pending. Meanwhile Secretary Zinke is moving forward with issuing a first permit for leasing in the Beaufort Sea[286] and has released a draft five-year plan to facilitate offshore oil and gas leasing, including in previously protected areas.[287]

5.6.2 Obama Administration's Denial of Keystone XL and Dakota Access Pipelines

Several cases have challenged executive branch actions that advance onshore fossil fuel development. After receiving direction through Presidential Memorandum, the U.S. Department of State issued a presidential permit approving the remaining section of the Keystone XL Pipeline along the U.S.-Canadian border.[288] The approval of the cross-border permit superseded former Secretary of State John Kerry's denial of the permit in November 2015. The State Department did not conduct new analysis on the social, environmental, or

[284] *Supra* note 55.
[285] The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1341(a).
[286] Margaret Kriz Hobson, *Trump Admin Issues Permit for Drilling in Beaufort Sea*, E&E News (Nov. 28, 2017), *available at* https://www.eenews.net/eenewspm/stories/1060067479.
[287] Dept. of Interior, Secretary Zinke Announces Plan For Unleashing America's Offshore Oil and Gas Potential (Jan. 4, 2018), *available at* https://www.doi.gov/pressreleases/secretary-zinke-announces-plan-unleashing-americas-offshore-oil-and-gas-potential ("U.S. Secretary of the Interior Ryan Zinke today announced the next step for responsibly developing the National Outer Continental Shelf Oil and Gas Leasing Program (National OCS Program) for 2019-2024, which proposes to make over 90 percent of the total OCS acreage and more than 98 percent of undiscovered, technically recoverable oil and gas resources in federal offshore areas available to consider for future exploration and development. By comparison, the current program puts 94 percent of the OCS off limits. In addition, the program proposes the largest number of lease sales in U.S. history.")
[288] *Supra* note 49.

economic impacts of the pipeline before the approval and in a press conference they directly contradicted the Obama Administration's finding that approving the pipeline would undercut America's global leadership on climate change.[289] A half-dozen environmental groups challenged the approval, arguing that "[b]y relying on a stale and inadequate EIS to issue a cross-border permit for Keystone XL, and arbitrarily reversing its earlier determination that Keystone XL is not in the United States' national interest, the State Department violated NEPA and the Administrative Procedure Act (APA)."[290] They subsequently added another claim under the ESA.[291] Another group of environmental and tribal parties made raised similar claims, while also arguing violations of the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.[292] These related cases have both survived defendant's motions for dismissal.[293]

While multiple suits opposing the Dakota Access Pipeline continued in 2017, no new litigation filed in 2017 brought a climate-related claim against the U.S. Army Corps of Engineers for granting an easement for construction of the Dakota Access Pipeline on February 8, 2017.[294] With this action the agency reversed course on its earlier decision to conduct a full environmental impact statement prior to issuing this easement.[295] Prior to this reversal, President Trump had directed the Secretary of the Army to "take all actions necessary and appropriate" to expedite the approval of the pipeline.[296] In 2017, Dakota Access Pipeline

---

[289] The White House, Statement by the President on the Keystone XL Pipeline (Nov. 6, 2015), *available at* https://obamawhitehouse.archives.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline.

[290] Northern Plains Resource Council v. Shannon, No. 4:17-cv-00031 at 2-3 (D. Mont. Filed Mar. 30, 3017). Later consolidated with Indigenous Environmental Network v. United States Department of State, No. 4:17-cv-00029 (D. Mont. filed Mar. 27, 2017).

[291] *Id*.

[292] Indigenous Environmental Network v. United States Department of State, No. 4:17-cv-00029 (D. Mont. filed Mar. 27, 2017).

[293] *Id*.

[294] USACE, *supra* note 50.

[295] *Id*.

[296] Presidential Memorandum Regarding Construction of the Dakota Access Pipeline, *supra* note 50.

Developers brought a Racketeer Influenced and Corrupt Organizations (RICO) action against Greenpeace International and other environmental groups who protested the pipeline.[297]

5.6.3 Moratorium on Federal Coal Leasing and Environmental Review of the Federal Coal Leasing Program

Through Secretarial Order 3348, Secretary Zinke revoked the moratorium on federal coal leasing and the programmatic environmental review of the federal coal leasing program.[298] The order claims that "the public interest is not served by halting the federal coal program for an extended time, nor is a PEIS required to consider potential improvements to the program." Seven environmental organizations and the Northern Cheyenne Tribe filed a lawsuit in the federal district court for the District of Montana arguing that Secretarial Order 3348 violated NEPA and the APA.[299] They contend that reversing the coal moratorium requires a PEIS or in the alternative a supplemental environmental impact statement to the 1979 coal program PEIS. They claim that "[b]y abruptly reversing Secretarial Order 3338 without adequate rationale, Defendants took agency action that violated the APA's requirement for rational, rather than arbitrary, decisionmaking."[300]

Another lawsuit brought by California, New Mexico, New York, and Washington further argued violations of NEPA and the APA as well as the Mineral Leasing Act and the Federal Land Policy and Management Act.[301] These states further stressed their interest in ensuring that the federal coal leasing program did not undermine their efforts to reduce GHG emissions and that they had experienced and would continue to experience harmful impacts of climate change. The two lawsuits challenging Secretarial Order 3348 were consolidated on June

---

[297] Energy Transfer Equity, L.P. v. Greenpeace International, No. 1:17-cv-00173 (D.N.D. filed Aug. 22, 2017).
[298] Dept. of the Interior, Secretarial Order 3348 (Mar. 29, 2017), *available at* https://www.doi.gov/sites/doi.gov/files/uploads/so_3348_coal_moratorium.pdf.
[299] *Citizens for Clean Energy v. U.S. Department of Interior*, No. 4:17-cv-00030 (D. Mont. filed Mar. 29, 2017).
[300] *Id*. at 32.
[301] California v. Zinke, No. 4:17-cv-00042-BMM (D. Mont. filed May 9, 2017).

2, 2017, and remained pending as of January 15, 2018. An environmental group also filed a FOIA lawsuit against the BLM seeking communications in regard to the Obama Administration's Secretarial Order establishing the coal moratorium "and/or its content, development, substance, and or potential repeal, withdrawal, replacement, or modification."[302]

5.6.4 Litigation over Opening National Monuments to Fossil Fuel Development

Litigation over the impact of deregulation on fossil fuel development extends past the parameters of the data set because many cases do not involve explicit "climate claims" even if they will have large climate change impacts. For example, the reduction in size of the Bears Ears and Grand Staircase Escalante National Monuments by approximately 85% and 46% respectively[303]—and potential reductions of other national monuments in the future[304]—opens up culturally and ecologically important areas to potentially extensive fossil fuel development.[305] Within days of President Trump's announcement several lawsuits were filed in these two monuments' defense.[306] At play in these lawsuits are a variety of constitutional, statutory, and administrative law claims. (These lawsuits are not included in the data set.)

5.7 Social Cost of Carbon & Council on Environmental Quality NEPA Guidance on Climate Change

Rollback of guidance documents, like the Social Cost of Carbon (SCC) metric and CEQ's guidance on considering climate change under NEPA, are difficult to directly challenge in the

[302] Center for Biological Diversity v. U.S. Bureau of Land Management, No. 1:17-cv-01208 at 5-6 (D.D.C. filed June 20, 2017).
[303] Squillace, *supra* note 60.
[304] DOI's Memo to the President Reviewing Designations Under the Antiquities Act, *supra* note 58 (recommending President Trump shrink four national monuments and change the management practices for six other land and marine sites).
[305] *See supra* note 56.
[306] Hopi Tribe et al v. Trump et al, Docket No. 1:17-cv-02590 (D.D.C. filed Dec. 4, 2017) (challenging reduction of Bears Ears National Monument); Wilderness Society et al. v. Trump et al., Docket No. 1:17-cv-02587 (D.D.C. filed Dec. 4, 2017) (challenging reduction of Escalante National Monument). See these two dockets for history of other challenges consolidated under these dockets.

courts. However, withdrawal of these documents does not eliminate agencies' obligations to consider climate change, GHG emissions, or the costs associated with climate impacts during NEPA review. CEQ's NEPA guidance clarified existing statutory obligations that the courts have already affirmed still persist after the withdrawal of the guidance;[307] courts have also held that agencies must account for the costs of climate change impacts in some circumstances.[308] For example, in August 2017, a Montana District court vacated an environmental assessment that considered a mining project's benefits, but not also the economic costs of carbon emissions.[309] Additionally, several states, including, Colorado, Illinois, Minnesota, and New York, continue to use a SCC above $40 to inform their policy choices.[310]

5.8 Other Obama-Era Climate Protections Targeted by the Trump Administration

Other key Obama-era climate protections have faced the Trump Administration deregulatory firing squad in 2017. Through executive order, President Trump revoked President Obama's Executive Order 13653, titled "Preparing the United States for the Impacts of

[307] For relevant 2017 decisions see State of Wyoming et al v. Zinke et al, No. 16-8068 (10th Circuit dismissed Sept 21, 2017) (finding the agency inadequately considered climate change impacts under NEPA); State of Wyoming et al v. DOI, No. 16-8069 (10th Circuit dismissed Sept 21, 2017) (finding the agency inadequately considered climate change impacts under NEPA); Sierra Club v. Fed. Energy Regulatory Comm'n, 867 F.3d 1357 (D.C. Cir. 2017).

[308] *See* Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin., 538 F.3d 1172, 1217 (9th Cir. 2008) (holding that an agency must analyze the effects of its actions on global climate change as required by NEPA); High Country Conservation Advocates v. U.S. Forest Serv., 52 F. Supp. 3d 1174, 1193 (D. Colo. 2014) (holding that an agency is obligated to use social cost of carbon protocol when calculating the costs and benefits of a greenhouse gas generating action). *See generally* Michael Burger & Jessica Wentz, *Downstream and Upstream Greenhouse Gas Emissions: The Proper Scope of NEPA Review*, 41 HARV. ENVTL. L. REV. 109, 137 (2017).

[309] Montana Envtl. Info. Ctr. v. U.S. Office of Surface Mining, 274 F. Supp. 3d 1074 (D. Mont. 2017), *amended in part, adhered to in part sub nom.* Montana Envtl. Info. Ctr. v. United States Office of Surface Mining, No. CV 15-106-M-DWM, 2017 WL 5047901 (D. Mont. Nov. 3, 2017).

[310] Peter Failey, *States Are Using Social Cost of Carbon in Energy Decisions, Despite Trump's Opposition*, InsideClimate News (Aug. 14, 2017), *available at* https://insideclimatenews.org/news/11082017/states-climate-change-policy-calculate-social-cost-carbon.

Climate Change," and President Obama's Climate Action Plan,[311] which collectively concerned many of the Obama Administration's activities to further climate change adaptation. President Trump announced his intention to withdraw from the Paris Agreement in June 2017, and in August 2017, his administration sent notification to the United Nations confirming intention to withdraw the U.S. once it becomes legally possible to so—which is not until 2020.[312] Neither of these rollbacks has been litigated—presumably for lack of legal claim.

In October 2017, the Center for Biological Diversity filed a FOIA lawsuit against the National Oceanic and Atmospheric Administration and the Department of Commerce seeking records on the August termination of the National Climate Assessment Advisory Committee.[313] They sought to information on "[w]ho participated in this decision-making process…; [w]hat factors were considered in making this decision; and [h]ow the Committee's unfinished work will now be completed, including" work for the Fourth National Climate Assessment which is due in 2018.[314] These areas of no or relatively little litigation reveal some of the limitations of litigation as a tool to check deregulatory activity.

[311] Exec. Order No. 13653, 78 Fed. Reg. 66817 (Nov. 6, 2013), *available at* https://www.gpo.gov/fdsys/pkg/FR-2013-11-06/pdf/2013-26785.pdf.
[312] U.S. Dept. of State, Communication Regarding Intent to Withdraw from Paris Agreement (Aug. 4, 2017), *available at* https://www.state.gov/r/pa/prs/ps/2017/08/273050.htm.
[313] Center for Biological Diversity v. National Oceanic and Atmospheric Administration, No. 1:17-cv-02031 (D.D.C. filed Oct. 3, 2017).
[314] *Id*. at 9.

6. CONCLUSION

In its first year, the Trump Administration set a high-water mark for climate change deregulation, but extralegal rollbacks have been constrained by the courts through vigilant litigation. While litigants use the courts as a tool to both maintain and erode climate protections, the vast majority (73%) of the 82 cases reviewed for this analysis were "pro" climate change protections; that is, they sought to enforce or advance policies or other efforts to mitigate the effects of climate change. While a handful of environmental NGOs with national or international missions were involved in more than half (55%) of all "pro" climate protection cases, a diverse suite of state-government entities, municipalities, private citizens, local and regional groups, and other NGOS collectively brought the Trump Administration's climate policy activities before judicial review. Claims ranged across administrative, statutory, constitutional, and common law.

Climate change litigation directly challenged deregulation through lawsuits over delays, postponements, revocations, and other regulatory rollbacks of climate policies. Fourteen of the 60 "pro" climate cases, (23% of the "pro" cases), fell into this category of defending Obama Administration climate change policies and decisions. Six of these 14 cases reached some form of resolution: federal courts found an administrative delay and a compliance postponement to each be illegal, one administrative stay case was voluntarily dismissed after the stay terminated and the agency withdrew its plans to delay the rule, and three cases pressured publication of two delayed rules by the relevant agencies (two cases concerned the same rule). Each of these six cases concerned delay of climate policies; none of the decisions concerning a revocation or implementation of new deregulatory practices had advanced to judicial or other resolution by the end of 2017.

The scope of how climate change affects deregulation ranges far wider than a handful of direct challenges to regulatory rollbacks. Another 46 cases supported climate change protection through less direct means including: filing FOIA lawsuits to defend transparency and science within the Trump Administration, enforcing requirements to consider climate change during

environmental review, and advancing novel legal arguments for new and additional climate protections. Many of these cases remained pending at the end of the Trump Administration's first year. These cases reflect existing trends in climate change litigation, such as enforcing obligations to consider climate change effects under NEPA, but also indicate potentially new developments, such as an uptick in FOIA litigation.

Additionally, a little more than a quarter (27%) of reviewed cases advanced climate change deregulation, undermined climate protections, or attacked supporters of climate protections. These challenges ranged from petitions to review Obama Administration climate rules to contestations over state-level denials of environmental permits for fossil fuel infrastructure to charges of defamation against critics of the fossil fuel industry.

Though litigants have scored some early victories from courts and pressured agencies to publish outstanding rules, the long-term "stickiness" of these individual outcomes remains uncertain. The termination of an illegal administrative stay of a rule or the publication of a withheld rule does not preclude the agency from subsequently rolling back the same climate change policies through the rulemaking process. Already, agencies have initiated the regulatory repeal process for one rule in which an administrative stay was struck down and one rule in which litigation pressured publication of a rule. As the regulatory process continues in these and other areas in 2018, climate change litigation will likely include an increased number of cases brought to enforce the substantive judicial standards for deregulation discussed in Part 2.2 of this paper. Additionally, the early cases challenging revocations of climate policies may begin to resolve in 2018. Meanwhile, lawsuits challenging delays will keep climate policies in effect during the many months or years it takes to accomplish regulatory repeals and prevent any illegally executed rollbacks from establishing new precedent.

APPENDIX A: CASES REVIEWED IN THE ANALYSIS

The cases included in the data set are listed below and grouped by their trend categorization. The case summaries are taken from the Sabin-AP U.S. Climate Change Litigation database available at http://climatecasechart.com/us-climate-change-litigation/. Case status is not provided because this information is constantly evolving.

Defending Obama Administration Climate Policies & Decisions						
Case	**Court**	**Plaintiff or Petitioner Type**	**Defendant**	**Principal Federal Law(s)**	**Sector**	**Summary**
California v. U.S. Bureau of Land Management	N.D. Cal.	State Government Entity, Intl/Natl Environmental NGO, Local or Regional Group	BLM, DOI	Administrative Procedure Act (APA), Federal Land Policy and Management Act (FLPMA), Federal Oil and Gas Royalty Management Act, National Environmental Policy Act (NEPA), Mineral Leasing Act (MLA)	Fossil Fuel Extraction & Transport	Challenge to a U.S. Bureau of Land Management rule postponing compliance dates for Waste Prevention Rule for one year.
California v. U.S. Bureau of Land Management	N.D. Cal.	State Government Entity	BLM	Administrative Procedure Act (APA)	Fossil Fuel Extraction & Transport	Challenge to U.S. Bureau of Land Management decision to postpone compliance dates for waste prevention rule.
Citizens for Clean Energy v. U.S. Department of Interior	D. Mont.	Tribe, State Government Entity, Intl/Natl Environmental NGO, Local or Regional Group	DOI, BLM	Administrative Procedure Act (APA), Clean Water Act (CWA), National Environmental Policy Act (NEPA)	Fossil Fuel Extraction & Transport	Challenge to lifting of moratorium on federal coal leasing and cessation of programmatic environmental review of leasing program.

Clean Air Carolina v. U.S. Department of Transportation	S.D.N.Y.	Intl/Natl Environmental NGO, Local or Regional, Other Intl/Natl NGO	Federal Highway Administ-ration	Administrative Procedure Act (APA)	Vehicle Emissions & Fuels	Challenge to Federal Highway Administration's indefinite suspension of greenhouse gas performance measure for highway system.
Clean Air Council v. Pruitt	D.C. Cir.	Intl/Natl Environmental NGO	EPA	Administrative Procedure Act (APA), Clean Air Act (CAA)	Fossil Fuel Extraction & Transport	Challenge to EPA's administrative stay of portions of the 2016 new source performance standards for sources in the oil and gas sector.
Indigenous Environmental Network v. United States Department of State	D. Mont.	Intl/Natl Environmental NGO, Local or Regional Group	Dept. of State, FWS	Administrative Procedure Act (APA), Bald and Golden Eagle Protection Act, Endangered Species Act (ESA), National Environmental Policy Act (NEPA), Migratory Bird Treaty Act	Fossil Fuel Extraction & Transport	Challenge to Trump administration approval of a presidential permit for the Keystone XL pipeline.
League of Conservation Voters v. Trump	D. Alaska	Intl/Natl Environmental NGO, Local or Regional Land	President Trump, DOI, Dept. of Commerce	Outer Continental Shelf Leasing Act (OCSLA)	Fossil Fuel Extraction & Transport	Challenge to executive order reversing President Obama's withdrawal of lands in the Atlantic and Arctic Oceans from future oil and gas leasing.
Natural Resources Defense Council v. Perry	N.D. Cal.	Municipal Government Entity, State Government Entity	DOE	Administrative Procedure Act (APA), Energy & Conservation Act, Federal Register Act	Energy Efficiency and Appliance Standards	Challenge to U.S. Department of Energy's failure to publish final energy efficiency standards.

Natural Resources Defense Council v. Pruitt	D.C. Cir.	Intl/Natl Environmental NGO, Local or Regional Group	EPA	Administrative Procedure Act (APA), Clean Air Act (CAA)	Landfill Emissions	Challenge to EPA's administrative stay of performance standards and emission guidelines for municipal solid waste landfills.
Natural Resources Defense Council, Inc. v. National Highway Traffic Safety Administration	2d Cir.	Intl/Natl Environmental NGO, State Government Entity	NHWTSA, DOT	Administrative Procedure Act (APA), Energy Conservation Act	Vehicle Emissions & Fuels	Challenge to delay of effective date for rule increasing civil penalties for violations of CAFE standards.
New York v. U.S. Department of Energy	2d Cir.	Municipality, State Government Entity	DOE	Administrative Procedure Act (APA), Energy Policy & Conservation Act	Energy Efficiency and Appliance Standards	Challenge to the U.S. Department of Energy's decisions to delay the effective date for ceiling fan energy efficiency standards.
People of State of California v. U.S. Department of Transportation	N.D. Cal.	State Government Entity	DOT, FHWA	Administrative Procedure Act (APA)	Vehicle Emissions & Fuels	Challenge to delays and suspension of greenhouse gas performance measures for the national highway system.
Public Citizen, Inc. v. Trump	D.D.C.	Intl/Natl Environmental NGO, Other Intl/Natl NGO, Union	President Trump	Administrative Procedure Act (APA), Constitutional (Take Care Clause, Separation of Powers)	Government Violation of Constitutional Rights	Challenge to President Trump's executive order on "Reducing Regulation and Controlling Regulatory Costs" as well as interim guidance for the order's implementation.

Sierra Club v. Perry	D.D.C.	Intl/Natl Environmental Group	DOE	Administrative Procedure Act (APA), Energy Independence & Security Act (EISA)	Energy Efficiency and Appliance Standards	Action to compel issuance of energy efficiency standards for manufactured housing.

Demanding Transparency & Scientific Integrity from the Trump Administration						
Case	**Court**	**Plaintiff or Petitioner Type**	**Defendant**	**Principal Federal Law(s)**	**Sector**	**Summary**
California v. EPA	D.D.C.	State Government Entity	EPA	Freedom of Information Act (FOIA)	Government Records or Communications Request	Freedom of Information Act lawsuit to compel disclosure of records concerning EPA's process to ensure that Administrator Scott Pruitt was in compliance with federal ethics regulations and obligations with respect to participation in rulemaking.
Center for Biological Diversity v. National Oceanic and Atmospheric Administration	D.D.C.	Intl/Natl Environmental NGO	NOAA, DOC	Freedom of Information Act (FOIA)	Government Records or Communications Request	Action to compel disclosure of records regarding the termination of the Advisory Committee for the Sustained National Climate Assessment.
Center for Biological Diversity v. U.S. Bureau of Land Management	D.D.C.	Intl/Natl Environmental NGO	BLM	Administrative Procedure Act (APA), Freedom of Information Act (FOIA)	Government Records or Communications Request	Action seeking to compel BLM to respond to Freedom of Information Act request for documents related to the federal coal program.
Center for Biological Diversity v. U.S. Department of Interior	D.D.C.	Intl/Natl Environmental NGO	DOI, EPA, DOE, State Dept.	Administrative Procedure Act (APA), Freedom of Information Act (FOIA)	Government Records or Communications Request	Freedom of Information Act lawsuit to compel disclosure of directives and communications regarding removal of climate change-related words from formal agency communications.

Center for Media & Democracy v. Hunter	Okla. Sup. Ct.	Other NGO	Pruitt/Hunter (Attorney General of OK)	Oklahoma Open Records Act	Government Records or Communications Request	Action to compel response by Oklahoma attorney general to Open Records Act request for documents regarding industry ties of attorney general Scott Pruitt.
Clement v. U.S. Department of Interior	D.D.C.	Citizen	DOI	Freedom of Information Act (FOIA)	Government Records or Communications Request	Freedom of Information Act lawsuit filed by former Department of Interior employee who alleged that the agency reassigned him in retaliation for raising concerns regarding climate change risk to Native Alaska communities.
Natural Resources Defense Council v. U.S. Environmental Protection Agency	S.D.N.Y.	Intl/Natl Environmental NGO	EPA, FDA, NOAA, OMB, DOI, BLM, Bureau of Reclamation, USFWS, Office of Surface Mining, Reclamation, & Enforcement, USFS, DOJ	Freedom of Information Act (FOIA)	Government Records or Communications Request	Action to compel production of communications between certain federal agencies and Trump transition team.

Project Democracy Project, Inc. v. U.S. Department of Energy	D.D.C.	Other Intl/Natl NGO	DOE	Freedom of Information Act (FOIA)	Government Records or Communications Request	Action to compel response to Freedom of Information Act request to the U.S. Department of Energy seeking Trump transition team questionnaires regarding climate change.
Public Employees for Environmental Responsibility v. EPA	D.D.C.	Intl/Natl Environmental NGO	EPA	Freedom of Information Act (FOIA)	Government Records or Communications Request	Action to compel a response by EPA to a Freedom of Information Act request regarding remarks about climate change made by EPA Administrator Scott Pruitt in a televised interview.
Sierra Club v. EPA	D.D.C.	Local/Regional	EPA	Administrative Procedure Act (APA), Freedom of Information Act (FOIA)	Government Records or Communications Request	Action to compel EPA to disclose senior officials' external communications.
Sierra Club v. U.S. Department of Energy	N.D. Cal.	Intl/Natl Environmental Group	DOE	Freedom of Information Act (FOIA)	Government Records or Communications Request	Freedom of Information Act action to compel disclosure of documents related to the U.S. Department of Energy's study of U.S. electricity markets and the reliability of the electrical grid
WildEarth Guardians v. U.S. Department of the Interior Office of the Secretary	D.D.C.	Intl/Natl Environmental Group	DOI	Freedom of Information Act (FOIA)	Government Records or Communications Request	Freedom of Information Act lawsuit against Department of the Interior to compel production of records related to Secretarial Order on onshore mineral leasing program

Integrating Consideration of Climate Change into Environmental Review & Permitting						
Case	**Court**	**Plaintiff or Petitioner Type**	**Defendant**	**Principal Federal Law(s)**	**Sector**	**Summary**
Allegheny Defense Project v. Federal Energy Regulatory Commission; In re Transcontinental Gas Pipe Line Company, LLC	D.C. Cir.; FERC	Intl/Natl Environmental NGO	FERC	National Environmental Policy Act (NEPA), Natural Gas Act	Fossil Fuel Extraction & Transport	Challenge to FERC approval of the Atlantic Sunrise natural gas pipeline expansion project in Pennsylvania and other locations on East Coast.
Appalachian Voices v. Federal Energy Regulatory Commission	D.C. Cir.	Intl/Natl Environmental Group, Local or Regional Group	FERC	National Environmental Policy Act (NEPA), Natural Gas Act (NGA), National Historic Preservation Act (NHPA)	Fossil Fuel Extraction & Transport	Challenge to FERC order approving Mountain Valley Pipeline extending from West Virginia to Virginia.
Bay.org d/b/a The Bay Institute v. Zinke	N.D. Cal.	Intl/Natl Environmental NGO, Local or Regional Group	DOI & FWS	Administrative Procedure Act (APA), Endangered Species Act (ESA)	Impacts on Land, Water, & Wildlife	Challenge to biological opinion issued for water diversion project in California.
Center for Biological Diversity v. EPA	N.D. Cal.	Intl/Natl Environmental NGO, Local or Regional Group	EPA	Clean Air Act (CAA)	Power Plants	Action to compel EPA to respond to petition seeking objection to Title V permit for natural gas plant in California.

Center for Biological Diversity v. U.S. Bureau of Land Management	D. Nev.	Intl/Natl Environmental NGO	BLM	Administrative Procedure Act (APA), National Environmental Policy Act (NEPA)	Fossil Fuel Extraction & Transport	Challenge to oil and gas lease sale in Nevada.
Center for Biological Diversity v. U.S. Fish & Wildlife Service	D. Ariz.	Intl/Natl Environmental NGO	FWS	Administrative Procedure Act (APA), Endangered Species Act (ESA)	Impacts on Land, Water, & Wildlife	Challenge to biological opinion for copper mine in Arizona.
Center for Biological Diversity v. U.S. Forest Service	S.D. Ohio	Intl/Natl Environmental NGO, Local or Regional Group	USFS, BLM	Administrative Procedure Act (APA), National Environmental Policy Act (NEPA)	Fossil Fuel Extraction & Transport	Challenge to authorization of oil and gas leasing in the Wayne National Forest.
Center for Food Safety v. U.S. Army Corps of Engineers	W.D. Wash.	Other NGO	USACE	Administrative Procedure Act (APA), Clean Water Act (CWA), National Environmental Policy Act (NEPA)	Impacts on Land, Water, & Wildlife	Challenge to U.S. Army Corps of Engineers' renewal of a nationwide permit to cover shellfish aquaculture in Washington State.
Columbia Riverkeeper v. Pruitt	W.D. Wash.	Regional or Local Group, Industry Trade Group	EPA	Administrative Procedure Act (APA), Clean Water Act (CWA)	Impacts on Land, Water, & Wildlife	Lawsuit alleging that EPA violated the Clean Water Act by failing to issue a total maximum daily load (TMDL) for temperature pollution in the Columbia and Snake Rivers in Oregon and Washington.

Crow Indian Tribe et al v. United States of America et al	D. Mont.	Tribe, Intl/Natl Environmental NGO, Other Intl/Natl NGO	DOI, FWS	Administrative Procedure Act (APA), Endangered Species Act (ESA)	Impacts on Land, Water, & Wildlife	Challenge to designation of a Greater Yellowstone Ecosystem grizzly bear distinct population segment (DPS) and a related determination that the DPS was recovered and did not qualify as endangered or threatened under the Endangered Species Act.
Delaware Riverkeeper Network v. Secretary of Pennsylvania Department of Environmental Protection	3d. Cir.	Local or Regional Group	State: PA Dept. of Environmental Protection	Natural Gas Act, Pennsylvania Dam Safety and Encroachment Act	Fossil Fuel Extraction & Transport	Challenge to Pennsylvania permits for interstate natural gas pipeline project.
Delaware Riverkeeper Network v. U.S. Army Corps of Engineers	3d Cir.	Local or Regional Group	USACE	Administrative Procedure Act (APA), Clean Water Act (CWA), National Environmental Policy Act (NEPA), Natural Gas Act	Fossil Fuel Extraction & Transport	Challenge to Clean Water Act permits for natural gas interstate pipeline project.
High Country Conservation Advocates v. U.S. Forest Service	D. Colo.	Intl/Natl Environmental NGO, Local or Regional Group	DOI, BLM, USDA, USFS	Administrative Procedure Act (APA), National Environmental Policy Act (NEPA)	Fossil Fuel Extraction & Transport	Challenge to federal approvals of underground coal mine expansion.

In re Atlantic Coast Pipeline, LLC	FERC	Local or Regional Group	FERC	National Environmental Policy Act (NEPA), the Natural Gas Act	Fossil Fuel Extraction & Transport	Challenge to approvals for natural gas pipeline project running through West Virginia, Virginia, and North Carolina.
National Wildlife Federation v. U.S. Army Corps of Engineers	D.D.C.	Environmental Groups and Local or Regional Group	USACE	Administrative Procedure Act (APA), National Environmental Policy Act (NEPA), the Water Resources Development Act, Fish and Wildlife Coordination Act	Impacts on Land, Water, & Wildlife	Challenge to approval of update to the Master Water Control Manual for federal dams and reservoirs in the Apalachicola-Chattahoochee-Flint River Basin.
New York State Department of Environmental Conservation v. Federal Energy Regulatory Commission	FERC; 2d Cir.	State Government Entity	FERC	Clean Water Act (CWA), National Environmental Policy Act (NEPA), Natural Gas Act	Fossil Fuel Extraction & Transport	Proceeding before FERC to obtain authorization for natural gas pipeline project in New York.
People of State of California v. United States	S.D. Cal.	State Government Entity	U.S., Dept. of Homeland Security, U.S. Customs and Border Protection	Administrative Procedure Act (APA), Coastal Zone Management Act, National Environmental Policy Act (NEPA)	Impacts on Land, Water, & Wildlife	Challenge to waivers for construction of border wall projects in California.

Regents of University of California v. Federal Emergency Management Agency	N.D. Cal.	State Government Entity	FEMA	Administrative Procedure Act (APA), National Environmental Policy Act (NEPA), Stafford Disaster Relief and Emergency Assistance Act of 1988	Impacts on Land, Water, & Wildlife	Challenge to termination of wildfire mitigation grants in Bay Area in California.
Rosado v. Pruitt	E.D.N.Y.	State Government Entity	EPA	Administrative Procedure Act, Coastal Zone Management Act, Ocean Dumping Act	Impacts on Land, Water, & Wildlife	Challenge to EPA's designation of an ocean dumping site in Long Island Sound.
Save the Colorado v. U.S. Bureau of Reclamation	D. Colo.	Intl/Natl Environmental NGO, Local or Regional Group	BLM, USACE	Administrative Procedure Act (APA), Clean Water Act (CWA), National Environmental Policy Act (NEPA)	Impacts on Land, Water, & Wildlife	Challenge to approvals for project facilitating diversion of water from Colorado River.
Save the Scenic Santa Ritas v. U.S. Forest Service	D. Ariz.	Intl/Natl Environmental Group, Local or Regional Group	USFS	Administrative Procedure Act (APA), Clean Water Act (CWA), Federal Lands Policy Management Act (FLPMA), Federal	Impacts on Land, Water, & Wildlife	Challenge to approvals for copper mine in Arizona.

				Reserved Water Rights Doctrine, Forest Service Organic Act, Las Cienegas National Conservation Area Act, Mining and Minerals Policy Act of 1970, National Environmental Policy Act (NEPA), Public Trust Doctrine, Stock Raising Homestead Act		
Sierra Club v. Federal Energy Regulatory Commission	D.C. Cir.	Local/Regional	FERC	National Environmental Policy Act (NEPA), Natural Gas Act	Fossil Fuel Extraction & Transport	Challenge to natural gas pipeline project between Ohio and Michigan.
WildEarth Guardians v. Zinke	D. Mont.	Intl/Natl Environmental Group, Local or Regional Group	DOI & Office of Surface Mining Reclamation & Enforcement	Administrative Procedure Act (APA), National Environmental Policy Act (NEPA)	Fossil Fuel Extraction & Transport	Challenge to mining plan modification for Montana coal mine.

Advancing and Enforcing Climate Protections						
Case	**Court**	**Plaintiff or Petitioner Type**	**Defendant**	**Principal Federal Law(s)**	**Sector**	**Summary**
City of Santa Cruz v. Chevron Corp.	Cal. Super. Ct.	Municipality	Industry (Fossil Fuel Companies)	Common Law (Public Nuisance, Private Nuisance, Strict Liability Based on Failure to Warn and Design Defect, Negligence, and Trespass)	Fossil Fuel Co. Liability	Lawsuits filed by City and County of Santa Cruz alleging that fossil fuel companies caused climate change-related injuries.
Clean Air Council v. United States	E.D. Pa.	Intl/Natl Environmental NGO, Citizens	U.S., DOE, EPA, Trump	Constitutional (5th Amendment), Public Trust Doctrine	Government Violation of Constitutional Rights	Lawsuit against United States and other federal defendants asserting constitutional claims to block deregulatory actions by Trump administration.
Colorado River Ecosystem v. State of Colorado	D. Colo.	Local or Regional Group	State of CO	Other Statutory	Impacts on Land, Water, & Wildlife	Action seeking judicial declaration that Colorado River ecosystem is a "person" possessing rights.
Conservation Law Foundation, Inc. v. Shell Oil Products US	D.R.I.	Local or Regional Group	Industry (Fossil Fuel Company)	Administrative Procedure Act (APA), Clean Water Act (CWA)	Fossil Fuel Co. Liability	Citizen suit alleging that Shell Oil violated the Clean Water Act by failing to prepare a bulk storage and fuel terminal in Providence, Rhode Island, for climate change impacts.

County of Marin v. Chevron Corp., County of San Mateo v. Chevron Corp., City of Imperial Beach v. Chevron Corp.	N.D. Cal., Cal. Super. Ct., Bankr. E.D. Mo.	Municipality	Industry (Fossil Fuel Companies)	Common Law (Public Nuisance, Private Nuisance, Strict Liability for Failure to Warn, Strict Liability for Design Defect, Negligence, Negligent Failure to Warn, and Trespass)	Fossil Fuel Co. Liability	Action by California city seeking damages from fossil fuel companies for sea level rise.
County of Santa Cruz v. Chevron Corp.	Cal. Super. Ct.	Municipality	Industry (Fossil Fuel Companies)	Common Law (Public Nuisance, Private Nuisance, Strict Liability Based on Failure to Warn and Design Defect, Negligence, and Trespass)	Fossil Fuel Co. Liability	Lawsuits filed by City and County of Santa Cruz alleging that fossil fuel companies caused climate change-related injuries.
Holmquist v. United States	E.D. Wash.	Citizens	U.S.	Constitution (Ninth Amendment, Interstate Commerce Commission Termination Act of 1995	Fossil Fuel Extraction & Transport	Challenge to Interstate Commerce Commission Termination Act of 1995 preemption of local prohibitions on rail transportation of fossil fuels.
Humane Society of United States v. Pruitt	D.D.C.	Intl/Natl Environmental NGO, Other Intl/Natl NGO, Local or Regional Group	EPA	Administrative Procedure Act (APA), Clean Air Act (CAA)	Animal Feedlot Emissions	Action to compel EPA to respond to 2009 petition requesting that concentrated animal feeding operations be regulated as sources of air pollution.

Lindsay v. Republican National Committee	W.D. Wis.	Citizen	120 defendants including President Trump, Trump Administration Cabinet Officials, Republican National Committee	Constitutional and Other Statutory	Government Violation of Constitutional Rights	Lawsuit alleging that defendants including President Trump, cabinet officials, other Republican officials, and other individuals violated plaintiff's rights through numerous policy and other actions, including the failure to act on global warming.
People of State of California v. BP p.l.c.	Cal. Super. Ct.	Municipality	Industry (Fossil Fuel Companies)	Common Law (Public Nuisance)	Fossil Fuel Co. Liability	Public nuisance actions brought separately by City of Oakland and City of San Francisco against fossil fuel companies.
Sierra Club v. Pruitt	D.D.C.	Intl/Natl Environmental Group	EPA	Clean Air Act (CAA), Energy Independence & Security Act (EISA)	Vehicle Emissions & Fuels	Action to compel EPA to submit reports on the Renewable Fuel Standard program's environmental and resource impacts and to complete an "anti-backsliding" study.

Deregulating. Undermining Climate Protections, or Targeting Climate Protections Supporters						
Case	**Court**	**Plaintiff or Petitioner Type**	**Defendant**	**Principal Federal Law(s)**	**Sector**	**Summary**
Alliance of Automobile Manufacturers v. EPA	D.C. Cir.	Industry Trade Group	EPA	Administrative Procedure Act (APA), Clean Air Act (CAA)	Vehicle Emissions & Fuels	Challenge to Obama administration's Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards Under the Midterm Evaluation
American Bird Conservancy v. Disbrow	D.D.C.	Local or Regional Group, Other National NGO	DOI, USFWS, U.S. Air Force; State-Level Entity (Ohio Air National Guard)	Administrative Procedure Act (APA), Bald and Golden Eagle Protection Act, Endangered Species Act (ESA), National Environmental Policy Act (NEPA), Migratory Bird Treaty Act	Renewable Energy Projects	Challenge by two bird conservation groups to a wind turbine project sponsored by the Ohio Air National Guard at Camp Perry in Ottawa County, Ohio.
Coffeyville Resources Refining & Marketing, LLC v. EPA	D.C. Cir.	Industry (Refineries and Energy Companies)	EPA	Clean Air Act (CAA)	Vehicle Emissions & Fuels	Challenge to EPA's final Renewable Fuel Standards for 2017 and Biomass-Based Diesel Volume for 2018.

Competitive Enterprise Institute v. U.S. Department of State	D.D.C.	Conservative NGO	Dept. of State	Freedom of Information Act (FOIA)	Government Records or Communications	Action to compel production of U.S. Department of State officials' correspondence regarding climate negotiations.
Competitive Enterprise Institute v. U.S. Department of State	D.D.C.	Conservative NGO	Dept. of State	Freedom of Information Act (FOIA)	Government Records or Communications	Freedom of Information Act lawsuit filed against the Department of State seeking correspondence of two employees' regarding the Paris Agreement.
Energy & Environment Legal Institute v. United States Department of State	D.D.C.	Conservative NGO	Dept. of State	Freedom of Information Act (FOIA)	Government Records or Communications	Action to compel disclosure of State Department communications regarding climate change negotiations with China
Energy & Environmental Legal Institute v. Attorney General of New York	N.Y. Sup. Ct.	Conservative NGO	NYAG	New York Freedom of Information Law	Speech or Protest Related to Fossil Fuels	Action to compel production of New York attorney general's correspondence with Vermont attorney general using private email account.
Energy Transfer Equity, L.P. v. Greenpeace International	D.N.D.	Industry (Pipeline Developer)	Environmental Group and Citizens	Racketeer Influenced and Corrupt Organizations (RICO)	Speech or Protest Related to Fossil Fuels	Racketeer Influenced and Corrupt Organizations (RICO) action by Dakota Action Pipeline developers against Greenpeace and other organizations.

In re Constitution Pipeline Co.	FERC	Industry (Pipeline Company)	NY State Dept. of Environmental Conservation	Clean Water Act (CWA), Natural Gas Act	Fossil Fuel Extraction & Transport	Petition seeking declaratory order that the New York State Department of Environmental Conservation had waived jurisdiction over water quality certificate for interstate natural gas pipeline project.
Marshall County Coal Co. v. Oliver	W. Va. Cir. Ct., N.D. W. Va.	Industry (Coal Companies and Coal Executive)	Citizen, Company	Tort Law (Defamation)	Speech or Protest Related to Fossil Fuels	Defamation action brought by coal companies and coal executive for statements made on the television show Last Week Tonight with John Oliver.
Millennium Bulk Terminals-Longview, LLC v. Washington State Department of Ecology	Wash. PCHB	Industry (Coal Developer)	State Agency: WA Dept. of Ecology	Clean Water Act (CWA), Constitution (Supremacy Clause, Commerce Clause, Fourteenth Amendment)	Fossil Fuel Extraction & Transport	Administrative appeal of denial of application for water quality certification for coal terminal in Washington State.
Millennium Bulk Terminals-Longview, LLC v. Washington State Department of Ecology	Wash. Super. Ct.	Industry (Coal Developer)	State Agency: WA Dept. of Ecology	Clean Water Act (CWA), Constitution (Supremacy, Fourteenth Amendment)	Fossil Fuel Extraction & Transport	Challenge to denial of water quality certificate for coal terminal.

Millennium Pipeline Co. v. Seggos	N.D.N.Y.	Industry (Pipeline Company)	State Agency: NY Dept. of Environme-ntal Conservati-on	Constitution (Supremacy Clause), Natural Gas Act	Fossil Fuel Extraction & Transport	Action seeking declaratory judgment that federal law preempted state environmental permitting requirements for gas pipeline project and also seeking to enjoin enforcement of state permitting requirements to interfere with project.
National Electrical Manufacturers Association v. United States Department of Energy	4th Cir.	Industry Trade Group	DOE	Energy Policy and Conservation Act (EPCA), Energy Independence & Security Act (EISA)	Energy Efficiency and Appliance Standards	Challenge to energy efficiency standards for lamps.
National Environmental Development Association's Clean Air Project v. EPA	D.C. Cir.	Industry Trade Group	EPA	Clean Air Act (CAA)	Energy Efficiency and Appliance Standards	Challenge to EPA's updates to refrigerant management requirements.
Turning Point USA (TPUSA) v. Macomb Community College	E.D. Mich.	Citizens	University	Constitutional (1st Amendment, 14th Amendment)	Speech or Protest Related to Fossil Fuels	Lawsuit brought by students against community college alleging that the college violated the students' free speech and equal protection rights by barring them from engaging in expressive activity to promote fossil fuels without prior approval.

Village of Old Mill Creek v. Star	N.D. Ill. ; 7th Cir.	Industry (Companies), Industry Trade Group, Citizens, Municipality	State: Director of the Illinois Power Agency	Constitutional: (Fifth Amendment, Commerce Clause, Supremacy Clause), Illinois Future Energy Jobs Act	Power Plants	Challenge to Illinois law that created a Zero Emissions Credit program allegedly to support uneconomic nuclear plants.

Cases Filed Prior to 2017 and Held in Abeyance in 2017						
Case	**Court**	**Plaintiff/Petitioner Type**	**Defendant**	**Principal Federal Law(s)**	**Sector**	**Summary**
American Petroleum Institute v. EPA	D.C. Cir.	State Government Entity, Industry Trade Group or Association	EPA	Clean Air Act (CAA)	Fossil Fuel Extraction & Transport	Challenge to new source performance standards for oil and gas sector.
National Waste & Recycling Association v. EPA	D.C. Cir.	Industry Trade Group, Private Companies	EPA	Clean Air Act (CAA)	Landfill Emissions	Challenge to emission guidelines for municipal solid waste landfills.
North Dakota v. EPA	D.C. Cir.	Industry Trade Group or Association, Industry (Companies), Conservative NGO, States, Chamber of Commerce, and Others	EPA	Clean Air Act (CAA)	Power Plants	Challenge to EPA's performance standards for greenhouse gas emissions from new, modified, and reconstructed power plants.
Truck Trailer Manufacturers Association, Inc. v. EPA	D.C. Cir.	Industry Trade Group	EPA	Clean Air Act (CAA), Energy Independence & Security Act (EISA)	Vehicle Emissions & Fuels	Challenge to greenhouse gas emissions and fuel efficiency standards for medium- and heavy-duty engines and vehicles.
West Virginia v. EPA	D.C. Cir.	State Government Entity, Industry (companies and utilities), Industry Trade Group, Union, the U.S. Chamber of Commerce, Conservative NGO	EPA	Administrative Procedure Act (APA), Clean Air Act (CAA)	Power Plants	Challenge to EPA's final Clean Power Plan rule.

APPENDIX B: LITIGATION MATTERS NOT INCLUDED IN THE ANALYSIS

These tables contain cases and other legal matters that were excluded from the dataset because they were either 1) focused on state or local law, 2) irrelevant to deregulation, or 3) not litigation matters before a court. The case summaries are taken from the Sabin-AP U.S. Climate Change Litigation database available at http://climatecasechart.com/us-climate-change-litigation/.

Cases Primarily of State or Local Significance	
Case	**Summary**
Alliance for the Great Lakes v. Illinois Department of Natural Resources	Challenge to authorization of diversion of water from Lake Michigan by the Metropolitan Water Reclamation District of Greater Chicago.
California Sportfishing Protection Alliance v. California Department of Water Resources	Challenge under CEQA to the WaterFix diversion project for the San Francisco Bay-Delta estuary.
Center for Biological Diversity v. City of San Bernardino Municipal Water Department	Lawsuit Filed Challenging Water Project in San Bernardino. Center for Biological Diversity and San Bernardino Valley Audubon Society filed a lawsuit challenging the California Environmental Quality Act (CEQA) review for the "Clean Water Factory Project" approved by the City of San Bernardino. The petition alleged that the project would divert up to 22 million gallons of treated water per day from the Santa Ana River. The petition asserted numerous failures in the environmental review for the project, including a failure to adequately disclose, analyze, and mitigate the project's significant and cumulative impacts to air quality and greenhouse gas emissions.
Citizens for a Responsible Caltrans Decision v. California Department of Transportation	Challenge to highway interchange project in San Diego.
Citizens for the Regents Road Bridge, Inc. v. City of San Diego	Group Challenged San Diego's Removal of Bridge Project from Planning Document. A nonprofit group filed a lawsuit challenging the CEQA review for the City of San Diego's removal of a bridge project from a community plan. The group said that the CEQA review failed to adequately disclose and analyze environmental impacts, including significant adverse impacts on greenhouse gas emissions.
Cleveland National Forest Foundation v. County of San	Challenge to the Forest Conservation Initiative Amendment to the San Diego

Diego	County general plan.
Columbia Pacific Building Trades Council v. City of Portland	Challenge to Portland zoning amendments restricting fossil fuel terminals.
Columbia Riverkeeper v. Cowlitz County	Challenge to permits for methanol manufacturing and shipping facility.
Energy & Environmental Legal Institute v. Attorney General of New York	Action to compel production of New York attorney general's correspondence with Vermont attorney general using private email account.
Harris County v. Arkema, Inc.	Proceeding by Texas county alleging that chemical manufacturer that operated facility that flooded and where chemicals ignited during Hurricane Harvey violated local floodplain regulations and state air and water laws.
In re Millennium Bulk Terminals – Longview, LLC Shoreline Permit Applications	Challenge to denial of shoreline permits for proposed coal terminal.
Mission Hills Heritage v. City of San Diego	Challenge to the City of San Diego's approval of a community plan update.
National Audubon Society v. Humboldt Bay Harbor, Recreation & Conservation District	Challenge to environmental review for expansion of shellfish aquaculture area in Humboldt Bay.
New England Power Generators Association v. Massachusetts Department of Environmental Protection	Challenge to Massachusetts regulations establishing emissions limits for electricity generating facilities.
Sierra Club v. California Public Utilities Commission	Challenge to inclusion of fossil fuel-fired resources in distributed energy procurement program.
Sierra Club v. County of San Diego	Challenge to the Forest Conservation Initiative Amendment to the San Diego County general plan.
Sinnok v. Alaska	Lawsuit contending that Alaska state Climate and Energy Policy violated youth plaintiffs' rights under the state constitution.

Cases Irrelevant to National Deregulation for Other Reasons

Case	**Summary**
Jacobson v. National Academy of Sciences	Action brought by scientist against journal and another scientist in connection with publication of article critiquing plaintiff-scientist's work.

Database Items Not Yet Before a Court	
Case	**Summary**
Letter from American Democracy Legal Fund to Comptroller General of the United States Requesting Pruitt Investigation	Request for investigation into whether EPA Administrator Scott Pruitt's communications were misuse of appropriated funds.
Petition to List the Giraffe Under the Endangered Species Act	Request to list the giraffe under the Endangered Species Act.
Petition for Rulemaking Seeking Amendment of Locomotive Emission Standards	Rulemaking petition to EPA from California Air Resources Board seeking more stringent emission standards for locomotives and locomotive engines.
Petition for Reconsideration of Application of the Final Rule Entitled "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Final Rule" to Gliders	Petition seeking reconsideration of application of greenhouse gas and fuel efficiency standards for medium- and heavy-duty engines and vehicles to "gliders" (i.e., certain types of rebuilt vehicles).
Center for Biological Diversity, Notice of Violations for Hilcorp's Pipeline Leak in the Cook Inlet, Alaska	Threatened legal action in connection with leaking natural gas pipeline in the Cook Inlet off the Alaskan coast.
Clean Air Act Notice of Intent to Sue for Failure to Establish Guidelines for Standards of Performance for Methane Emissions from Existing Oil and Gas Operations	Threatened lawsuit against EPA for failing to regulate methane emissions from existing oil and gas sources.
Notice of Intent to Sue EPA for Failure to Promulgate Emission Guidelines for Methane and VOC Emissions from the Oil and Gas Sector	Threatened litigation against EPA for failing to regulate methane and volatile organic compound emissions from the oil and gas sector.
Petitions Seeking Reconsideration of EPA's 2009 Endangerment Finding for Greenhouse Gases	Rulemaking petitions seeking to undo 2009 endangerment finding for greenhouse gases.
Sierra Club Complaint to EPA Inspector General regarding Violation of Scientific Integrity Policy by Administrator Scott Pruitt	Complaint to EPA inspector general alleging that EPA Administrator Scott Pruitt's statements violated the agency's Scientific Integrity Policy.
Rule 14a-8 No-Action Request from Apple, Inc. Regarding Shareholder Proposal of Sustainvest Asset Management, LLC	Request for no-action response from SEC regarding shareholder proposal asking Apple to produce a report assessing the climate benefits and feasibility of adopting requirements that all retail locations implement a policy to keep store doors closed.
Rule 14a-8 No-Action Request from Apple, Inc.	Request for no-action response from SEC regarding shareholder proposal asking

Regarding Shareholder Proposal of Christine Jantz	Apple to prepare a report evaluating the potential for Apple to achieve net-zero emissions of greenhouse gases.