

Daily on Energy: Escaping ‘the water regulatory version of *Groundhog Day*’

by Jeremy Beaman & Breanne Deppisch

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CLEANING UP WOTUS: Republicans, red states, and business groups are piling on the amicus briefs in support of Idaho couple and Supreme Court “WOTUS” petitioners **Michael** and **Chantell Sackett**, hoping that justices will finally help stakeholders to avoid remaining trapped in what one amica said amounts to “the water regulatory version of *Groundhog Day*.”

The court took *Sackett v. EPA* in January on appeal from the Ninth Circuit and is positioned to rule in some way on what kinds of bodies of water constitute “waters of the United States” under federal jurisdiction under the Clean Water Act.

Briefly, the Sacketts ran into the WOTUS wall when they began building a home near Idaho’s Priest Lake in 2007 (yes, they’ve been at this for 15 years). EPA notified them that wetlands on their property were subject to the agency’s WOTUS regulations, meaning a permit would be required to build.

The Sacketts, and parties to the briefs friendly to their position, want the court to revisit *Rapanos v. United States*, which failed to reach a majority to define a standard for WOTUS jurisdiction.

Who stands where: Members of the Congressional Western Caucus, made up largely of western Republicans, filed a brief last week saying the nation’s farmers, businesses, and landowners “deserve certainty” of the rule’s scope.

Monday, nearly 200 Republican members of Congress filed a brief of their own arguing that, with the Clean Water Act, Congress made clear it sought “a limited federal regulatory presence in cooperation with the States.”

Importantly, a number of these same lawmakers have asked the Biden administration to hold off on developing its own WOTUS definition until the court rules on the case.

Who else is chiming in: The states of Alaska and West Virginia, the libertarian Cato Institute, and mining interests all also filed briefs this week supporting a narrower definition of WOTUS, too, as did the U.S. Chamber of Commerce.

Andrew Varcoe, deputy chief counsel for the Chamber's Litigation Center, said the court's task is to resolve the "mystery and confusion" created by years of litigation and rule rewriting under multiple administrations.

"There's a lot of disagreement among, let's say environmental groups, and the business community, and DOJ about what the test should be," Varcoe told Jeremy. "I think that if you apply the lie detector test to most people, even those who don't admit it, I think most would agree that this unstable 4-1-4 construct [in *Rapanos*] isn't working."

Varcoe said it's clear the court got tired of the "regulatory ping pong" around WOTUS in taking the case (In November, the Biden administration undid Trump era WOTUS rule, which itself had undone the Obama era rule, and each of the latter got tied up in their own legal troubles.)

Clarity from the Sackett case is especially necessary, Varcoe said, beyond how it would affect the Chamber's members.

"Anybody who owns land in the United States needs to know, do I need to get a permit from the Army Corps of Engineers before I build?" he said. "Because I don't really want to go to jail for guessing wrong, nor do I want to pay thousands, or tens of thousands, or hundreds of thousands of dollars in fines for guessing wrong."

Where the Biden administration stands: The Justice Department has yet to file its merits brief laying out its case yet, but in its brief urging the court not to take the petition in October, DOJ asked the justices to be sympathetic to fact that the Sacketts "ask the Court to impose a categorical limit on the agencies' authority before either the forthcoming rule or the administrative record underlying it has been finalized" and to decline the case.

"But even if clarification by this Court ultimately becomes warranted, it should occur after the agencies have completed their work," DOJ argued.

That's basically the same argument the administration made in asking the court to reject petitions in *West Virginia v. EPA*, which the court also took up and has already heard argument on.

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GERMANY TO PHASE OUT RUSSIAN OIL BY END OF THE YEAR: Germany announced today that it will end Russian oil imports by the end of the year, a major step that comes as the EU weighs whether to pass a bloc-wide embargo on Russian oil. Germany is deeply dependent on Russian energy supplies and was long considered to be one of the bigger holdouts on a potential EU ban.

But German Foreign Minister **Annalena Baerbock** made clear the country will move ahead on a ban: "I therefore say here clearly and unequivocally yes, Germany is also completely phasing out Russian energy imports," she said.

"We will halve oil by the summer and will be at 0 by the end of the year, and then gas will follow, in a joint European roadmap, because our joint exit, the complete exit of the European Union, is our common strength."

DANES DEFINE RUSSIA GAS PHASE OUT: The Danish government released an energy package yesterday which envisions a phasing out of Russian gas imports by 2030, *Euractiv* [reported](#).

"When we become greener, we weaken Putin. And when we become greener, we slow down the climate change that is destroying our planet," said Prime Minister **Mette Frederiksen**.

"It is our clear conviction that it is better to get gas from the North Sea than to buy it from Putin," she also said.

European governments agreed last month to "[phasing] out our dependency on Russian gas, oil and coal imports as soon as possible," as outlined by a declaration approved at Versailles, but EU members still vary as to how aggressively their respective economies can afford to do so.

\$6B EFFORT TO REVIVE NUCLEAR FLEET: The Biden administration announced a [major effort](#) to save financially distressed nuclear plants in the U.S., hoping to deliver on its goals of expanding domestic energy production and lowering emissions.

The \$6 billion allocation is the largest-ever federal investment aimed at saving U.S. nuclear reactors, whose owners have struggled to foot the bill for high maintenance costs and to compete with lower-priced natural gas alternatives.

These costs have forced the closures of a dozen U.S. nuclear plants in the past decade, [Breanne reports](#). Operators of seven active reactors said they plan to retire their facilities by 2025—and according to the U.S. Department of Energy, one-quarter of active nuclear plants in the U.S. are considered "at risk."

Why it matters: Nuclear plants are responsible for about 20% of total U.S. electricity generation, in addition to accounting for more than 50% of all clean energy generation. The U.S. currently has 55 active commercial nuclear plants, with 93 total reactors.

The loss of nuclear plants would be a major setback for clean energy efforts, **Andrew Griffith**, DOE's acting assistant secretary for nuclear energy, told the *Associated Press*. If more plants close, he said, it risks creating a void that would likely be filled by fossil fuel plants and other high-emissions alternatives.

NEW PAPER CHARTS US POWER SECTOR EMISSIONS SUCCESS STORY: A new [white paper](#) out today from conservative policy group CRES Forum draws attention to the progress the U.S. power sector has made in reducing greenhouse gas emissions since 2005.

The paper, previewed to Jeremy, shows what co-author **Rebecca Lorenzen** explained is the reason the U.S. needs to "reassert our energy security and leadership" while the West tries to simultaneously balance reducing energy prices with emissions reductions goals.

The displacement of coal with natural gas for power generation is estimated to be responsible for some 65% of U.S. sector emissions reductions between 2005 and 2019, according to Energy information Administration data that Lorenzen and co-author **Marty Hall** note, while the exponential growth of renewable energy accounts for another 30% of reduction over the same period.

“These are important facts that are often missing from the debate. The facts today on the ground are different than they were in 2005, yet it seems a lot of the policy we talk about is grounded 2005 facts, not in 2022 facts,” Hall, senior policy fellow with CRES Forum, told Jeremy.

The paper comes into play during a time of immense debate between Republican and Democratic lawmakers and environmentalists as to what kind of energy sources the federal government should be promoting to tame high prices here and in Europe.

Hall said the notion that the U.S. is and has been doing things all wrong, especially by embracing natural gas, is belied by data showing emissions reductions.

“If we were increasing emissions, that would lead to one set of policies,” Hall said. “If we’re decreasing emissions, then the question is, how do we accelerate what we’re doing as opposed to completely changing how we’re doing things?”

Green groups and a number of Democrats in Congress have insisted emissions have to come down faster, especially after new reports this year from the IPCC reiterating again the need for countries to more aggressively mitigate emissions. The EIA has established, too, that energy-related carbon dioxide emissions increased by an estimated 6% last year after dropping during the 2020 pandemic year, although they didn’t reach back up to 2019 levels.

Still, as the Biden administration gameplans around liquefied natural gas, Lorenzen pointed to estimates that lifecycle emissions associated with U.S. LNG shipments to Europe are significantly lower than Russian gas imported into the continent, a factor some Democratic-aligned energy policy wonks have put forward in promoting U.S. gas shipments.

NEAR-RECORD GASOLINE COSTS WON’T SLOW SUMMER TRAVEL: A strong majority of Washington-area residents say they are planning to travel this summer, according to a new AAA poll, despite higher-than-normal gas prices, as well as high costs of jet fuel, which have touched off a spike in airline ticket costs.

A 55% majority of D.C.-area residents said they are planning to take “multiple” trips this summer, the survey found, including a 70% majority who said they plan to take a trip that is at least 50 miles away.

Respondents also said they were undeterred by high gas prices, which today reached a national average of \$4.11 a gallon, according to AAA—a \$1.24 increase from the same point last year. Meanwhile, jet fuel costs have surged to a whopping \$3.34 per gallon, according to U.S. Gulf Coast data—double the price from the same point last year.

“People just really have that pent-up desire to resume life as normal, or as normal as it can be,” AAA Mid-Atlantic spokeswoman **Ragina Ali** told the *Washington Examiner*.

A ‘NIGHTMARE SCENARIO’ — MORE DETAILS ON THE CHERNOBYL

OCCUPATION EMERGE: Inspectors tasked with evaluating damage at Chernobyl’s nuclear power plant in the wake of Russia’s month-long occupation say they are stunned by the dangerous conditions they encountered at the facility—where Russian troops scattered mines, set forest fires, and dug “sleeping trenches” into the soil of one of the most radioactive places on earth.

After inspecting the site, officials said the conditions risked a catastrophe worse than the original 1986 nuclear meltdown for which Chernobyl is known.

The soldiers’ rash decisions were previously described to *Reuters* as “suicidal,” since even driving through the highly toxic Red Forest risks kicking up deeply radioactive dust.

Any change in radiation levels could also put surrounding countries at risk, the *AP* notes.

Plant workers scrambled to prevent catastrophe: The plant’s main security engineer, **Valerii Semenov**, worked 35 days straight, and slept for just three hours a night—too fearful to leave Russians unattended for any longer.

For the same reason, Semenov also chose to remain at Chernobyl even after Russian soldiers allowed a shift change. “I was afraid they would install something and damage the system,” Semenov told the *AP* in an interview.

State inspectors are stunned by the soldiers’ ignorance, as well as their refusal to heed workers’ safety warnings. Some Russian soldiers even stole highly radioactive materials from the site to take home as souvenirs, or to sell. Others said they had never even heard of the 1986 disaster.

“It was very dangerous to act in this way,” said state nuclear official **Maksym Shevchuck**. He believes thousands of the young soldiers may have unknowingly damaged their health.

These concerns remain top-of-mind for nuclear officials, since another Ukrainian nuclear plant, Zaporizhzhia, remains under Russian control. It is the largest nuclear facility in the country.

ELECTRIC VEHICLES SALES BOOMING IN SPITE OF HIGHER COSTS: Several vehicle manufacturers enjoyed record sales of their electric models during the first quarter, despite the inflation exacting pressure across the global economy.

Mercedes-Benz sold 74,000 battery-electric and plug-in hybrid vehicles during the quarter, which represented 33% of total passenger vehicle sales — a record high percentage, according to research firm Rystad Energy.

Volkswagen sold an all-time high 99,000 EVs, while Tesla’s sales reached a record 310,000 vehicles.

Tesla boasted in a financial report earlier this month the sales were accomplished “despite ongoing supply chain challenges and factory shutdowns.”

CLEAN POWER GROUP ISSUES SOLAR DUTY WARNING: The American Clean Power Association projects the Commerce Department’s anti-dumping investigation will badly hinder

solar deployment by causing significant job loss and will limit Biden's targets for new solar additions for this year and next to nearly half.

Even though the department has yet to make a determination in the case, ACP said a survey it conducted of solar developers revealed that with the threat of new duties on imported solar products from Asia and the potential that they be retroactively applied, "production and supply to the U.S. from the targeted countries has largely been halted."

Heather Zichal, the CEO of the American Clean Power Association, said workers in the industry "are rightfully questioning why President Biden's own administration is imperiling their livelihoods" and asked the administration to dismiss the probe.

Read more about the issues at play, and the tensions between U.S. manufacturers and the developers relying on imported materials, [here](#) and [here](#).

FERC ENDING TWO YEARS OF REMOTE MEETINGS: FERC commissioners will gather at their D.C. HQ for tomorrow's open meeting for the first time since February 2020.

The commission has a list of pipeline projects docketed, including certificating of the TC Energy's North Baja Pipeline, which would carry 495 million cubic feet of gas to Sempra's Costa Azul LNG export facility.

VIRGINIA GAS TAX HOLIDAY BILL ADVANCES: Virginia lawmakers passed a bill out of the House of Delegates Finance Committee yesterday that would suspend the state's fuel tax of 26 cents per gallon from May 1 to July 31.

The proposal, which [according to WTOP](#) now goes to the Appropriations Committee, would then phase the tax back in at half its regular level for August and at three-quarters its regular level in September.

The Rundown

[Politico](#) Hunger games: Ukrainians slam Western agribusinesses for staying in Russia

[Reuters](#) Balkans turns to coal as energy crisis trumps climate commitments

Calendar

THURSDAY | APRIL 21

10:00 a.m. The Federal Energy Regulatory Commission will hold its monthly open meeting.

11:00 a.m. Woodridge, Ill. The House House Science, Space, and Technology Subcommittee on Investigations and Oversight will hold a field hearing in Illinois on electric vehicle batteries and U.S. critical minerals supply.

THURSDAY | APRIL 28

The House Science, Space and Technology Committee will hold a hearing on the findings of an intergovernmental panel report, titled, "Climate Change 2022: Mitigation of Climate Change."
Location and time TBA.