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# **U.S. CLIMATE CHANGE LITIGATION IN THE AGE OF TRUMP: YEAR TWO**

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By Dena P. Adler

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**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. The author would like to thank the Sabin Center's Executive Director Michael Burger for his edits and feedback throughout development of the report. This paper draws heavily on the Sabin Center's Deregulation Tracker and the U.S. Climate Change Litigation Database maintained by the Sabin Center and Arnold & Porter. The author also thanks Sabin Center Senior Fellow Jessica Wentz and Legal Writer Margaret Barry for their work maintaining the Deregulation Tracker and U.S. Climate Change Litigation databases respectively.

## EXECUTIVE SUMMARY

More than two and a half years into the Trump Administration, no climate change-related regulatory rollback brought before the courts has yet survived legal challenge. Nevertheless, climate change is one arena where the Trump Administration's regulatory rollbacks have been both visible and real. The Administration has 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 other decisionmaking; 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 provide a landscape level view of how litigation is shaping climate change law and policy during the Trump Administration. To this end, it categorizes and reviews dozens of climate change cases filed during 2017 and 2018 to shed light on how litigation is counterbalancing—and at times complementing—the Trump Administration's efforts to undermine climate change protections.** 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 159 climate change cases from 2017 and 2018 pertaining to federal climate change policy. **To analyze climate change litigation from 2017-2018, 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 protections or support climate policy deregulation. 129 of the reviewed cases were “pro” climate protection and 30 were “con.”

### Top-Level Highlights from the Analysis

- Lawsuits Advancing and Upholding Climate Protections Exceeded Those Opposing Climate Protections:*** The pro cases outweigh the con cases roughly 4:1 (81% to 19%). The pro cases are represented in shades of blue and the con cases are depicted in orange.

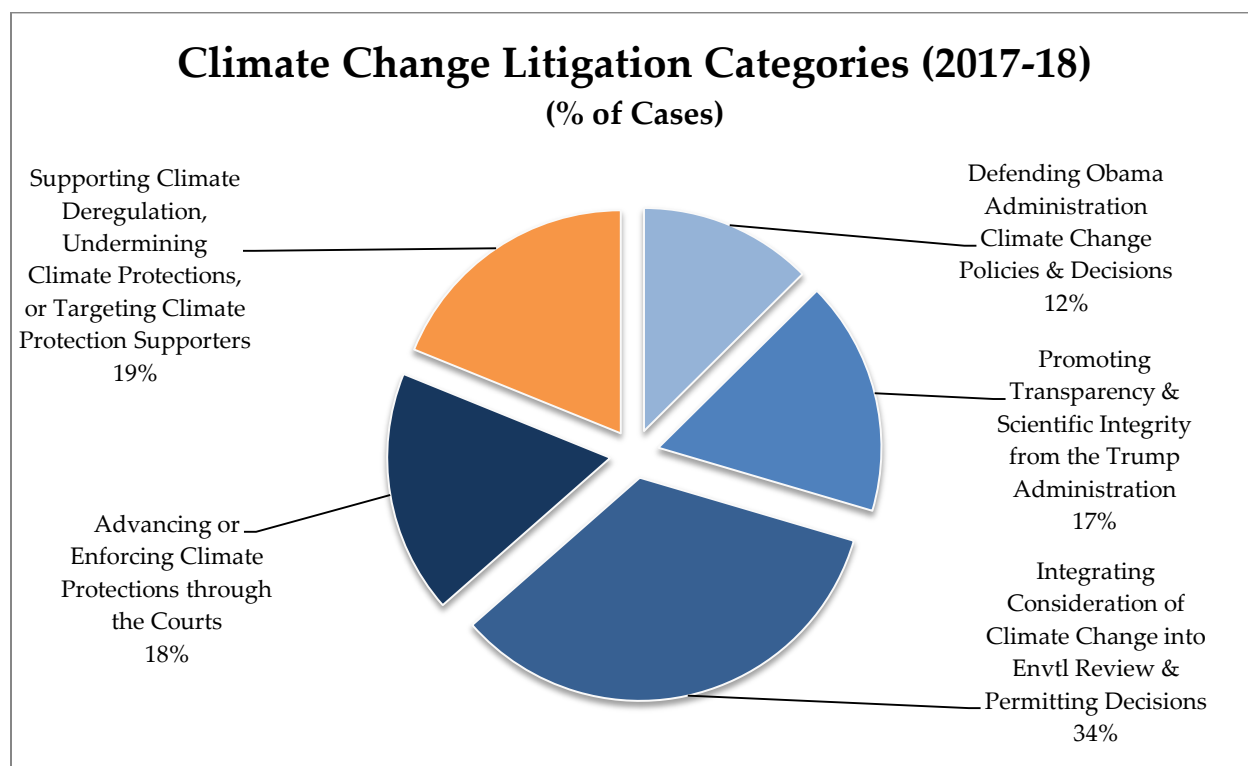


Figure 1: Cases were assigned to a single category. Blue indicates “pro” cases in favor of climate-related protections and orange indicates “con” cases opposing climate-related protections.

- ***Direct Defense of Obama Administration Climate Policies Is Supplemented by a Wide Range of Other Lawsuits Supporting Climate Protections:*** Twenty of the 129 pro climate cases (16%) concerned “Defending Obama Administration Climate Change Policies & Decisions.” The other 109 pro cases concerned transparency, environmental review and permitting, or advancing other climate protections. These cases reflect trends in climate change litigation that pre-date the Trump Administration, 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 for damages related to their GHG emissions under different tort law claims and a suite of Freedom of Information Act (FOIA) lawsuits seeking transparency from the Trump Administration.
- ***About a Fifth of Cases Sought to Undermine Climate Protections, But Fewer of These Cases Were Filed in 2018 Than 2017:*** Roughly one-fifth (19%) of reviewed cases sought to advance climate change deregulation, undermine climate protections, or attack 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 number of these cases declined in 2018—only seven of the thirty cases in this category were filed in 2018.
- ***The Distribution of Suits Shifted Between 2017 to 2018:*** In 2018, (as compared to 2017), fewer suits were filed in the categories of defending Obama Administration climate policies and undermining climate protections. The number of cases related to environmental review and permitting held steady, but increased as a percentage of the annual dataset. The number of cases promoting transparency and advancing or enforcing climate protections increased. These litigation changes appear at least partially responsive to underlying opportunities to challenge current and previous administration policies.

## Key Court Developments on Major Trump Administration Efforts to Delay or Reverse Climate Change Policies

- *Thus Far, the Courts Have Not Upheld Any Attempts by the Trump Administration to Delay or Roll Back Regulatory Climate Protections:* These cases have been struck down, voluntarily dismissed, or are still pending a final decision. In 2017-2018, a dozen cases were filed that raised climate change as an issue of fact or law and concerned delay or suspension of climate-related rules. Five of these cases have resulted in a judicial decision against the Trump Administration (of which one has an appeal pending). Five pressured the Trump Administration to end the delay at issue in the lawsuit, and were then dismissed or otherwise allowed to lapse prior to a decision on the merits. Two are pending. These cases are building a body of precedent that clarifies limitations on the executive branch's ability to destabilize duly promulgated regulations, to act without regard to proper procedure, and to make decisions that lack an evidentiary basis.
- *Courts Have Halted Trump Administration Policies to Promote Fossil Fuel Extraction on Public Lands and in Public Waters for Inadequate Environmental Review and Executive Overreach:* Courts found that the Trump Administration violated requirements of environmental review in its attempt to reverse a moratorium for coal leasing on federal lands and issue a new permit for the Keystone XL pipeline. Another court decision vacated a reversal of the Obama Administration's drilling ban on leasing in parts of the Atlantic and Arctic Oceans, finding the administration acted beyond its authority under the relevant statute. These cases uphold precedent that the Trump Administration cannot shirk statutory obligations to conduct environmental review, administrative law requirements to justify a change in policy, or promote fossil fuel extraction beyond the limits of its statutory authorities to act.

## 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 (99/159 cases or 52%) of the reviewed climate change litigation. Looking within the pro category, NGOs brought 77% of the pro litigation items. A handful of national and international environmental NGOs were involved in more than half (64%) 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 25% of pro cases, including actions from more than a dozen states.
  - Industry actors, (primarily private companies and trade groups), brought 16% of total cases and 70% of con cases. These numbers do not include conservative think tanks closely aligned with industry interests—such groups were plaintiffs in 27% of con cases.
- ***EPA and DOI Were the Most Frequent Defendants:*** The federal government is the defendant in a vast majority of cases (79% of reviewed cases filed in 2017 and 2018, see Part 3 for details on this figure). While more than a dozen federal entities were sued, nearly half (46%) of the climate cases filed against federal defendants in 2017 challenged the DOI, EPA, their respective sub-entities, and/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. Eighty-two cases involved federal 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 eighty-one of those cases. Seventy-two cases involved the Administrative Procedure Act and another thirty-two involved FOIA.

The Trump Administration's efforts to bypass the requirements of administrative and statutory law to delay and expedite reversal of climate change policies have fared poorly in court thus far. Nonetheless, the ultimate fate of the underlying policies remains uncertain. In 2018 and 2019, the Trump Administration's efforts to repeal and replace Obama Administration climate change policies through notice and comment rulemaking continue to progress. As these rules are finalized, more climate change litigation will likely seek to enforce the substantive judicial standards for deregulation. As these and other cases develop, the courts will continue to be an important arena for enforcing administrative, statutory, and other legal obligations and preventing the establishment of agency precedent that flouts these requirements.



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## 1. INTRODUCTION

More than two and a half years into the Trump Administration, no climate change-related regulatory rollback brought before the courts has yet survived legal challenge.<sup>1</sup> Nevertheless, climate change is one arena where the Trump Administration's regulatory rollbacks have been both visible and real. The Administration has 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 other decisionmaking; and hindered adaptation to the impacts of climate change.<sup>2</sup> In total, the Sabin Center's U.S. Climate Deregulation Tracker identifies a total of 94 actions taken by the executive branch in 2017 and 2018 to deregulate climate change.<sup>3</sup> These actions correspond to at least two dozen climate-related protections "on the way out under Trump."<sup>4</sup> If the Trump Administration is successful in its efforts to reduce six major rules affecting some of the largest sources of GHG emissions from power plants, vehicles, the oil and

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<sup>1</sup> See *infra* Part 4.1. See also NYU Institute for Policy Integrity, *Round-Up Trump-Era Deregulation in the Courts*, (updated April 22, 2019), available at <https://policyintegrity.org/deregulation-roundup#fn-4-a>.

<sup>2</sup> See *infra* Part 2.1. See also Jessica Wentz and Michael Gerrard, *Persistent Regulations: The Trump*

<sup>3</sup> The deregulation tracker includes 117 total actions across federal government for 2017 through 2018 of which 24 were congressional actions, including President Trump's approval of a Congressional Review Act (CRA) resolution. The above count of 94 actions includes President Trump's CRA approval and the other 93 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. The Sabin Center for Climate Change Law, *U.S. Climate Deregulation Tracker*, available at <http://columbiaclimatelaw.com/resources/climate-deregulation-tracker/> (last visited May 3, 2019)(hereafter "climate deregulation tracker").

<sup>4</sup> Nadja Popovich, Livia Albeck-Ripka, and Kendra Pierre-Louis, *78 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](https://www.nytimes.com/interactive/2017/10/05/climate/trump-environment-rules-reversed.html?_r=1) (updated Jun. 3, 2019) (listing 84 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.

gas sector, and landfills, it could allow an additional 209 million metric tons of CO<sub>2</sub> equivalent to be released annually by 2025.<sup>5</sup>

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,<sup>6</sup> in many instances the very same statutes governing the climate regulations now under fire.<sup>7</sup> 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.<sup>8</sup> Although President Trump enjoyed a Republican-controlled Congress in his first two years of office that did little to curtail the Administration's anti-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, overreaches of executive authority, and failures to fulfill statutory obligations.

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<sup>5</sup> The State Energy & Environmental Impact Center, *Climate & Health Showdown in the Courts: State Attorneys General Prepare to Fight* (NYU Law School, Mar. 2019), available at <https://www.law.nyu.edu/sites/default/files/climate-and-health-showdown-in-the-courts.pdf>.

<sup>6</sup> 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* (Jun. 2017), available at <https://envirodatagov.org/wp-content/uploads/2017/06/Part-1-EPA-Under-Siege.pdf>.

<sup>7</sup> 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).

<sup>8</sup> *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>.

New Presidential administrations have always advanced and disassembled the policy regimes of their predecessors.<sup>9</sup> 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,<sup>10</sup> observes proper procedures for public input,<sup>11</sup> 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."<sup>12</sup> Already, courts have blocked multiple Trump Administration attempts to roll back climate change regulations through illegal stays and delays—the courts have not upheld a single one of the twelve cases concerning delay or suspension of climate-related rules reviewed for this analysis on the merits.<sup>13</sup> Five of these cases have resulted in a judicial decision against the Trump Administration (of which one has an appeal pending). Five pressured the Trump Administration to end the delay at issue in the lawsuit, and were then dismissed or otherwise allowed to lapse prior to a decision on the merits. Two matters remain pending. Courts have also checked the Trump Administration's efforts to promote fossil fuel extraction on public lands and in public waters when those actions violated statutory obligations for environmental review, failed administrative law requirements to justify a change in policy, or overreached executive authority. These decisions have affected policies attempting

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<sup>9</sup> STEPHEN SKOWRONEK, *THE POLITICS PRESIDENTS MAKE: LEADERSHIP FROM JOHN ADAMS TO BILL CLINTON* (1997)(discussing cycles of authority through presidential history).

<sup>10</sup> 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.").

<sup>11</sup> See the Administrative Procedure Act (APA) § 3, 5 U.S.C. § 553.

<sup>12</sup> 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.") (Internal citation omitted).

<sup>13</sup> *Infra* Part 4.1.

to reopen federal lands to coal leasing, reopen oil and gas leasing in previously protected areas of the Arctic and Atlantic Oceans, and reverse denial of a permit for the Keystone XL pipeline.

The full scope of climate change litigation extends far wider than these efforts to undermine climate regulation and reverse Obama Administration climate policies. More than one hundred cases filed in the U.S. in 2017-2018 raised claims concerning either the impacts of climate change or reducing GHG emissions.<sup>14</sup> From the U.S. Climate Change Litigation database maintained jointly by the Sabin Center for Climate Change Law and Arnold & Porter, 159 climate change cases were identified as pertinent to federal deregulation of climate change policy during the first two years of the Trump Administration and selected for analysis in this paper.<sup>15</sup> 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”<sup>16</sup> 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. In 2018, agencies began the process of proposing repeals and replacement rules—or at least signaling their intent to do so—for a number of rules that the courts prevented the administration from rolling back through illegal delay and suspension tactics. Additionally, the courts can also be a tool for deregulation; industry and its

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<sup>14</sup> See Sabin-AP U.S. Climate Change Litigation Database, <http://climatecasechart.com/us-climate-change-litigation/> (last visited May 1, 2019) (listing 206 litigation matters filed in 2017-2018). 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. As discussed in Part 3.1, 11 “cases” in the database that did not constitute litigation were removed from this analysis. (A similar screening was not conducted for 2016.)

<sup>15</sup> *Infra* Part 3.1 for further details on how these cases were selected for the data set.

<sup>16</sup> 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>.

allies have sought review of additional existing climate protections, sued their critics, and challenged permit denials for fossil development and infrastructure, especially pipelines. 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.<sup>17</sup> Meanwhile, beyond the regulatory arena; NGOs, cities, states, and tribes continue to challenge dozens of other executive and agency actions to reduce climate protections, expand development of fossil fuel resources on public lands and in federal waters, advance construction of fossil fuel infrastructure, undermine climate science, and reduce consideration of climate impacts on vulnerable species and the environment.

This paper seeks to give shape to the current moment in climate litigation, categorizing and reviewing dozens of climate change cases filed during 2017-2018 to understand how litigation countered—and at times courted—the influx of climate change deregulation during the first two years of the Trump administration.<sup>18</sup> It further seeks to situate these regulatory legal battles within the wider context of how litigation is shaping climate change law. 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

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<sup>17</sup> *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.

<sup>18</sup> This study relies on the compilation of cases in the Sabin-AP 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.

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 to further examine: 1) who are the litigants are, 2) what laws they are utilizing, 3) the issues they are shaping, and 4) how they are faring in the courts thus far.

This account of the first two years of climate change litigation in the Trump Administration proceeds in four parts. First, Part 2 reviews the scope of federal climate change deregulatory activity in 2017-2018. Part 3 summarizes the methodology underlying the paper and provides an overarching picture of recent U.S. climate change litigation. It reviews the major categories of response, the parties occupying the federal climate change law field by challenging and defending climate change deregulation, and the laws and sectors in which these cases occur. Part 4 provides a deeper analysis of each category of litigation response, reviewing the primary issues and progress of cases in each category. The paper concludes with a brief review of the outcomes of climate change litigation in 2017-2018.



## 2. THE TRUMP ADMINISTRATION'S DEREGULATION OF CLIMATE CHANGE

The Trump Administration's effort to deregulate climate change is remarkable in its attempted wholesale reversal of an 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.<sup>19</sup> The Obama Administration recorded over 100 climate, energy, and environmental accomplishments along these lines.<sup>20</sup> As described 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.<sup>21</sup> (For a summary of the Obama Administration's climate policy accomplishments and the Trump Administration's climate-related rollbacks from 2017 see the "U.S. Climate Change Litigation in the Age of Trump: Year One" Report Part 2.)<sup>22</sup> This section updates the previous year's report with a summary of

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<sup>19</sup> 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 (Jun. 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>.

<sup>20</sup> 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](https://obamawhitehouse.archives.gov/sites/obamawhitehouse.archives.gov/files/achievements/theRecord_climate_0.pdf) [hereinafter *The Record*].

<sup>21</sup> *See e.g.*, N.Y. Times, *supra* note 4; Climate Deregulation Tracker, *supra* note 3.

<sup>22</sup> Dena Adler, U.S. Climate Change Litigation in the Age of Trump: Year One (Sabin Center for Climate Change Law, Columbia Law School, Feb. 14, 2018), available at



continued climate-related deregulatory activity undertaken by the Trump Administration in 2018.<sup>23</sup>

In 2018, the Trump Administration continued to advance its deregulatory agenda, including a concentrated effort to rollback climate protections and expedite fossil fuel development. These efforts largely implement the agenda set by Executive Order 13783, titled “Promoting Energy Independence and Economic Growth,” which Trump issued in March 2017 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.<sup>24</sup> The 2018 rollbacks are discussed in the context of these three major objectives.

## 2.1 Rollbacks of Key Obama-Era Climate Rules that Limit GHG Emissions

In 2017, the Trump Administration attempted to roll back Obama-era climate rules to limit GHG emissions through a series of delays outside of the notice and comment rulemaking process which is required to repeal, delay, or replace rules established through that process. The courts have yet to uphold any of the attempted delays brought before them and have struck down several. However, litigation over several key finalized Obama-era climate rules remains held in abeyance and implementation of the Clean Power Plan to limit GHG emissions from existing power plants remains stayed. In 2018, agencies shifted away from their extralegal delay

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<https://academiccommons.columbia.edu/doi/10.7916/d8-dg03-cm33> (hereafter “Climate Litigation Report Year One”).

<sup>23</sup> This section summarizes data and analysis in the Climate Deregulation Tracker, *supra* note 3, and draws language directly from the tracker with the author’s permission. For a full analysis of climate deregulation during the Trump Administration, see Jessica Wentz and Michael Gerrard, *Persistent Regulations: The Trump Administration’s Unfinished Business in Repealing Federal Climate Protections* (prepared by the Sabin Center for Climate Change Law for the Climate Leadership Council, forthcoming Jun. 2019).

<sup>24</sup> 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>.

tactics and began to propose rules through notice and comment to repeal, withdraw, replace, or update Obama-era climate rules. These rules include:

- The “Affordable Clean Energy” Rule: An Environmental Protection Agency (EPA) proposed rule to regulate CO<sub>2</sub> from existing power plants which is far less stringent than the Clean Power Plan and revisions to new source review standards for power plants.<sup>25</sup>
- Weakened GHG Limitations for New Coal Plants: The EPA proposed to weaken the new source performance standard (NSPS) establishing CO<sub>2</sub> emission standards for new coal-fired power plants.<sup>26</sup>
- Repeal of Key Provisions of the Methane Waste Rule: The Bureau of Land Management (BLM) published a final rule repealing key provisions of the Methane Waste Prevention Rule and re-instating earlier regulations.<sup>27</sup>
- Revisions to Methane New Source Performance Standards for Oil & Gas Sector: The EPA published proposed revisions to its New Source Performance Standards (NSPS) for controlling methane and other emissions from the oil and natural gas sector, which include significant changes to the leak detection and repair requirements for sources in this sector.<sup>28</sup>

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<sup>25</sup> Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, 83 Fed. Reg. 44746 (Aug. 31, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-08-31/2018-18755>.

<sup>26</sup> Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 83 Fed. Reg. 65424 (December 20, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-12-20/2018-27052>.

<sup>27</sup> Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 49184 (Sept. 28, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-09-28/2018-20689>.

<sup>28</sup> Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration, 83 Fed. Reg. 52056 (Oct. 15, 2018), *available at* <https://www.govinfo.gov/content/pkg/FR-2018-10-15/pdf/2018-20961.pdf>.

- Delay of Compliance Timeframe for GHG Guidelines at Municipal Solid Waste Landfills: The EPA proposed to postpone the deadline for state plans issued pursuant to the GHG emission guidelines for MSW landfills from May 30, 2017 to August 29, 2019.<sup>29</sup>
- Weakened Clean Car Standards: The EPA and the National Highway Traffic Safety Administration (NHTSA) issued a proposal to weaken the greenhouse gas emission and fuel economy standards for light-duty vehicles Model Years 2021-2026 and withdraw the mid-term evaluation issued by the Obama Administration that no change to the standards was warranted.<sup>30</sup>
- Updated Renewable Fuel Standards: The EPA proposed an update to Renewable Fuel Standard Program for the years 2019 and 2020.<sup>31</sup>
- Repeal of GHG Metric for Measuring Highway Performance: The Federal Highway Administration repealed regulations establishing performance standards for state and regional highway projects. The regulations required, among other things, state and regional highway planners receiving federal funding to tally and report anticipated greenhouse gas emissions from vehicles traveling on their roads.<sup>32</sup>

As repeals and new rules are finalized they become ripe for challenge and are in turn becoming the subject of climate litigation as discussed in Part 4.1 of this report.

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<sup>29</sup>Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills, 83 Fed. Reg. 54527 (Oct. 30, 2018), *available at* <https://www.govinfo.gov/content/pkg/FR-2018-10-30/pdf/2018-23700.pdf>.

<sup>30</sup> The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42986 (August 24, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-08-24/2018-16820>.

<sup>31</sup> Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020, 83 Fed. Reg. 32024 (Jul. 10, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-07-10/2018-14448>.

<sup>32</sup> 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, 83 Fed. Reg. 24920 (May 31, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-05-31/2018-11652>.

## 2.2 Eliminate Guidance for Integrating the Costs and Impacts of Climate Change into Agency Reviews

Executive Order 13783 also disbanded the Interagency Working Group on the Social Cost of Carbon, rejected further use of the social cost metrics to help monetize and estimate the range of public health and other costs associated with emissions of carbon, methane, and nitrous oxide, and revoked the Council on Environmental Quality (CEQ)'s guidance on climate change and National Environmental Policy Act (NEPA) reviews. In this vein, several 2018 rollbacks continued to undermine consideration of climate science, impacts, and costs in agency decision-making, including:

- Proposal to Restrict Use of Science in Rulemaking: The EPA issued a proposal which would restrict the EPA, when issuing regulations, to relying only on scientific research for which the underlying data has been made available to the general public.<sup>33</sup>
- Advance Notice of Proposed Rulemaking on Cost-Benefit Analysis: The EPA issued an advance notice of a proposed rulemaking to “clarify” the agency’s approach to cost-benefit analysis. The proposed rulemaking has implications for how the EPA will weigh costs and benefits in future climate regulations.<sup>34</sup>
- Advance Notice of Proposed Rulemaking on Changes to NEPA Regulations: The CEQ issued an Advance Notice of Proposed Rulemaking seeking public comments on potential revisions to update the NEPA regulations.<sup>35</sup>

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<sup>33</sup> Strengthening Transparency in Regulatory Science, 83 Fed. Reg. 18768 (April 30, 2018), *available at* [HTTPS://WWW.GOVINFO.GOV/CONTENT/PKG/FR-2018-04-30/PDF/2018-09078.PDF](https://www.govinfo.gov/content/pkg/FR-2018-04-30/pdf/2018-09078.pdf).

<sup>34</sup> Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process, 83 Fed. Reg. 27524 (Jun. 13, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-06-13/2018-12707>.

<sup>35</sup> Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28591 (Jun. 20, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-06-20/2018-13246>. This update provides no explicit discussion of climate change, but the administration may use the NEPA regulatory update to modify or limit the extent to which climate change-related considerations are addressed in NEPA review.

- Proposed Changes to ESA Regulations Which Could Curtail Consideration of Future Climate Change Impacts on Species: The U.S. Fish & Wildlife Service (USFWS) issued proposed changes to its Endangered Species Act (ESA) regulations which include provisions that would limit the extent to which USFWS can rely on future climate change impacts as a basis for determining whether a species should be listed as a “threatened species” under the ESA.<sup>36</sup>

## 2.3 Remove Barriers to Fossil Fuel Development

The Trump Administration has also made a concentrated effort to expand fossil extraction on public lands and in public waters. Complementing Executive Order 13783, at the end of April 2017, President Trump issued another order titled “Implementing an America-First Offshore Energy Strategy” (the Offshore Energy Order<sup>37</sup>). This order further removed barriers for fossil fuel development to establish 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.<sup>37</sup> In 2018, several agencies made changes to policies and plans that implemented and supplemented efforts to expand fossil fuel extraction on federal lands and in federal waters:

- BLM Amends Management Plans to Open 9 Million Acres of Sage Grouse Habitat to Drilling and Mining: The BLM amended six resource management plans (RMPs) in the

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<sup>36</sup> Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat, 83 Fed. Reg. 35193 (Jul. 25, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-07-25/2018-15810>; 83 Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants, Fed. Reg. 35174 (Jul. 25, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-07-25/2018-15811>; Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation, 83 Fed. Reg. 35178 (Jul. 25, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-07-25/2018-15812>.  
<sup>37</sup> 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>.

western U.S. to remove protections for the sage grouse. The revisions lift restrictions on mineral development on approximately 9 million acres of sage grouse habitat, opening these areas for oil and gas leasing and other extractive uses.<sup>38</sup>

- USFS Announces Regulations to Streamline Oil and Gas Permitting in National Forests: The U.S. Forest Service (USFS) published an advance notice of proposed rulemaking in which it is seeking comment on how it should modify existing regulations to streamline and expedite the issuance of oil and gas permits on national forest lands.<sup>39</sup>
- BLM Internal Policy to Streamline Oil and Gas Permitting: The BLM issued an instruction memorandum aimed at streamlining oil and gas development by eliminating the use of Master Leasing Plans—a tool used by the Obama Administration to protect sensitive landscapes from oil and gas drilling.<sup>40</sup>

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<sup>38</sup> Notice of Availability of the Oregon Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, 83 Fed. Reg. 63524 (Dec. 10, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-12-10/2018-26701>; Notice of Availability of the Wyoming Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, 83 Fed. Reg. 63525 (Dec. 10, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-12-10/2018-26700>; Notice of Availability of the Idaho Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, 83 Fed. Reg. 63529 (Dec. 10, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-12-10/2018-26702>; Notice of Availability of the Northwest Colorado Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, 83 Fed. Reg. 63523 (Dec. 10, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-12-10/2018-26699>; Notice of Availability of the Utah Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, Utah, 83 Fed. Reg. 63527 (Dec. 10, 2018), *available at* <https://www.govinfo.gov/app/details/FR-2018-12-10/2018-26698>; Notice of Availability of the Nevada and Northeastern California Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement (Dec. 10, 2018), 83 Fed. Reg. 63528, *available at* <https://www.govinfo.gov/app/details/FR-2018-12-10/2018-26703>.

<sup>39</sup> Advance Notice of Proposed Rulemaking on Oil and Gas Resources Regulations; Request for Comment, 83 Fed. Reg. 46458 (Sept. 13, 2018), *available at* <https://www.govinfo.gov/content/pkg/FR-2018-09-13/pdf/2018-19962.pdf>.

<sup>40</sup> Bureau of Land Management, BLM Updating Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel, Instruction Memorandum No. 2018-034 (02/01/2018), *available at* <https://www.blm.gov/policy/im-2018-034>.

- Proposed Oil and Gas Leasing Program in Arctic Refuge: The BLM is proposing to open up to 1.5 million acres of the Arctic National Wildlife Refuge for oil and gas drilling.<sup>41</sup>
- Proposed Expansion of Offshore Oil and Gas Drilling Program for 2019-2024: The Department of the Interior (DOI) proposed a new National Outer Continental Shelf Oil and Gas Leasing Program for 2019-2024, which would make over ninety-percent of the outer continental shelf available for oil and gas development.<sup>42</sup>

In the first few months of 2019, the Trump Administration has continued to undermine climate protections. In February, the Department of Energy (DOE) issued a proposal to repeal regulations that expanded energy efficiency standards to apply to a greater quantity of light bulbs.<sup>43</sup> In March, President Trump issued a pair of executive orders that expedite the approval of energy infrastructure and cross-border infrastructure—both policies that affect pipeline approvals.<sup>44</sup> In May, the BLM published a draft environmental assessment concluding that reinstating the coal leasing program on federal lands will have no significant environmental effects.<sup>45</sup>

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<sup>41</sup> The Department of the Interior, Coastal Plain Oil and Gas Leasing Draft Environmental Impact Statement, DOI-BLM-AK-0000-2018-0002-EIS (Dec. 2018), *available at* <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=102555&dctmId=0b0003e8810d09e5>.

<sup>42</sup> Notice of Availability of the 2019-2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program and Notice of Intent To Prepare a Programmatic Environmental Impact Statement, 83 Fed. Reg. 829 (Jan. 8, 2018), *available at* <https://www.govinfo.gov/content/pkg/FR-2018-01-08/pdf/2018-00083.pdf>.

<sup>43</sup> Energy Conservation Program: Energy Conservation Standards for General Service Lamps, 82 Fed. Reg. 7322, 82 Fed. Reg. 7276 (April 1, 2019), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-04-01/pdf/2019-06265.pdf>.

<sup>44</sup> Promoting Energy Infrastructure and Economic Growth, Exec. Order No. 13868, 84 Fed. Reg. 15495 (Apr. 15, 2019), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-04-15/pdf/2019-07656.pdf>; Issuance of Permits With Respect to Facilities and Land Transportation Crossings at the International Boundaries of the United States, Exec. Order No. 13867, 84 Fed. Reg. 15491 (Apr. 15, 2019), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-04-15/pdf/2019-07645.pdf>.

<sup>45</sup> Bureau of Land Management, Lifting the Pause on the Issuance of New Federal Coal Leases for Thermal (Steam) Coal, DOI-BLM-WO-WO2100-2019-0001-EA (May 22, 2019), *available at* [https://eplanning.blm.gov/epl-front-office/projects/nepa/122429/173355/210563/Lifting\\_BLM\\_Coal\\_Leasing\\_Pause\\_EA.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/122429/173355/210563/Lifting_BLM_Coal_Leasing_Pause_EA.pdf).



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.<sup>46</sup> 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<sup>47</sup> and “formulat[ing] policies that can be justified by neutral principles and a reasoned explanation.”<sup>48</sup> 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.<sup>49</sup> For a summary of the judicial standards applied to deregulatory activities affecting final rules or regulations see Climate Litigation Report Year One Part 2.2. Some scholars have already begun to analyze how the Trump Administration’s rollbacks and subsequent litigation is shaping expectations for presidential authority and administrative law.<sup>50</sup>

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<sup>46</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>47</sup> The Administrative Procedure Act (APA) § 3, 5 U.S.C. § 553.

<sup>48</sup> *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](http://policyintegrity.org/files/publications/Energy_Law_Journal_Deregulation_DG_BDN.pdf).

<sup>49</sup> 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).

<sup>50</sup> See e.g., Bulman-Pozen “Administrative States: Beyond Presidential Administration” (forthcoming); Bethany A. Davis Noll & Richard L. Revesz, *Regulation in Transition*, 104 MINN. L. REV. (forthcoming 2019); Robert L. Glicksman & Emily Hammond, *The Administrative Law of Regulatory Slop and Strategy*, 68 DUKE L.J. 1651 (2019)(discussing courts’ remedial options in instances of what the authors term “regulatory slop” to describe agencies flouting the rules of administrative law).



### 3. OVERVIEW OF CLIMATE CHANGE LITIGATION IN THE FIRST TWO YEARS OF THE TRUMP ADMINISTRATION

This analysis takes stock of how climate change litigation has countered—and at times courted—climate deregulation in the first two years of the Trump Administration. However, the scope of domestic climate change litigation extends well beyond suits over deregulation. Climate change litigation shapes national climate policy in a variety of ways, encompassing not only recent rollbacks of federal climate policy, but also environmental review and permitting decisions that incrementally and cumulatively shape the law.<sup>51</sup> 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 for years.<sup>52</sup> During the first two years of the Trump Administration, litigants have also sought to advance further climate protections through the courts in the face of federal inaction. Recognizing that not all of the Trump Administration deregulatory climate actions are judicially ripe for direct review and that climate change litigation shapes policy through a variety of avenues, this paper identifies five major ways that climate litigation is influencing climate change law during the Trump Administration.

#### 3.1 Defining and Categorizing National Climate Change Litigation During the Trump Administration

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 U.S. Climate Change Litigation database”). The database includes only cases that explicitly discuss GHG emissions or climate change impacts in relation to their

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<sup>51</sup> 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).

<sup>52</sup> *Id.* at 16-18.

claims. Other cases unquestionably have important impacts on reducing GHG emissions and adapting to the effects of climate change—for example, litigation concerning mercury and other non-GHG emissions 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. 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 159 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 or 2018.<sup>53</sup> From that database of 206 litigation matters filed in 2017 and 2018, 154 cases were selected for the dataset based on their relevance to issues of federal climate change law and policy. These 206 litigation matters were winnowed to 154 relevant cases for the following reasons. Twelve cases were removed because they involved only administrative actions or pre-litigation proceedings. Another 37 cases were removed from the data set because they primarily concerned state policies.<sup>54</sup> Two were removed because their

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<sup>53</sup> Sabin-AP U.S. Climate Change Litigation Database *supra* note 14. The Sabin-AP database lists 206 cases as filed in 2017 and 2018 as of April 12, 2019. 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.

<sup>54</sup> 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 federal deregulation, this analysis focuses on cases that more directly shape and affect federal climate law and policy.

climate nexus arose only in the context of a consent decree concerning settlement of other legal action.<sup>55</sup> Cases in state courts or adjudicatory bodies were only included in the data set if they involved federal law or common law claims regarding national scale actions.<sup>56</sup> While many more state-level efforts unarguably play a critical role in shaping a national climate response, this analysis focuses on the trends common to climate litigation at the federal level. 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 and 2018 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.<sup>57</sup> 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 159 cases: 73 filed in 2018, 81 filed in 2017, and 5 filed previously. A full list of cases reviewed for this analysis is available

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<sup>55</sup> One concerned a citizen suit against owner-operators of power plant in Pennsylvania who agreed to cease combustion of coal by the end of 2028, except during certain “Emergency Action” events as part of the consent decree. The other concerned a Clean Air Act enforcement action against a natural gas processing plant in Illinois for alleged violations regarding fugitive emissions of volatile organic compounds (VOCs), but the mitigation activities to be undertaken will result in a reduction of carbon dioxide emissions. See Appendix B for further information.

<sup>56</sup> The common law claims included in the analysis concern alleged tort liability and fraud of companies operating at the national scale and which in most cases raises legal issues concerning a federal response, or lack thereof, to climate change.

<sup>57</sup> 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.

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-related policy or decision. The vast majority concern defense of Obama Administration decisions.
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.
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, programs, and plans 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 as "defending existing 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 claims.<sup>58</sup> While described as “responses,” some of these cases may very well have occurred even in the absence of the Trump Administration’s deregulatory activities. A significant amount of climate litigation pre-dated the Trump Administration to challenge climate-related policies, fossil fuel extraction and infrastructure project approval, and consideration of climate change impacts during previous administrations. These categories are meant to describe how litigation not only responds, but more broadly interacts with the Trump Administration’s efforts to undermine and remove climate change policies and protections.

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,<sup>59</sup> but instead seeks to explain top-level developments in how litigation interfaces with climate change deregulation during the first two years of the Trump Administration. 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

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<sup>58</sup> 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.

<sup>59</sup> *E.g.*, Markell and Ruhl (2012).

objective of the filing party or parties and whether their success would support or undermine climate-related protections.<sup>60</sup>

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 consolidated or related prior to April 1, 2019 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:

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<sup>60</sup> 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 analysis. These 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.

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?

### **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. Looking across the full dataset of 2017-2018 cases, the pro cases outweigh the con cases roughly 4:1 (81% pro cases to 19% con cases). From 2017 to 2018 the proportion of con cases declined—con cases represented 27% of the suits filed in 2017, but only 10% of the cases filed in 2018. The high proportion of pro cases reflects a strong defensive effort from climate protection advocates responding to deregulation, but may underrepresent the field of ongoing con litigation filed prior to 2017 to challenge the Obama Administration’s policies as well as the defensive actions of industry intervening in pro suits. The decline in con case filings from 2017 to 2018 at least partially reflects that in 2017, litigants were still challenging in-progress or established climate policies of the Obama Administration. Nevertheless, in 2018, litigants continued to file con cases that appealed permitting decisions, solicited information through FOIA, and pressured plaintiffs challenging the fossil fuel industry’s activities.

The distribution of litigation seeking to advance, defend, and enforce climate protections indicates a wide-ranging response to federal deregulation and inaction. Only 16% of pro cases filed over the two-year period directly challenged rollbacks and delays of climate-related protections and only about 8% of 2018 cases fell into this category of direct defense. The drop-off reflects challenges to the 2017 wave of delays and suspensions the Trump Administration attempted to enact without going through the mandated notice and comment rulemaking process. In 2018, there were fewer of these delay actions to challenge, but also few deregulatory actions that had completed the notice and comment process and were ripe to challenge as final

agency actions. As more repeals and rules are anticipated to be finalized in 2019-20, there may be another uptick in these direct defense actions. However, the fact that the defense suits represent only a small portion of the pro litigation is indicative of the broader suite of opportunities to challenge the Trump Administration's climate policy—or lack thereof. Pro litigants have responded to deregulation and inaction 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.<sup>61</sup> Conversely, FOIA claims appear to be growing—both in the pro and con categories. Thirty-two of the fifty-five FOIA cases in the Sabin-AP database were filed in 2017 or 2018.<sup>62</sup> From 2017 to 2018 there were increases in both the number of suits involving FOIA and the number of suits advancing or enforcing climate protections. These upticks suggest litigants' seeking avenues to promote climate action through the courts despite a limited set of opportunities for direct defense of rollbacks. While the proportion of cases in the environmental review and permitting category increased from 2017-2018, the number of cases was static. Section 4 discusses each major category and its subcategories in greater detail.

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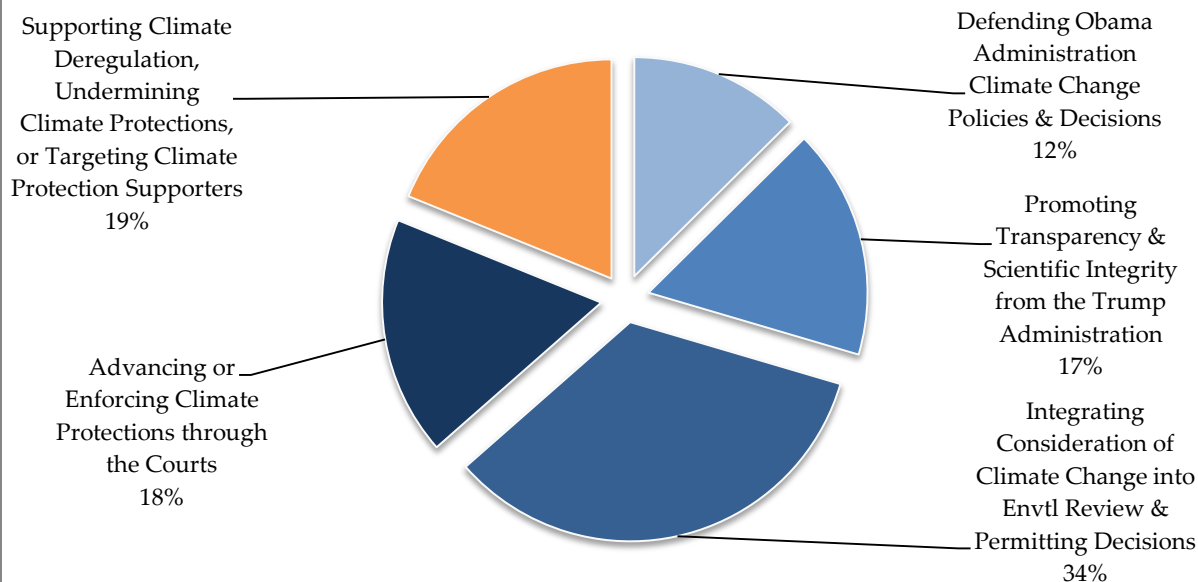
<sup>61</sup> Sabin-AP U.S. Climate Change Litigation Database *supra* note 14. The Sabin-AP U.S. Climate Change Litigation Database, which contains cases that raise climate change as an issue of fact or law, shows a steady trend of suits involving environmental review claims under NEPA. Over the past decade, the database contains the following counts of NEPA litigation matters by year: 2008 (12), 2009 (9), 2010 (10), 2011 (15), 2012 (7 cases), 2013 (13 cases), 2014 (20 cases), 2015 (14 cases), 2016 (30 cases), 2017 (24 cases), 2018 (24 cases).

<sup>62</sup> *Id.*



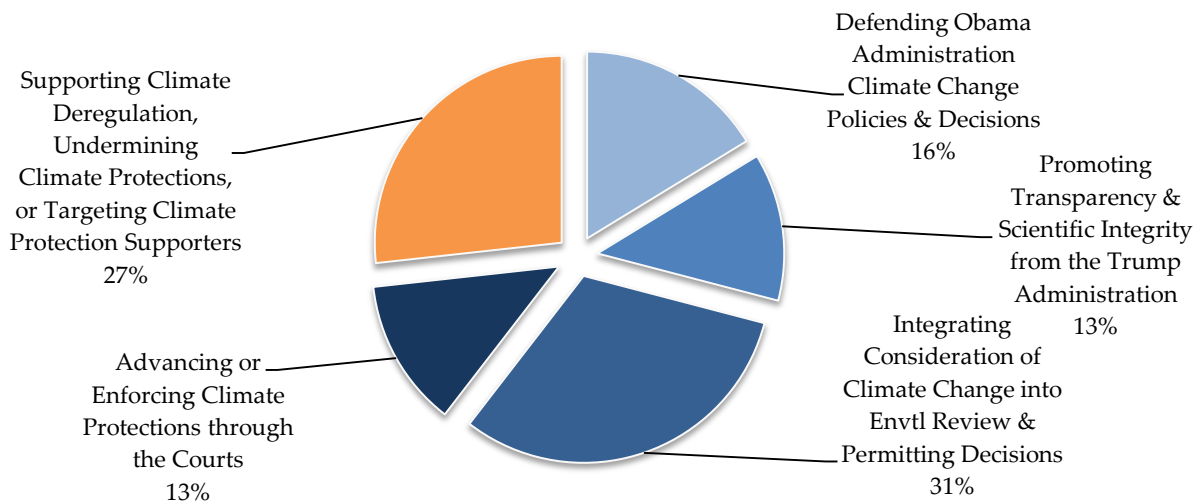
## Climate Change Litigation Categories (2017-18)

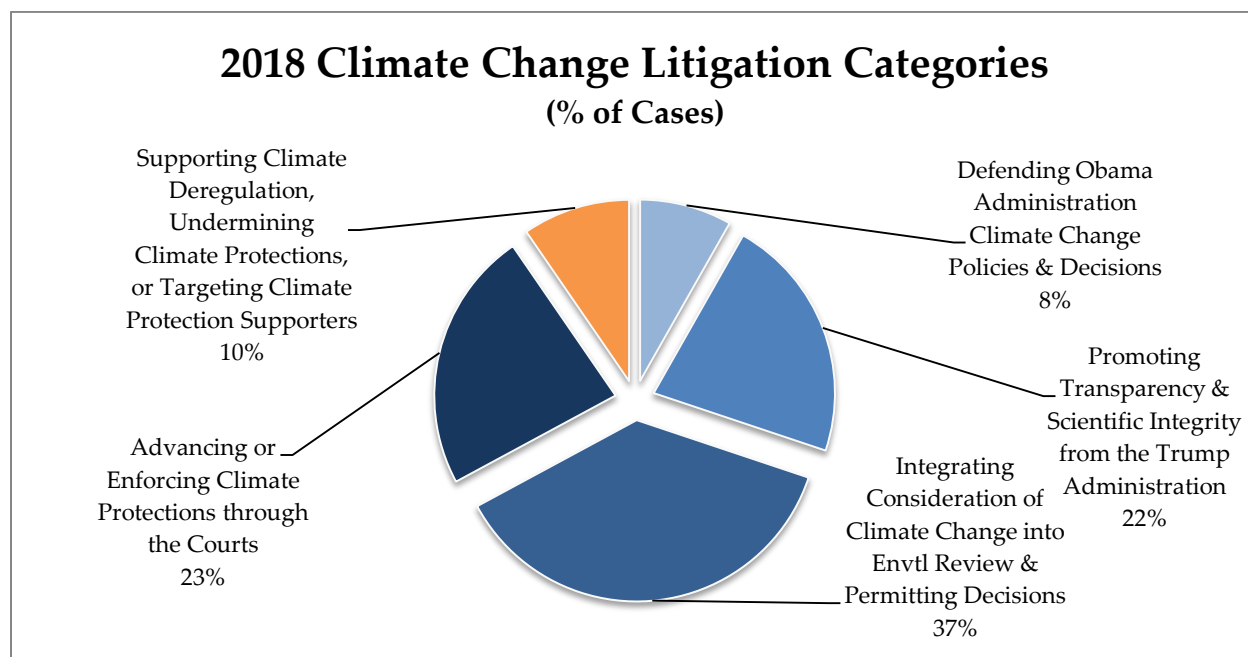
(% of Cases)



## 2017 Climate Change Litigation Categories

(% of Cases)





Figures 1a-c: 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. The final 2017-18 data set contained 159 cases, the 2018 dataset contained 73 cases, and the 2017 dataset contained 86 cases (inclusive of the 5 abeyance actions discussed previously. See Part 4 for further description of the cases assigned to each category.

### 3.2.2 Who Are the Litigants?

Plaintiffs/Petitioners filed 129 pro and 30 con cases in the dataset of 2017-2018 cases. Pro cases brought by NGOs represent more than half (99/159 cases or 62%) of the total climate litigation filed in 2017 and 2018. Looking within the pro category, NGOs brought 77% of the pro litigation items. A handful of national and international environmental NGOs were involved in more than half (64%) of all pro cases. Municipal, state, and tribal government entities were plaintiffs or petitioners in 25% of pro cases which included actions from more than a dozen different states.

Industry actors (private companies and trade groups) brought 16% of total cases (25/159) and 70% of con cases (21/30). These numbers do not include conservative think tanks closely aligned with industry interests—such groups were plaintiffs in 27% 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 (and those interveners were not tracked 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 where new abeyance activity in the docket during 2017 brings new climate deregulation efforts into the case.

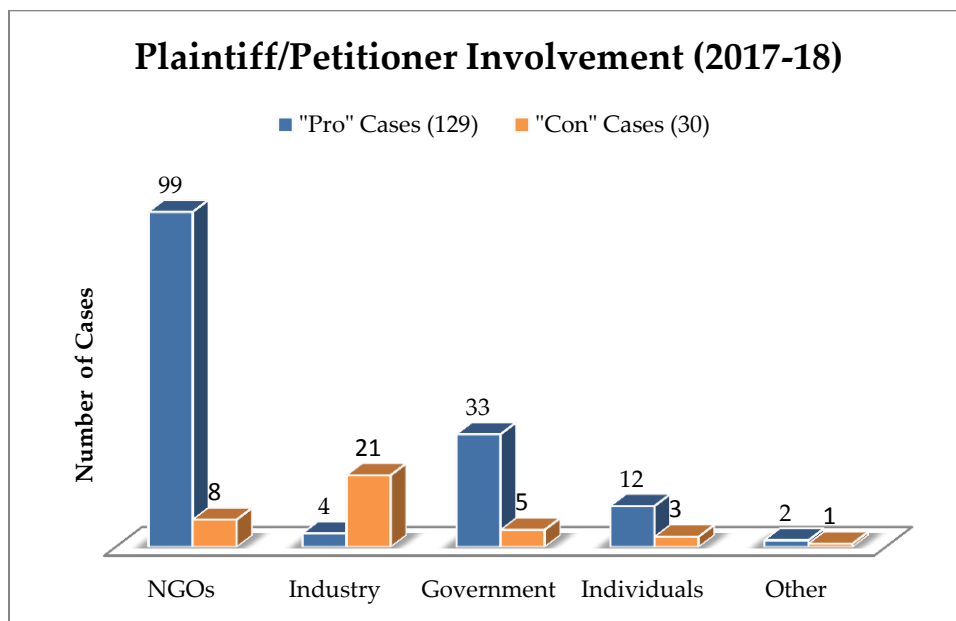


Figure 2: See Appendix A for data underlying figure. The numbers add up to more than the total number of cases because there are multiple parties in many of the cases. For the five pre-2017 cases included because of the abeyance actions taken in 2017, both the government party moving for the abeyance 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 2017-18 cases.

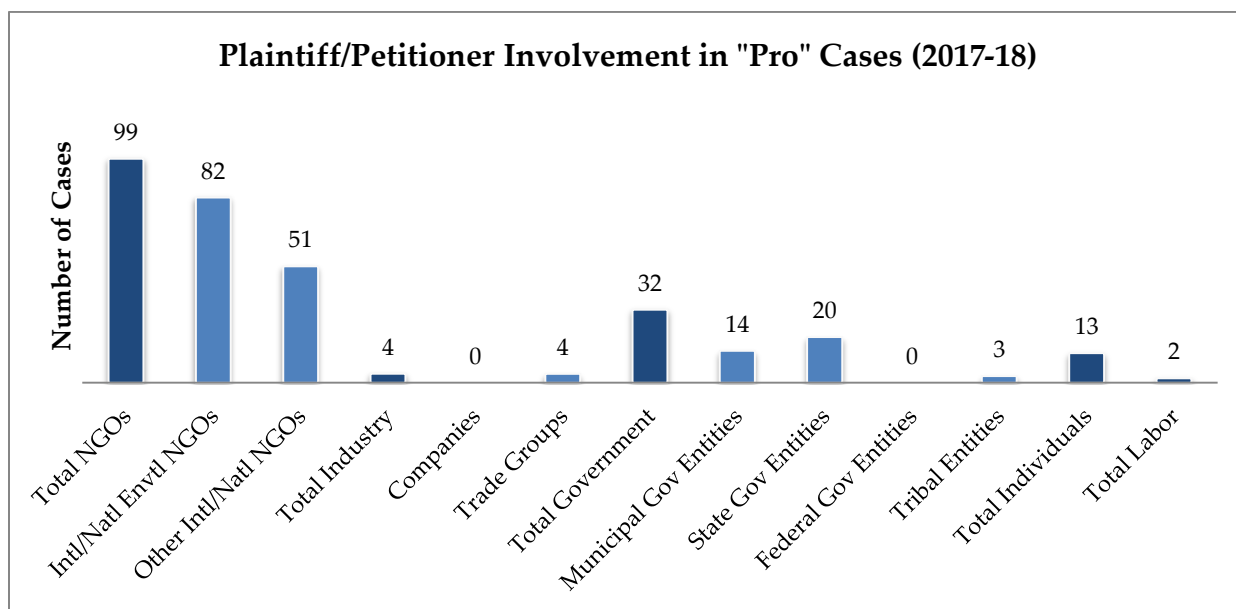


Figure 3: See Appendix A for data underlying figure. The numbers add up to more than the total number of cases because there are multiple parties in many of the cases.

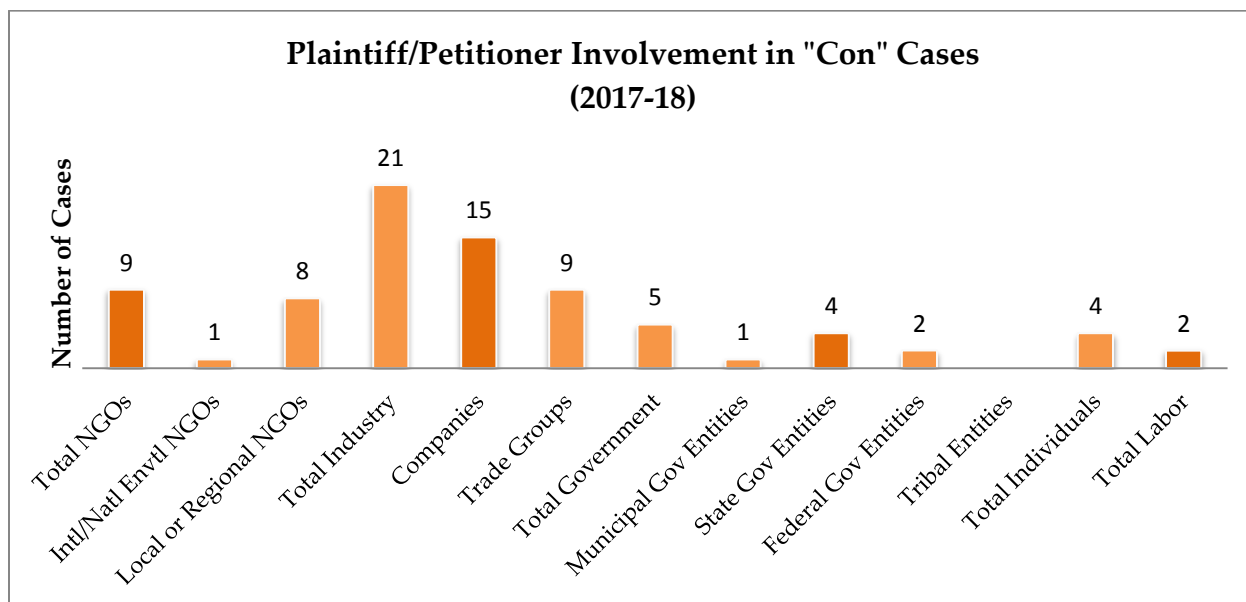


Figure 4: See Appendix A for data underlying figure. The numbers add up to more than the total number of cases because there are multiple parties in many of the cases. For the five abeyance actions taken in 2017, both the government party moving for the abeyance action and the original plaintiffs/petitioners 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 the cases filed in 2017 and 2018 (79% or 122/154, 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, nearly half of the cases (46% or 71/154, not including the abeyance cases) against federal defendants challenged the DOI, EPA, their respective sub-entities, and/or their officials. Defendants also include local and state-level government entities, industry, and critics of fossil fuel companies. Among industry defendants, roughly 85% of these cases were against fossil fuel companies or pipeline developers—this encompasses the wave of suits filed by local and state government actors against fossil fuel companies for climate change-induced damages. 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 behavior more closely with the petitioners.

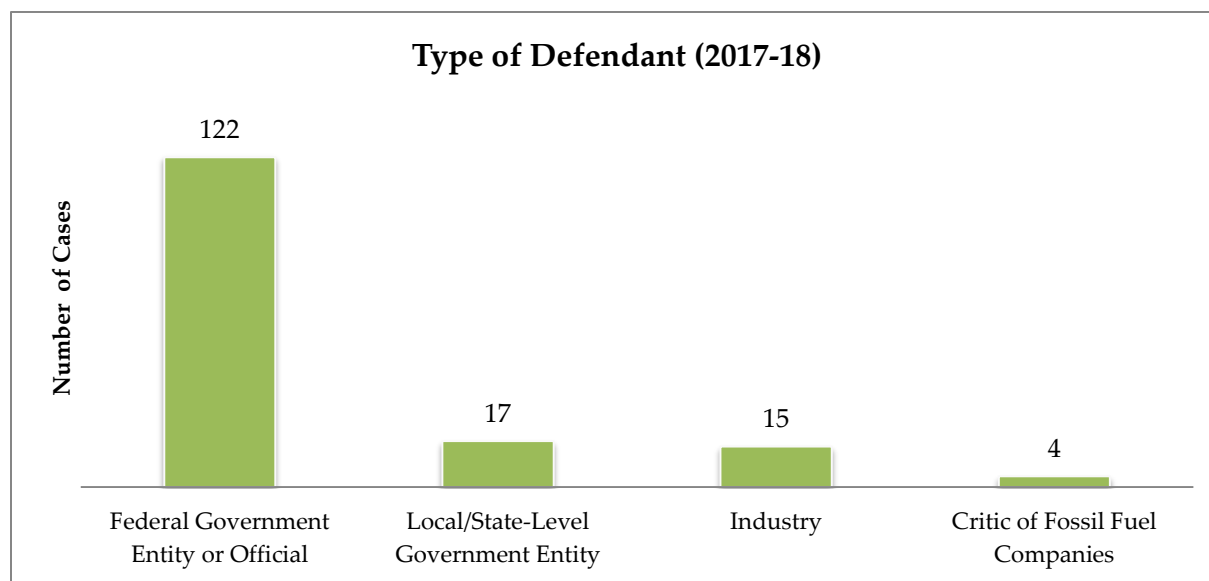


Figure 5: See Appendix A for data underlying figure. Abeyance actions are counted separately because of the complexities of categorizing the defendants as the government parties shifted stance after the election. In these cases the original government defendants are now playing a role more akin to petitioners by filing the motion for abeyance. A few cases involved multiple categories of defendant.

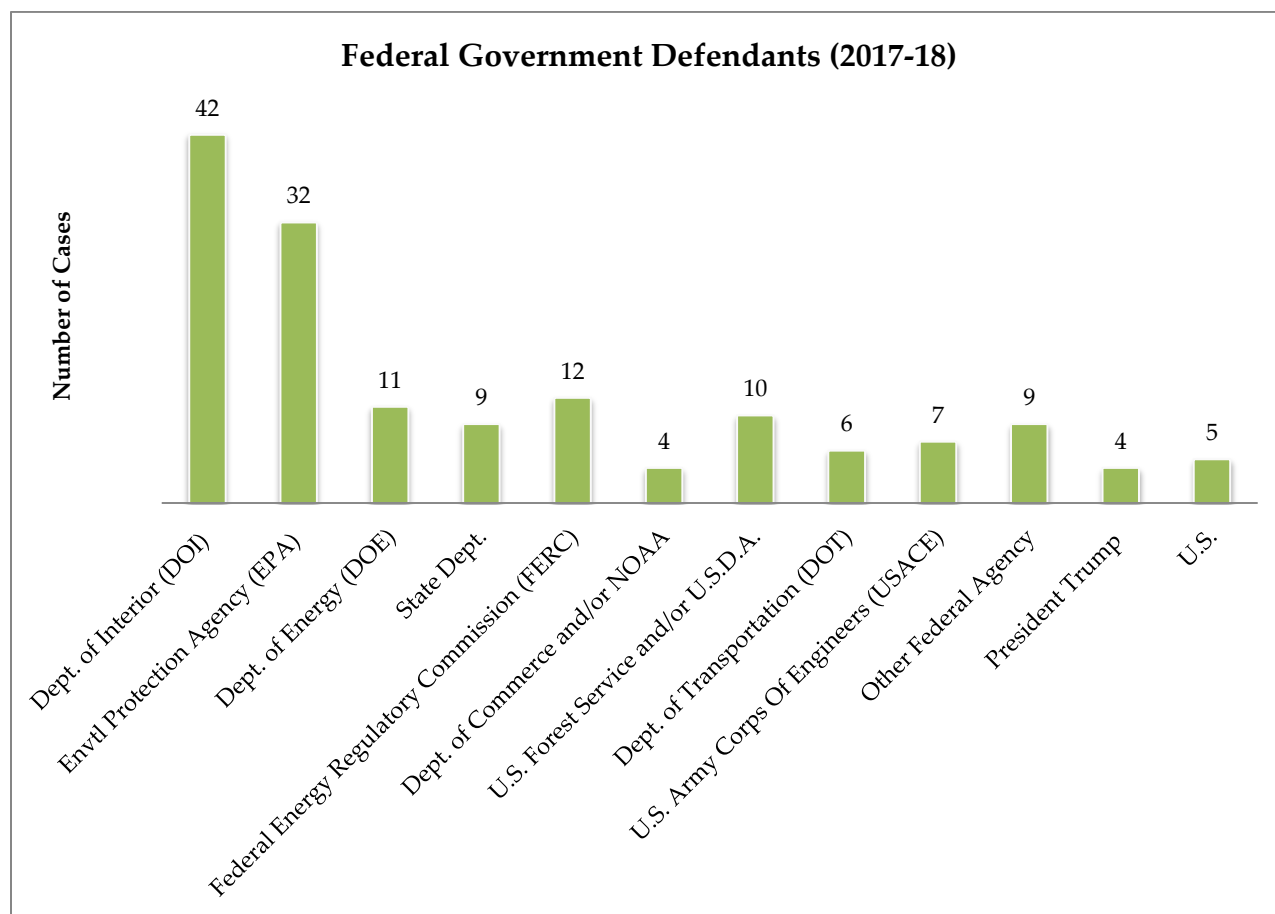


Figure 6: See Appendix A for data underlying figure. Each category includes suits against officials employed by the indicated government entity and subdivisions of that government entity. Many cases involved multiple defendants.

### 3.2.3 What is the Substance of the Litigation?

Climate litigation covered a wide spread of sectors in 2017-2018. The volume of cases concerning “fossil fuel extraction and infrastructure” or “climate, land, water, and wildlife” reflects in part the higher volume of adjudications over individual projects in these areas than in other sectors. Though the small number of cases concerning broad standards for transportation, power plant, and landfill emissions have the potential to influence an extensive 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.

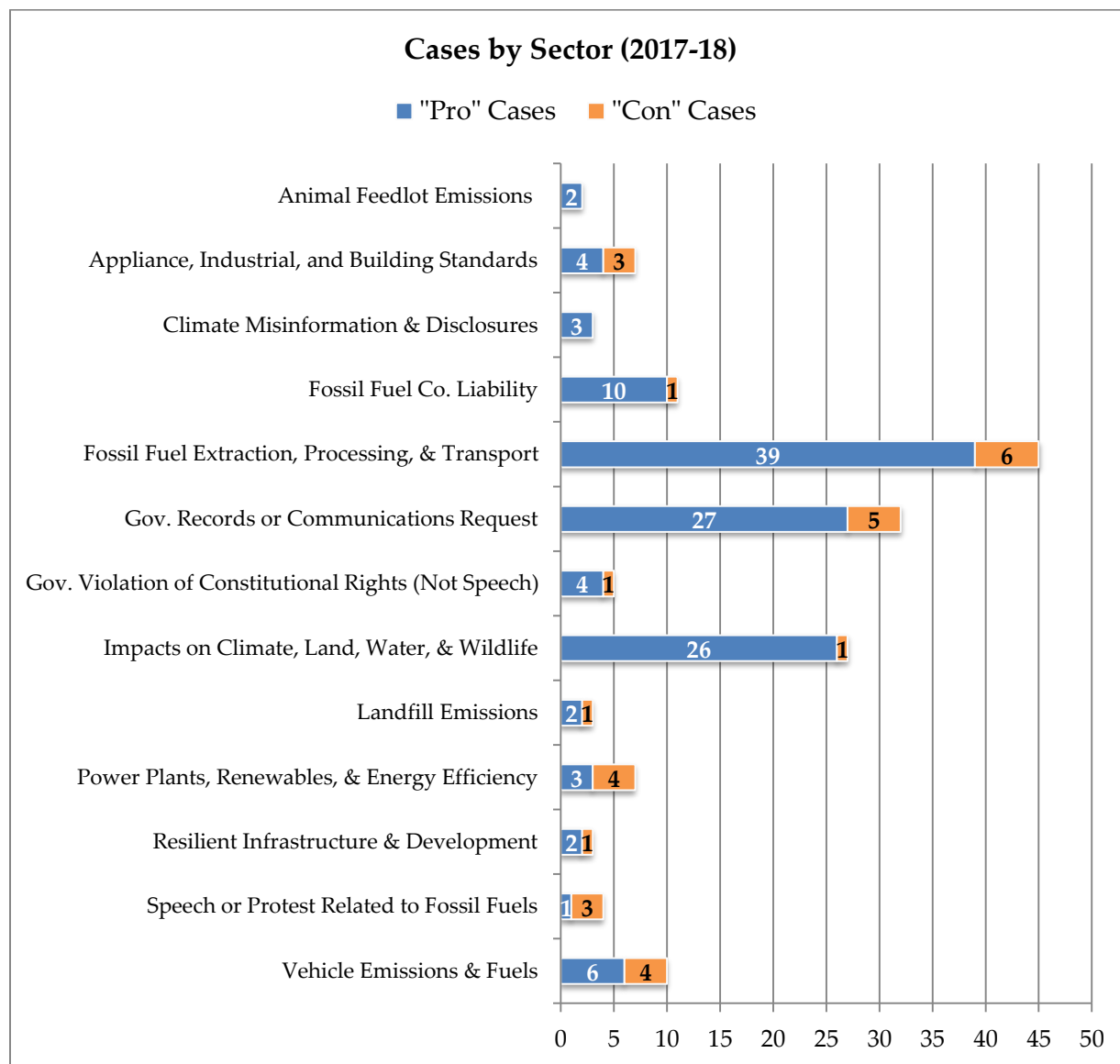


Figure 7: See Appendix A for data underlying figure. Each case was assigned a single dominant sector.

A vast majority of cases raised issues under federal environmental statutes and administrative law, often in combination. Eighty-two cases involved federal 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 eighty-one of those lawsuits. Additional environmental statutes were also involved in these cases. 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.

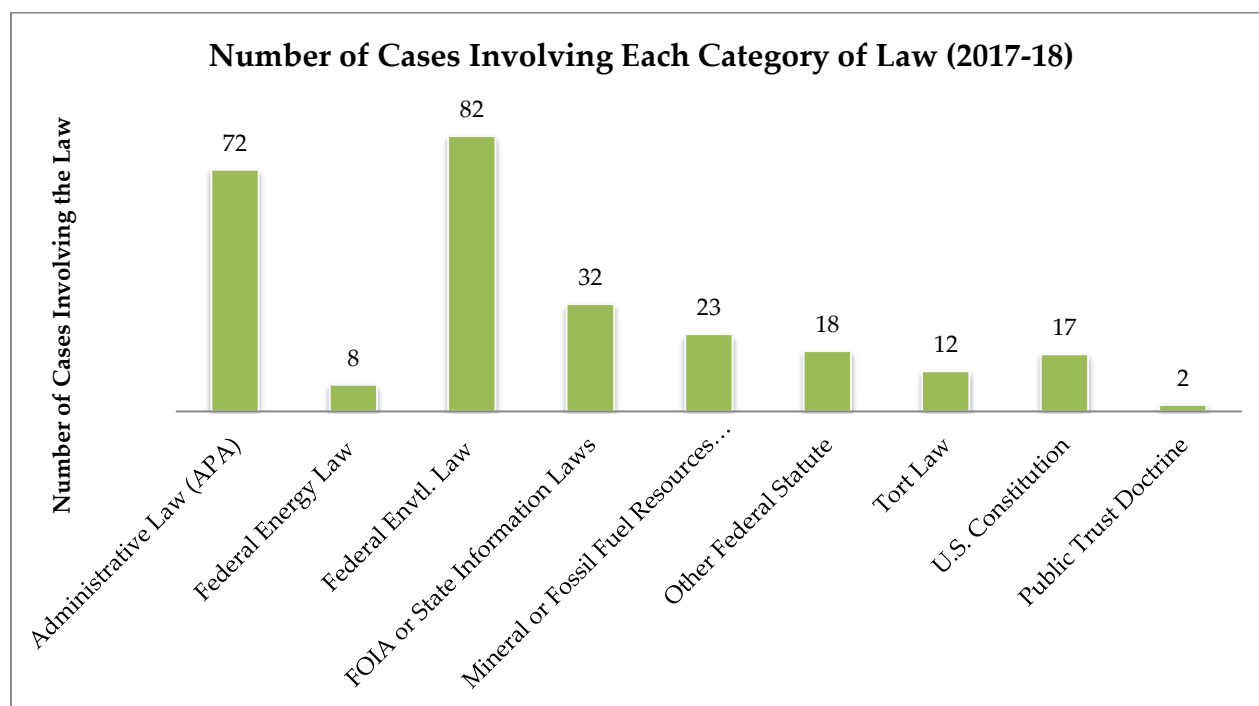


Figure 8: See Appendix A for data underlying figure. Laws were counted if they played a significant role in the case even if a claim was not brought specifically under that law. Many cases involved multiple laws. Again these numbers reflect cases that also raise federal questions of law so there may be additional suits concerning only state law that raise issues of tort law or public trust doctrine, but are not in the dataset.



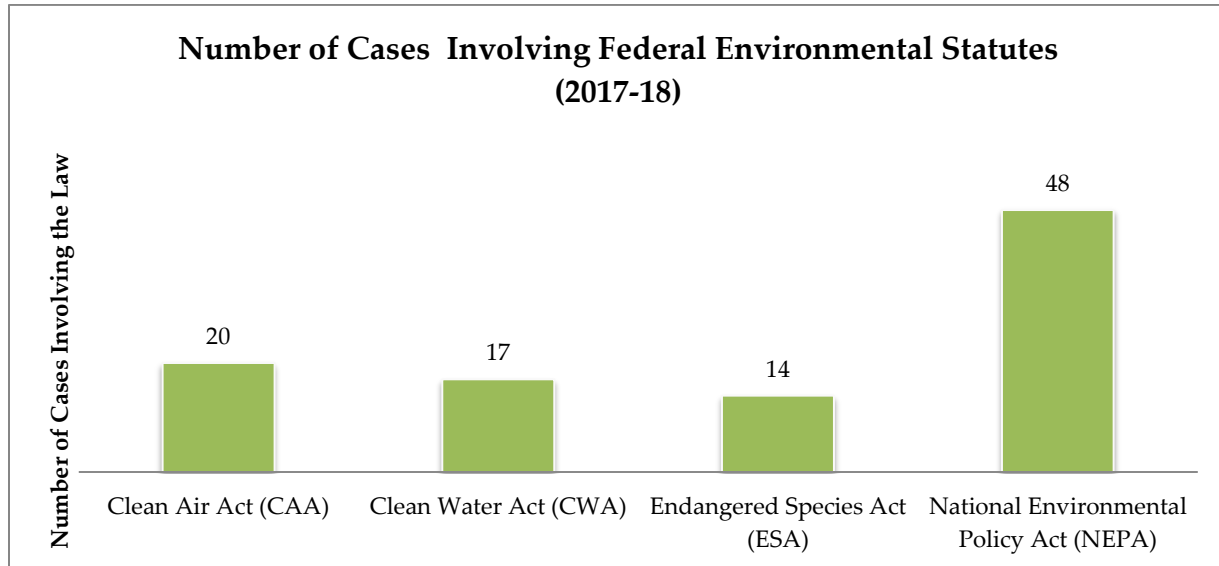


Figure 9: See Appendix A for data underlying figure. Counts represent number of cases involving a given law. Many cases involved multiple laws.

## **4. ANALYSIS OF MAJOR CATEGORIES IN CLIMATE CHANGE LITIGATION IN 2017-18**

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 in each category. The discussion indicates where certain developments are specific to cases filed in 2017 or 2018 rather than common across both years. Footnotes in this section provide hyperlinks to the relevant case profile pages in the Sabin-AP U.S. Climate Change Litigation database.<sup>63</sup> These profiles contain relevant case documents and are regularly updated with new case developments. While significant climate litigation decisions handed down in 2018 and early 2019 but filed pre-2017 are not part of the dataset, they are discussed for their potential influence on pending litigation.

### **4.1 Defending Obama Administration Climate Policies & Decisions**

About 12% of cases in the data set defend federal climate change protections established by the Obama Administration and targeted for rollback by the Trump Administration. These cases were brought primarily by municipal and state-level entities and environmental, public health, and government watchdog groups. In 2017, these took two primary tacks to defend climate policies in response to two types of rollbacks. One vein of cases contested the Trump Administration's wave of efforts to delay climate regulation through stays, suspensions, inaction, and other means without going through notice and comment rulemaking or meeting other legal obligations to justify a shift in policy. Some of these cases reacted to active announcement by agencies to delay policies, while others prodded agency inaction to publish delayed rules or put them into effect. A smaller subset of 2017 cases challenged non-regulatory

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<sup>63</sup> In some places, case summary information is drawn directly from the Sabin-AP U.S. Climate Change Litigation database.

actions by the executive branch that are not subject to notice and comment rulemaking. These cases argued that the administration had acted beyond its constitutional and statutory legal authorities. For example, these cases sought to overturn Trump Administration policies that reversed a moratorium on federal coal leasing and opened previously protected areas to offshore drilling through executive order.

In 2018, litigation began to pivot in response to changing rollback strategies and the quantity of litigation in this category decreased overall. As the Trump Administration began to finalize repeals of Obama-era climate regulations through notice and comment rulemaking at the very end of 2017 and into 2018, these “final agency actions” were challenged under administrative and statutory law. Since agencies have begun to propose replacement rules for various climate policies in 2018, this type of suit will likely increase as replacement rules are finalized and become ripe for challenge. The Trump Administration continued a few climate-related regulatory rollbacks outside of notice and comment rulemaking, but they took a different tactic than the delay efforts of 2017, instead stating in a memorandum and the Federal Register that specific climate measures would not be enforced. Additional suits filed in 2018 maintained pressure on the Administration by challenging these attempts to suspend enforcement of policies as well as challenging a policy withdrawal that claimed it was not a final agency action because it was intended to initiate rulemaking for a replacement regulation. Additionally, one suit continued the pattern of direct challenge to non-regulatory executive branch actions that reversed Obama Administration policies.

#### By the Numbers:

- *Total Count:* The data set includes 14 cases meeting the above criteria from 2017 and another 6 from 2018.<sup>64</sup> Of the 2017 cases, about two-thirds involve delays or suspensions and the other third concern revocations, withdrawals, or new action that directs regulatory rollback. Of the six 2018 cases, two concerned attempts to suspend enforcement of policies, and four

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<sup>64</sup> See Appendix A for list of cases.

challenged repeals or decisions to reverse policies, including two repeals that were finalized through the notice and comment process.

- *Plaintiffs/Petitioners*: The cases were brought by: state-level government entities (12), national or international environmental NGOs (12), local and regional organizations (7), municipalities (3), a tribe (2), and a union (1). Often cases included a combination of NGO and local, state, or tribal government plaintiffs. NGOs and local/state/tribal government entities were plaintiffs in thirteen of these suits, roughly two-thirds of this category of suits. .
- *Defendants*: Defendants include President Trump (2) and federal agencies, their sub-entities and officials: DOE (3), EPA (5), DOI (2), the State Department (3), and the Department of Transportation (DOT)(3).
- *Laws*: These cases involved: the APA (15), the CAA (5), the NEPA (5), 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)(4), 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), the National Historic Preservation Act (1), and the U.S. Constitution (1). Looking specifically at the 2018 cases, roughly half involved the CAA and roughly half involved a combination of APA, NEPA, and public lands and natural resources laws.

#### Issues Raised:

- *Presidential Authority*: A few cases filed in 2017 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.<sup>65</sup> Another suit argues that in purporting to open up areas of the Arctic and Atlantic oceans for oil and gas leasing that were formerly

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<sup>65</sup> [Public Citizen, Inc. v. Trump](#), No. 1:17-cv-00253, (D.D.C. filed Feb. 8, 2017).

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).<sup>66</sup>

- *The Regulatory Freeze, Suspensions, and Other Delay Tactics*: Several 2017 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,<sup>67</sup> energy efficiency of manufactured housing,<sup>68</sup> a metric to measure GHG emissions from highways,<sup>69</sup> and penalties for violations of fuel economy standards.<sup>70</sup> In 2018, lawsuits challenged EPA's further attempts to suspend enforcement of policies through memorandum and notice in the Federal Register. These efforts included a "No Action Assurance" memorandum in which EPA provided assurance that it would not enforce its greenhouse gas emissions and fuel efficiency standards for trucks against small manufacturers of "glider" vehicles and kits,<sup>71</sup> notice it would not apply a rule limiting use of HFC's until it could complete rulemaking addressing a vacated portion of the existing rule,<sup>72</sup> and a withdrawal of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for

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<sup>66</sup> [League of Conservation Voters v. Trump](#), No. 3:17-cv-00101, (D. Alaska, vacated Mar. 29, 2019).

<sup>67</sup> [Natural Resources Defense Council v. Perry](#), No. 18-15380 (9th Cir., stay granted Apr. 11, 2018). (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).

<sup>68</sup> [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.

<sup>69</sup> [Clean Air Carolina v. U.S. Department of Transportation](#), No. 1:17-cv-5779 (S.D.N.Y., filed Jul. 31, 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., 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.

<sup>70</sup> [Natural Resources Defense Council, Inc. v. National Highway Traffic Safety Administration](#), No. 17-2780, (2d Cir., rule vacated Jun. 29, 2018) (challenging delay of effective date for rule raising civil penalties for violations of fuel economy standards).

<sup>71</sup> [Environmental Defense Fund v. EPA](#), No. 18-1190 (D.C. Cir., dismissed Aug. 22, 2018).

<sup>72</sup> [Natural Resources Defense Council v. Wheeler](#), No. 18-1172 (D.C. Cir., filed Jun. 26, 2018).

Model Year 2022–2025 Light-Duty Vehicles issued by the Obama Administration upon a Trump Administration finding that these standards were too strict.<sup>73</sup>

- *Standards for Methane Emissions:* In 2017, 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 and gas sector sources<sup>74</sup> and landfills<sup>75</sup> 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”).<sup>76</sup> In 2018, an additional suit challenged the repeal of the methane waste rule.<sup>77</sup>
- *Challenge to Agency Repeals of Climate Policies:* In 2018, litigation promptly challenged repeals or withdrawals of climate-related policies finalized after notice and comment rulemaking. These challenges concerned rules related to regulation of hydraulic fracturing on federal and tribal lands,<sup>78</sup> the methane waste rule,<sup>79</sup> and mid-term greenhouse gas emissions

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<sup>73</sup> [California v. EPA](#), No. 18-1114 (D.C. Cir. filed May 1, 2018).

<sup>74</sup> [Clean Air Council v. Pruitt](#), 862 F.3d 1, 4 (D.C. Cir. 2017).

<sup>75</sup> [Natural Resources Defense Council v. Pruitt](#), No. 17-1157, (D.C. Cir. dismissed Feb. 1, 2018).

<sup>76</sup> [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 Jun. 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 was subsequently challenged, plaintiffs were granted a preliminary injunction barring the government from enforcing the delay. [California v. U.S. Bureau of Land Management](#), No. 3:17-cv-07186 (N.D. Cal., order Feb. 22, 2018). The government appealed the injunction, but then voluntarily dismissed the appeal. [California v. U.S. Bureau of Land Management](#), No. 18-15711 (Ninth Cir. dismissed Jun. 26, 2018).

<sup>77</sup> [California v. Zinke](#), No. 3:18-cv-05712 (N.D. Cal., filed Sept. 18, 2018).

<sup>78</sup> [California v. U.S. Bureau of Land Management](#), No. 4:18-cv-00521 (N.D. Cal., filed Jan. 24, 2018).

<sup>79</sup> [California v. Zinke](#), *supra* note 77.

limitations for light-duty vehicles model year 2022–2025 (clean car standards).<sup>80</sup> Each of these suits raised claims under the APA, including arguments that an agency action contradicted the record, lacked reasoned analysis, or failed to offer a reasoned explanation for a policy reversal. The first two cases also included claims under the NEPA regarding inadequate consideration of climate change as well as claims under the FLPMA and the MLA. The case concerning clean car standards brought claims under the APA.

- *Fossil Fuel Development and Infrastructure*: A number of suits filed in 2017 and 2018 challenge agency actions that advanced major fossil fuel development, including approval of the Keystone XL pipeline<sup>81</sup> as well as lifting the coal moratorium on federal lands and ending environmental review of the federal coal program.<sup>82</sup> The Keystone XL litigation relies on the NEPA, ESA, APA, and other wildlife statutes. The coal moratorium cases concern the NEPA, CWA, and APA. These suits concerning major reversals of Obama Administration policies track similar patterns discussed in the environmental review and permitting cases later in this report.

#### Key Developments:

While a number of these cases are still pending or pending on appeal, the courts have struck down Trump Administration rollbacks of climate policies when those cases have progressed to a judicial decision on the merits. None of the Trump Administration climate policy rollbacks have been upheld on the merits thus far. The Trump Administration has suffered additional losses in several cases which were voluntarily dismissed after the Trump Administration published a withheld rule or stopped delaying a rule from taking effect.

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<sup>80</sup> [California v. EPA](#), No. 18-1114 (D.C. Cir., filed May 1, 2018).

<sup>81</sup> [Indigenous Environmental Network v. United States Department of State](#), No. 4:17-cv-00029 (D. Mont., filed Mar. 27, 2017) (bringing challenges under NEPA, ESA, and the APA); [Rosebud Sioux Tribe v. U.S. Department of State](#), No. 4:18-cv-00118 (D. Mont., filed Sept. 10, 2018) (bringing challenges under NEPA, APA, and the National Historic Preservation Act).

<sup>82</sup> [Citizens for Clean Energy v. U.S. Department of Interior](#), No. 4:17-cv-00030 (D. Mont., filed Mar. 29, 2017).

Looking more broadly at the scope of litigation challenging Trump Administration rollbacks, (not exclusively climate-related litigation), the NYU Institute for Policy Integrity found the Trump Administration was unsuccessful in 37/39 matters.<sup>83</sup> Looking more specifically at the climate cases, a similar trend tracks across the cases.

- *Regulatory Delay Cases*: The Trump Administration has not won a single one of the twelve cases concerning delay or suspension of climate-related rules. Five of these cases have resulted in a judicial decision against the Trump Administration (of which one has an appeal pending). Five pressured the Trump Administration to end the delay at issue in the lawsuit, and were then dismissed or otherwise allowed to lapse prior to a decision. Collectively, this litigation has prevented extralegal delays of climate protections and carved out a new body of legal precedent confirming the illegality of executive branch efforts to delay a previous administration's policies by means unauthorized by law. However, this litigation does not prevent the Trump Administration from pursuing legal avenues to reverse climate policies. Many of the rule delays reversed through litigation concern climate policies that are now being targeted through for delay, repeal, or replacement through the legally authorized process of notice and comment rulemaking.
  - **5 Court Decisions Ruled Against the Trump Administration's Delays Related to Methane Waste Rule,<sup>84</sup> NSPS for the Oil & Gas Sector,<sup>85</sup> Energy Efficiency Standards,<sup>86</sup> and Increases in Civil Penalties for CAFE Standards Violations<sup>87</sup>:**

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<sup>83</sup> NYU Institute for Policy Integrity, *Round-Up Trump-Era Deregulation in the Courts* (updated April 22, 2019), available at <https://policyintegrity.org/deregulation-roundup#fn-4-a>.

<sup>84</sup> *Supra* note 80.

<sup>85</sup> [\*Clean Air Council v. Pruitt\*](#), 862 F.3d 1, 4 (D.C. Cir. 2017). The D.C. Circuit Court of Appeals ruled that the U.S. Environmental Protection Agency (EPA) lacked authority to administratively stay portions of new source performance standards for the oil and gas sector and a rehearing en banc was denied, it signaled that extralegal delays beyond the notice and comment process would not be upheld.

<sup>86</sup> [\*Natural Resources Defense Council v. Perry\*](#), No. 18-15380 (9th Cir., stay granted Apr. 11, 2018). An effort to delay final rules through a failure to publish them in the Federal Register has not fared well either. A federal district court ordered the U.S. Department of Energy to publish energy conservation standards adopted in December 2016 that had never taken effect because DOE failed to publish them in



These losses may partially explain subsequent agency choices to let delays lapse and be dismissed or to pursue delays through other avenues such as attempted suspensions of enforcement or rulemaking as discussed below.

- **5 Other Defeats of Trump Administration Delays & Suspensions Related to GHG Highway Metrics, Energy Efficiency Standards for Ceiling Fans, Truck Glider Kits, and Methane Emissions from Landfills:** 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.<sup>88</sup> In response to two other lawsuits, DOT published notice putting the metric for GHG emissions from highways into effect.<sup>89</sup> However, DOT also promptly published notice that it would repeal this metric.<sup>90</sup> EPA withdrew and promised not to enforce a "no action assurance" memorandum that provided assurance that EPA would not enforce greenhouse gas emission and fuel efficiency standards against small manufacturers of glider kits and vehicles. Subsequently, the court granted a motion to dismiss on mootness.<sup>91</sup> After being sued for delaying emissions standards for landfills, EPA allowed the delay to expire and withdrew

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violation of a non-discretionary duty under statute. The Ninth Circuit has stayed the order pending appeal.

<sup>87</sup> [Natural Resources Defense Council, Inc. v. National Highway Traffic Safety Administration](#), No. 17-2780, (2d Cir., rule vacated Jun. 29, 2018). The Second Circuit granted summary vacatur of delays affecting CAFE standards upon a finding of no legal authority to issue the delays.

<sup>88</sup> 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>.

<sup>89</sup> 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](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).

<sup>90</sup> 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>.

<sup>91</sup> [Environmental Defense Fund v. EPA](#), No. 18-1190 (D.C. Cir., dismissed Aug. 22, 2018).

- plans for further delays. Environmental groups then agreed to voluntary dismissal by stipulation.<sup>92</sup>
- **2 Suits Still Pending on Efficiency Standards for Manufactured Housing<sup>93</sup> and EPA's pre-rulemaking Determination That Obama Administration Greenhouse Gas Standards for Vehicles Were Too Stringent.<sup>94</sup>** Thus far, the suit concerning efficiency standards for manufactured housing has survived a motion to dismiss. Several challenges were filed against the withdrawal of the mid-term greenhouse gas emissions limitations for light-duty vehicles model year 2022–2025 continues which were consolidated and have now proceeded to briefing.
  - *Non-Regulatory Executive Action Cases:* The few cases challenging executive orders or other non-regulatory actions are either still pending or resulted in losses for the Trump Administration.
    - **Obama-Era Offshore Drilling Ban Reinstated:** In March 2019, the U.S. District Court for the District of Alaska vacated a provision of the president's 2017 executive order on offshore drilling, reinstating Obama-era prohibitions on leasing in parts of the Arctic and Atlantic oceans.<sup>95</sup> The judge ruled that the President exceeded his authority because OCSLA only authorized the President to close areas to offshore drilling—not to also reopen them to drilling. The government will likely appeal, but this decision may be a pre-cursor for similar arguments raised in lawsuits challenging the Trump Administration reversing National Monument protections for Bears Ears and Escalante under the Antiquities Act.
    - **Reversal of Coal Moratorium Halted for Further Environmental Review:** In April 2019, the U.S. District Court for the District of Montana found on summary

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<sup>92</sup> [Natural Resources Defense Council v. Pruitt](#), No. 17-1157, (D.C. Cir. dismissed Feb. 1, 2018).

<sup>93</sup> [Sierra Club v. Perry](#), No. 1:17-cv-02700 (D.D.C., filed Dec. 18, 2017).

<sup>94</sup> [California v. EPA](#), No. 18-1114 (D.C. Cir. filed May 1, 2018).

<sup>95</sup> [League of Conservation Voters v. Trump](#), No. 3:17-cv-00101, (D. Alaska Mot. for Summ. J. Mar. 29, 2019).

judgment that the government had violated environmental review requirements under NEPA by reversing the Obama Administration's moratorium on coal leasing on federal lands.<sup>96</sup> This ruling does not prohibit the reversal, but does compel DOI to conduct some further level of environmental review and provide good reasons if it opts to do a lesser review under a finding of no significant impact.

- **Keystone XL Permit Reversal Frozen:** The Ninth Circuit Declined to Lift Injunction Barring Keystone XL Construction and Preconstruction Activities after a Montana federal district court enjoined such activities pending the U.S. Department of State's completion of additional environmental review.<sup>97</sup> The district court found that the Department of State violated the National Environmental Policy Act (NEPA) and Administrative Procedure Act when it reversed the Obama administration's denial of a cross-border permit for the pipeline without providing a reasoned explanation for disregarding the Obama administration's factual findings concerning climate change and the U.S.'s role in contributing to and addressing climate change.<sup>98</sup> On March 29, 2019, however, President Trump issued a new presidential permit authorizing the pipeline's construction and revoking the March 2017 permit that is the subject of the lawsuit.<sup>99</sup>
- **2-for-1 Rule:** The lawsuit concerning the 2-for-1 rule is still pending, having been once dismissed for lack of standing, revived by an amended complaint, and then

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<sup>96</sup> [Citizens for Clean Energy v. U.S. Department of Interior](#), No. 4:17-cv-00030 (D. Mont. order Apr. 19, 2019).

<sup>97</sup> [Indigenous Environmental Network v. United States Department of State](#), No. 18-36068 (9<sup>th</sup> Cir., Mot. for a stay pending appeal denied Mar. 15, 2019).

<sup>98</sup> [Indigenous Environmental Network v. United States Department of State](#), No. 18-36068 (9<sup>th</sup> Cir., order Nov. 08, 2018).

<sup>99</sup> Presidential Permit (Mar. 29, 2019), available at <https://www.whitehouse.gov/presidential-actions/presidential-permit/>. Following issuance of the new permit, the government and TransCanada asked the Ninth Circuit to order dismissal of the challenge to the 2017 permit, arguing that President Trump's revocation of the 2017 presidential permit rendered the plaintiffs' claims moot. A new suit was filed to challenge the 2019 permit. [Indigenous Environmental Network v. Trump](#), No. 4:19-cv-00028 9D. Mont., filed Apr. 5, 2019).

- surviving a motion to dismiss for lack of standing.<sup>100</sup> However, the court fell short of finding the plaintiffs to have standing, not finding the plaintiffs had demonstrated that any rule blocked by the order affected them. The case “currently sits in a liminal state” as the court cannot consider the merits without determining that it had jurisdiction. Meanwhile, in April 2019, attorneys general from California, Oregon and Minnesota challenged the 2-for-1 rule in a new suit.<sup>101</sup> Their suit may fare better against standing challenges based on their status representing the public.
- *Regulatory Repeal or Withdrawal Cases:* The three cases concerning repeals or withdrawals of climate policy that passed through notice and comment rulemaking all currently remain pending without any lower court decisions.<sup>102</sup> However, a couple of other recent suits suggest the Administration may have a difficult time justifying the basis for its repeals under the APA. In a suit challenging the one-year delay of the methane waste rule, (also established by notice and comment rulemaking), a federal district court granted plaintiffs’ motions for preliminary injunction upon finding that BLM’s reasoning for delaying the rule was “untethered to evidence contradicting the reasons for implementing the Waste Prevention Rule” and that plaintiffs were therefore likely to prevail on the merits.<sup>103</sup> The suit was voluntarily dismissed after the expiration of the delay so there was not a final ruling on the merits. In April 2019, the Trump Administration had its first repeal struck down in a lawsuit concerning rules for valuing oil, gas, and coal produced on federal lands.<sup>104</sup> The judge ruled that the repeal violated the APA and the agency “must provide ‘a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered

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<sup>100</sup> [Public Citizen, Inc. v. Trump](#), No. 1:17-cv-00253, (D.D.C., granted Mot. to dismiss and for Summ. J. Feb. 8, 2019).

<sup>101</sup> [California v. Trump](#), No. 1:19-cv-00960 (D.D.C., filed Apr. 4, 2019).

<sup>102</sup> *Supra* note 78-80.

<sup>103</sup> [California v. U.S. Bureau of Land Management](#), No. 3:17-cv-07186 (N.D. Cal., order Feb. 22, 2018).

<sup>104</sup> [California v. U.S. Department of Interior](#), No. 4:17-cv-05948-SBA (N.D. CA filed Jun. 25, 2018).

by the prior policy."<sup>105</sup> These suits suggest that at least BLM has failed to prioritize compliance with the rules of administrative laws in its haste to rollback climate policies.

## 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 17% of the cases in the data set. They were brought under the Freedom of Information Act (FOIA) primarily by environmental groups. In 2017, they largely sought to shine light on climate change denial, unethical, and/or potentially illegal climate-related activity within the Trump Administration. Documents obtained through these suits have been released by NGO plaintiffs to show a lack of substance behind climate change denying statements of administrators and to expose industry ties. In 2018, this trend has continued, but a greater number of suits seek records related to specific climate policy rollbacks. Some of these suits request substantive information underlying a policy decision, but most commonly these suits request communications between the Administration and industry in regard to the rollback. Access to the information released from these suits allows the public to better understand the nature of these rollbacks, the Administration's activities, and external influence potentially affecting the administration's decision-making. Additionally, several of these rollbacks are being directly litigated, thus the public information released from these requests could be relevant to ongoing legal actions.

### By the Numbers:

- *Total Count:* The data set includes 27 cases meeting the above criteria.<sup>106</sup> Eleven were filed in 2017 and 16 in 2018.

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<sup>105</sup> *Id.* at 17 (internal citations omitted).

<sup>106</sup> See Appendix A for list of cases.

- *Plaintiffs/Petitioners*: Cases were brought primarily by environmental groups (21). Additional actors filing this type of suit were government watchdog groups (4), the State of California (1), and a former federal employee (1).
- *Defendants*: FOIA violation suits involved more than a dozen different divisions or subdivisions of the administration, its agencies, and officials, including DOI, EPA, DOE, DOT, FERC, 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 9 and EPA and its officials receiving 12. A few additional suits were filed under state information laws, but were excluded from the dataset as beyond the scope of its parameters.

#### Issues Raised:

- *Scott Pruitt's Potentially Illegal, Unethical, or Anti-Science Actions*: FOIA lawsuits from 2017 sought information revealing whether EPA Administrator Scott Pruitt was acting unethically, illegally, and/or in a manner to advance climate denial.<sup>107</sup> A Sierra Club suit secured 24,000 pages of EPA, emails, and call logs that it reported to reveal to “culture of corruption” and industry ties in Pruitt’s EPA.<sup>108</sup> Pruitt resigned in June 2018, about a month after the release of the Sierra Club documents and other media coverage of a long list of

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<sup>107</sup> [California v. EPA](#), No. 1:17-cv-01626 (D.D.C., filed Aug. 11, 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., filed Sept 18, 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. order Jun. 1, 2018) (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”).

<sup>108</sup> Sierra Club, “Pruitt Exposed: Sierra Club Secures 24,000 Pages of EPA Emails, Call Logs and Documents,” (May 7, 2018), available at <https://www.sierraclub.org/press-releases/2018/05/pruitt-exposed-sierra-club-secures-24000-pages-epa-emails-call-logs-and>.

controversies. A report by the Inspector General corroborated unethical practices, finding Pruitt and his staff wasted nearly \$124,000 on “excessive” premium travel arrangements and recommending Pruitt and the others involved pay back the money.<sup>109</sup>

- *Unethical Agency Practices and Inappropriate Industry Influence:* Influence over decision-making was a particular focus in several 2018 cases. These cases included three filed by Sierra Club in regard to communications between EPA and DOI officials with external stakeholders.<sup>110</sup>
- *General Climate Science Denial and Suppression:* In 2017, litigants sought to reveal unethical or illegal behavior more widely within the administration through FOIA requests for records related to such matters as reassigning an employee who advocated for addressing climate change,<sup>111</sup> and communications between a federal agency and the transition team including what might reveal a secret, climate-denying member of the transition team.<sup>112</sup> Other cases requested records on directives or communications related to removing the words “climate

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<sup>109</sup>U.S. EPA OFFICE OF INSPECTOR GENERAL, ACTIONS NEEDED TO STRENGTHEN CONTROLS OVER THE EPA ADMINISTRATOR’S AND ASSOCIATED STAFF’S TRAVEL: REPORT NO. 19-P-0155 (May 16, 2019), *available at* [https://www.epa.gov/sites/production/files/2019-05/documents/epa\\_oig\\_20190516-19-p-0155.pdf](https://www.epa.gov/sites/production/files/2019-05/documents/epa_oig_20190516-19-p-0155.pdf).

<sup>110</sup> [Sierra Club v. EPA](#), No. 3:18-cv-02372 (N.D. Cal., filed Apr. 19, 2018)(seeking communications from seven new hires who each “lack prior experience or expertise in environmental protection and instead has a strong connection with anti-EPA organizations, companies, or politicians.”); [Sierra Club v. EPA](#), No. 4:18-cv-03472 (N.D. Cal., order issued Dec. 26, 2018)( seeking external communications and meeting records for EPA staff that Sierra Club alleged had “troubling ties to polluting industries.”); [Sierra Club v. U.S. Department of Interior](#), No. 4:18-cv-00797 (N.D. Cal., filed Feb. 6, 2018)(seeking disclosure of external communications of Department of the Interior officials).

<sup>111</sup> [Clement v. U.S. Department of Interior](#), No. 1:17-cv-02451 (D.D.C., filed Nov. 14, 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).

<sup>112</sup> [Sierra Club v. EPA](#) *supra* note 110; [Natural Resources Defense Council v. U.S. Environmental Protection Agency](#), 1:17-cv-04084 (S.D.N.Y., filed May 31, 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., Mot. for Summ. J. granted in part and den. in part Sept. 17, 2018) (seeking Trump transition team questionnaires regarding climate change).



change” from formal communications,<sup>113</sup> potentially biased objectives in a grid reliability study from DOE,<sup>114</sup> and on the decision to disband the review committee for the National Climate Assessment.<sup>115</sup> In 2018, this trend continued with suits seeking information related to the preparation and production of an “overdue” climate action report,<sup>116</sup> EPA instructions to employees about discussing their work publicly,<sup>117</sup> controlling EPA personnel participation in public events,<sup>118</sup> and communications with the Heartland Institute over scientists who might participate in a “Red Team/Blue Team” to put climate science under review.<sup>119</sup>

- *Industry Influence Over Specific Climate-Related Policy Rollbacks*: In 2018, lawsuits focused more narrowly on securing information related to rollbacks or inaction on specific climate-related policies including: U.S. aircraft emission standards,<sup>120</sup> the Methane Waste Prevention Rule,<sup>121</sup> and greenhouse gas and fuel efficiency standards for light- and medium-duty vehicles and for heavy-duty trailers.<sup>122</sup>

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<sup>113</sup> [Center for Biological Diversity v. U.S. Department of Interior](#), No. 1:17-cv-0974 (D.D.C., filed May 23, 2017) (requesting directives and communications related to removal of climate change-related words from formal agency communications); [Sierra Club v. EPA](#), *supra* note 110 (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).

<sup>114</sup> [Sierra Club v. U.S. Department of Energy](#), No. 3:17-cv-04663 (N.D. Cal., filed Aug. 14, 2017)(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).

<sup>115</sup> [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).

<sup>116</sup> [Center for Biological Diversity v. U.S. Department of State](#), No. 1:18-cv-02139 (D.D.C. filed Sept. 16, 2018)

<sup>117</sup> [Ecological Rights Foundation v. EPA](#), 3:18-cv-00394 (N.D. Cal. filed Jan. 18, 2018)

<sup>118</sup> [Public Employees for Environmental Responsibility v. EPA](#), 1:18-cv-00271 (D.D.C. filed Feb. 6, 2018).

<sup>119</sup> [Southern Environmental Law Center v. EPA](#), 3:18-cv-00018 (W.D. Va. filed Mar. 15, 2018).

<sup>120</sup> [Center for Biological Diversity v. U.S. Department of State](#), 1:18-cv-02139 (D.D.C. filed Sept. 16, 2018).

<sup>121</sup> [Environmental Defense Fund v. Department of the Interior](#), 1:18-cv-01116 (D.D.C. filed May 10, 2018).

<sup>122</sup> [Environmental Defense Fund v. U.S. Department of Transportation](#), 1:18-cv-03004 (D.D.C. filed Dec. 19, 2018).



- *Technical or Scientific Information Underlying Policy Choices with Negative Climate Impacts:* Other 2018 cases sought substantive information underlying policy choices with negative climate impacts, including: two cases concerning subsidies for coal and nuclear-based power<sup>123</sup> and another case concerning vehicle emissions.<sup>124</sup>
- *Fossil Fuel Policy Development & Fossil Fuel Industry Influence:* In 2017, environmental groups requested information related to coal policy on federal land<sup>125</sup> and a secretarial order to increase onshore oil, gas, and mineral development.<sup>126</sup> In 2018, similar suits sought information on developing oil & gas leasing in the Arctic National Wildlife Refuge<sup>127</sup> and implementation of the Trump Administration's Executive Order 13783, "Promoting Energy Independence and Economic Growth."<sup>128</sup>

#### Key Developments:

While more difficult to gauge success of lawsuits filed in this category, many of the 2017 and 2018 FOIA suits have now produced documents which have exposed industry influence over policy decisions, unethical conduct by officials, and obfuscation of climate science. For example, the Sierra Club illuminated industry ties and controversial expenditures by the Pruitt EPA by securing 24,000 pages of EPA emails and call logs that it reported to reveal a "culture of corruption" in Pruitt's EPA. This information joined the steady drumbeat of media coverage of unethical behavior in Pruitt's EPA that preceded his resignation. FOIA suits can also reveal the lack of support behind statements of climate denial by administration officials and provide

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<sup>123</sup> [Sierra Club v. U.S. Department of Energy](#), No. 4:18-cv-04715 (D.D.C., filed Aug. 6, 2018); [Union of Concerned Scientists v. U.S. Department of Energy](#), No. 1:18-cv-02615 (D.D.C., filed Nov. 13, 2018).

<sup>124</sup> [Natural Resources Defense Council v. EPA](#), No. 1:18-cv-11227 (S.D.N.Y., filed Dec. 3, 2018).

<sup>125</sup> [Center for Biological Diversity v. U.S. Bureau of Land Management](#), No. 1:17-cv-01208 (D.D.C. filed Jun. 20, 2017) (seeking BLM to release documents related to the federal coal program).

<sup>126</sup> [WildEarth Guardians v. U.S. Department of the Interior Office of the Secretary](#), No. 1:17-cv-02512 (D.D.C., filed Nov. 20, 2017) (seeking DOI to release records related to Secretarial Order on onshore mineral leasing program).

<sup>127</sup> [Defenders of Wildlife v. U.S. Department of the Interior](#), No. 18-cv-2572 (D.D.C., filed Nov. 8, 2018).

<sup>128</sup> [Wilderness Society v. U.S. Department of Interior](#), No. 1:18-cv-01089 (D.D.C., filed May 9, 2018).

important clarification to the public. In response to a FOIA suit filed by the Public Employees for Environmental Responsibility seeking information underlying Administrator Pruitt's statement that human actions were not the primary driver of climate change, EPA handed over only one document which offered no basis for his statement.<sup>129</sup> The Environmental Defense Fund has posted documents received through a number of FOIA requests and lawsuits which provide the public and media access to climate information removed from government websites, communications between agency officials and polluting industries, and agency records concerning climate policy rollbacks.<sup>130</sup> In some cases FOIA lawsuits concern policy rollbacks that are later litigated on their substance, such as the rollbacks of the methane waste rule.<sup>131</sup> This may become a more common event as more rollbacks are pursued through notice and comment rulemaking.

### 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<sup>132</sup> and arguably would have continued to do so regardless of who assumed the Presidency. A similar number of cases were filed in 2017 and 2018 in this category, but these suits constitute a greater percentage of the suits filed in 2018. These cases encompass requirements to consider the direct and indirect GHG emissions of a federal project, policy, or decision; the impacts

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<sup>129</sup> See Public Employees for Environmental Responsibility, "EPA Comes up Empty in Search for Climate Denial Science: Press Release" (Oct. 11, 2018), available at <https://www.peer.org/news/press-releases/epa-comes-up-empty-in-search-for-climate-denial-science.html>.

<sup>130</sup> See Environmental Defense Fund, "Promoting Government Transparency," (last update Mar. 2019), available at <https://www.edf.org/climate/promoting-government-transparency>.

<sup>131</sup> See *Id.*; "Environmental Defense Fund, EDF, Allies File Lawsuit Challenging Trump Administration Attack on Methane Waste Standards: Press Release," (Oct. 1, 2018), available at <https://www.edf.org/media/edf-allies-file-lawsuit-challenging-trump-administration-attack-methane-waste-standards>.

<sup>132</sup> See Ruhl & Markell (2012) at 31, 41-46, 57-65.

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 34% of the data set.

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. These cases do not directly challenge the withdrawal of CEQ’s NEPA guidance or the social cost metrics, but the content of the rollbacks permeate a number of these cases. Consequently, the outcomes of these cases have bearing on the efficacy of these rollbacks.

These cases also challenge the implementation of the Trump Administration’s Executive Orders and other actions promoting an expansion of fossil fuel development. In some cases, these lawsuits complement direct challenges to an Executive Order. For example, NGOs challenged the BOEM’s decision to approve an offshore oil and gas development and production plan in the Beaufort Sea, a decision authorized by an executive order that opened that area up to drilling (which is itself subject to litigation). In some cases these suits may be the only avenue to challenge changes in agency practice or policy. For example, FERC has shifted its expectation for measurement of greenhouse gas emissions associated with a project—a

change in practice carried out—and challenged—in regard to decisions on individual projects because no overarching regulatory proposal has been put forward for challenge.<sup>133</sup>

Cases in the environmental review and permitting category discuss climate change in two overarching ways. One set of cases raises questions around how climate change will impact a federal project/decision or the species/environment affected by that project/decision (“climate impacts cases”). For example, a coastal transportation project may be susceptible to sea level rise or a species may be cumulatively impacted by a mine and drought conditions expected to worsen due to climate change. Climate impact cases chiefly involve decisions related to water, public lands, wildlife, and infrastructure vulnerability. Another set of cases concern GHG emissions associated with projects, especially projects related to oil & gas leasing, pipeline development, and other fossil fuel extraction and infrastructure construction-related projects (“GHG emissions cases”). The cases concerning GHG emissions primarily involve development of fossil fuel industry related infrastructure. Some cases concerned both climate impacts and GHG emissions.

Recent decisions demonstrate an uphill battle of influencing the law incrementally through these suits. In a few emerging decisions concerning oil & gas development on public land, courts have upheld NEPA requirements to consider greenhouse gas emissions in several ways, remanding at least one analysis, but have not yet vacated any agency decisions on these grounds. The D.C. Circuit has upheld a series of FERC authorizations for pipeline and natural gas-related projects despite petitions that these projects do not adequately assess greenhouse gas emissions associated with the projects. Many of the other types of environmental review decisions remain pending.

By the Numbers:

- *Total Count:* A total of 54 cases fell into this category, 27 cases filed in 2017 and 27 cases filed in 2018.

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<sup>133</sup> *Infra* note 145.

- *Plaintiffs/Petitioners*: Cases were brought by local and regional NGOs—including local environmental groups (36); international or national environmental NGOs (36); municipal, state, or tribal entities (2); and commercial trade groups (3).
- *Defendants*: Defendants were largely federal entities including: Dept. of Interior and its sub-entities including BLM, USFWS, and Office of Surface Mining & Reclamation (23); Federal Energy Regulatory Commission (FERC)(10); U.S. Army Corps of Engineers (USACE)(6); EPA (3); USDA/USFS (6); the Department of Transportation (2); Federal Emergency Management Agency (FEMA)(1); U.S. Department of Homeland Security (1); U.S. Customs and Border Protection (1); and the federally-owned Tennessee Valley Authority (1). Three suits included state agency defendants and two suits were against pipeline developers.
- *Laws*: Cases involved: the NEPA (40), the APA (32), the CWA or other federal water law (10), the Natural Gas Act (NGA)(13), the ESA (11), Coastal Zone Management Act (CZMA)(3), the CAA (1), and the Ocean Dumping Act (1), FLPMA (4), Mining and Minerals Policy Act of 1970 (1), Stock Raising Homestead Act (1), Las Cienegas National Conservation Area Act (1), Forest Service Organic Act or National Forest Management Act (3), 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 (2), the Regulatory Flexibility Act (1), Outer Continental Shelf Lands Act (1), the Rivers & Harbors Act (1), the Wild & Scenic Rivers Act (1), the Marine Mammal Protection Act (1), the Internal Revenue Code (1), and the Fifth Amendment (1).

Issues Raised:

- *Impacts on Endangered and Other Vulnerable Species Act*: Litigants challenged the government's failure to adequately assess climate change impacts on species protected under the Endangered Species Act (ESA) and other vulnerable species. These included challenges to

ESA delisting decisions,<sup>134</sup> determinations that listing is not warranted,<sup>135</sup> failure to respond to petitions for listing,<sup>136</sup> failure to designate critical habitat,<sup>137</sup> and inadequate recovery plans.<sup>138</sup> These suits alleged inadequate consideration of the effects of climate change on species and at least some paired administrative law challenges for unjustified agency changes in position. Other cases stem from decisions related to mining,<sup>139</sup> dams,<sup>140</sup> oil and gas leasing,<sup>141</sup> or management regimes<sup>142</sup> which together with climate change have cumulative impacts on listed or vulnerable species. Some of these lawsuits specifically concern fossil fuel extraction activities contributing to climate change, such as a suit contesting the sale of oil and gas leases within and affecting sage-grouse habitat, alleging,

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<sup>134</sup> [Crow Indian Tribe et al v. United States of America et al.](#), No. 9:17-cv-00089 (D. Mont., delisting rule vacated and remanded Sept. 24, 2018)(challenging delisting of Yellowstone grizzly distinct population segment).

<sup>135</sup> [Center for Biological Diversity v. Zinke](#), No. 3:18-cv-00064 (D. Alaska, filed Mar. 8, 2018)(challenging determination that listing of Pacific walrus as endangered or threatened was not warranted with claims under the APA and ESA for failure to explain change in position and account for the latest science on projected loss of sea ice due to climate change).

<sup>136</sup> [Center for Biological Diversity v. Zinke](#), No. 1:18-cv-00862 (D.D.C., filed Apr. 12, 2018)(seeking to compel determination on 2013 petition to list the Tinian monarch as endangered or threatened).

<sup>137</sup> [Friends of Animals v. U.S. Fish & Wildlife Service](#), No. 1:18-cv-01544 (D. Colo., settlement agreement reached Dec. 21, 2018)(seeking to compel the U.S. Fish and Wildlife Service to designate critical habitat for the western distinct population segment of the yellow-billed cuckoo).

<sup>138</sup> [WildEarth Guardians v. Zinke](#), No. 4:18-cv-0004 (D. Ariz., mot. to dismiss granted in part and den. In part, Mar. 30, 2019)(challenging recovery plan for Mexican wolves).

<sup>139</sup> [Idaho Conservation League v. U.S. Forest Service](#), No. 1:18-cv-00504 (D. Idaho, filed Nov. 13, 2018) (challenging to approval of a mining exploration project including an alleged violation to provide “quantitative or detailed information” to support the conclusion that the project and threats posed by climate change, fire suppression, and other factors would not have measurable cumulative effects on whitebark pine).

<sup>140</sup> [Save the Colorado v. Semonite](#), No. 1:18-cv-03258 (D. Colo., filed Dec. 19, 2018).

<sup>141</sup> [Center for Biological Diversity v. U.S. Forest Service](#), No. 2:17-cv-00372 (S.D. Ohio, filed May 2, 2017) (challenging authorization of oil and gas leasing in the Wayne National Forest).

<sup>142</sup> [Center for Biological Diversity v. Ross](#), No. 1:18-cv-00112 (D.D.C., filed Jan. 18, 2018) (alleging that authorization and management of lobster fishery violated federal law due to impacts on North American right whales).

among other things, a failure to address likely climate change impacts to the sage-grouse and its habitat.<sup>143</sup>

- *Pipelines & Other Fossil Fuel Infrastructure*: Fifteen of the cases in this category concerned pipelines or natural gas infrastructure. Among other claims, litigants alleged inadequate consideration of GHG emissions and climate impacts as part of environmental review under NEPA in approval of natural gas pipelines and other fossil fuel infrastructure projects.<sup>144</sup> Such cases often involve challenges to FERC's authorization of projects that are then challenged in court. One issue contested is how a 2017 D.C. Circuit decision requiring quantification of downstream emissions<sup>145</sup> for a pipeline project will be applied to other project determinations.<sup>146</sup> They have also been a battleground where FERC has attempted to shift its policy so that less consideration and quantification of greenhouse gas emissions will be necessary.<sup>147</sup> Some have also been a battleground between state entities seeking to halt

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<sup>143</sup> [Western Watersheds Project v. Zinke](#), No. 1:18-cv-00187 (D. Idaho, mot. for preliminary injunction granted, Sept. 21, 2018).

<sup>144</sup> See e.g., [In re Atlantic Coast Pipeline, LLC](#), No. 18-1224 et al. (D.C. Cir. 2018)(challenging to FERC approval of the Atlantic Coast natural gas pipeline); [Appalachian Voices v. Federal Energy Regulatory Commission](#), No. 18-1114 (4<sup>th</sup> Cir., appeal dismissed and stay den. Mar. 21, 2018)(challenging to FERC approval of the Atlantic Coast natural gas pipeline); [Delaware Riverkeeper Network v. Federal Energy Regulatory Commission](#), No. 18-1128 (D.C. Cir., filed May 9, 2018)(challenging FERC approval of PennEast Pipeline project).

<sup>145</sup> *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.").

<sup>146</sup> [Birckhead v. Federal Energy Regulatory Commission](#), No. 18-1218 (D.C. Cir., filed Aug. 8, 2018)(challenging FERC authorization of project involving construction and replacement of natural gas compression facilities).

<sup>147</sup> See [Otsego 2000, Inc. v. Federal Energy Regulatory Commission](#), No. 18-1188 (D.C. Cir., dismissed May 9, 2019)(asserting that FERC acted arbitrarily and capriciously in departing from D.C. Circuit precedent requiring FERC to evaluate greenhouse gas emissions from fossil fuel production and transportation projects). The case was dismissed for lack of jurisdiction and the court did not rule on the merits. For more detailed analysis of how upstream and downstream greenhouse gas emissions must be considered during environmental review see Michael Burger and Jessica Wentz, *Evaluating the Effect of Fossil Fuel Supply Projects on Greenhouse Gas Emissions and Climate Change Under NEPA* (forthcoming 2019, draft on file with the author).



the pipeline and FERC's authorization.<sup>148</sup> In addition to NEPA and APA arguments, a suit concerning the Bayou Bridge Pipeline project in Louisiana also raised arguments regarding climate impacts on the project and environment, alleging that the Corps' "public interest" review pursuant to the Clean Water Act and Rivers and Harbors Act did not adequately consider floodplains and coastal loss impacts and asserting that Executive Order 11988 required the Corps to "consider alternatives to avoid adverse effects and incompatible development in the floodplains."<sup>149</sup>

- *Oil & Gas Leasing*: Eleven cases in this category concerned oil & gas leasing or other development. These included cases concerning offshore and onshore extraction. In regard to offshore development, one suit challenged federal actions authorizing oil and gas development project in the Beaufort Sea offshore of Alaska with claims under NEPA, APA, OCSLA, and the ESA<sup>150</sup> and another concerned Gulf offshore leases with claims under NEPA and APA.<sup>151</sup> The Beaufort case raised claims related both to inadequate consideration of greenhouse gas emissions and to impacts of a changing climate on vulnerable species. A variety of challenges related to inadequate consideration of greenhouse gas emissions were brought under NEPA and APA to contest oil and gas lease sales across large areas of public

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<sup>148</sup> [In re Valley Lateral Project](#), No. 17-3770, 17-3503 (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. [In re Millennium Pipeline Co.](#), No. CP16-17-000 (FERC, rehearing and stay den. Nov. 16, 2017). The 2<sup>nd</sup> Circuit denied a petition for review. [New York State Department of Environmental Conservation v. Federal Energy Regulatory Commission](#), No. 17-3503, 17-3770 (2d. Cir. 2017)(finding NYSDEC had waived its authority to deny a CWA permit irrespective of the GHG question).

<sup>149</sup> [Atchafalaya Basinkeeper v. U.S. Army Corps of Engineers](#), No. 18-30257 (5<sup>th</sup> Cir., preliminary injunction vacated Jul. 6, 2018).

<sup>150</sup> [Center for Biological Diversity v. Zinke](#), No. 18-73400 (9<sup>th</sup> Cir., filed Dec. 17, 2018).

<sup>151</sup> [Gulf Restoration Network v. Zinke](#), No. 1:18-cv-01674 (D.D.C., filed Jul. 16, 2018).



lands in the National Petroleum Reserve–Alaska,<sup>152</sup> and public lands in Western Colorado,<sup>153</sup> Colorado and Utah,<sup>154</sup> and Montana.<sup>155</sup>

- *Water & Wildfire-Related Management Decisions*: Several cases filed in 2017 alleged failure to adequately consider how climate change would reduce water availability or quality, typically under NEPA or the CWA. The claims concern integration of climate change considerations into agency practice, e.g. when issuing national shellfish permits<sup>156</sup> and updating the USACE’s Master Water Control Manual for federal dams.<sup>157</sup> In 2018, litigants filed a suit challenging U.S. Forest Service plan to reduce wildfire risk.<sup>158</sup>
- *State Interests in Federal Climate Consideration*: In 2017, state government entities argued federal agencies’ decisions failed to consider future resilience projects or climate impacts affecting state-level entities.<sup>159</sup> In 2017, California further challenged the Trump Administration’s border wall for violating NEPA, CZMA, and other statutory law.<sup>160</sup>
- *Infrastructure Resilience*: Several 2018 cases concerned inadequate consideration of the impacts of climate change on infrastructure under NEPA and other statutes. These cases

<sup>152</sup> [Natural Resources Defense Council, Inc. v. Zinke](#), No. 3:18-cv-00031 (D. Alaska, order Dec. 6, 2018); [Northern Alaska Environmental Center v. U.S. Department of the Interior](#), No. 3:18-cv-00030 (D. Alaska, order Dec. 6, 2018).

<sup>153</sup> [Wilderness Workshop v. U.S. Bureau of Land Management](#), No. 1:18-cv-00987 (D. Colo., filed Apr. 26, 2018).

<sup>154</sup> [Rocky Mountain Wild v. Zinke](#), No. 1:18-cv-02468 (D. Colo., filed Sept. 27, 2018).

<sup>155</sup> [WildEarth Guardians v. U.S. Bureau of Land Management](#), No. 4:18-cv-00073 (D. Mont., filed May 15, 2017).

<sup>156</sup> [Center for Food Safety v. U.S. Army Corps of Engineers](#), No. 2:17-cv-01209 (W. D. Wash., filed Aug. 10, 2017).

<sup>157</sup> [National Wildlife Federation v. U.S. Army Corps of Engineers](#), No. 1:17-cv-00772 (D.D.C., filed Apr. 27, 2017).

<sup>158</sup> [Klamath-Siskiyou Wildlands Center v. Grantham](#), No. 2:18-cv-01604 (E.D. Cal., filed Oct. 16, 2018).

<sup>159</sup> See e.g., [Regents of University of California v. Federal Emergency Management Agency](#), No. 3:17-cv-03461 (N.D. Cal., stipulation entered Nov. 8, 2017) (challenging FEMA’s failure to renew wildfire mitigation grants); [Rosado v. Pruitt](#), No. 1:17-cv-04843 (E.D.N.Y., filed Aug. 17, 2017) (challenging decision approving ocean-dumping site in the Long Island Sound).

<sup>160</sup> [In re Border Infrastructure Environmental Litigation](#), Nos. 18-55474, 18-55475, 18-55476 (9<sup>th</sup> Cir., affirmed Feb. 11, 2019)(affirming summary judgment for Department of Homeland Security in challenge to waivers for construction of border wall projects in California).

include challenges to federal allocation for a passenger railroad in Florida,<sup>161</sup> a resiliency analysis for Railroad Bridge in Connecticut,<sup>162</sup> and a proposal for a Colorado dam.<sup>163</sup>

### Key Developments:

While many of these cases are still pending, recent decisions offer some information on how these different types of cases are shaping climate change law by creating precedent to consider climate change impacts and greenhouse gas emissions, but may not ultimately stop a project and are also subject to various procedural limitations.<sup>164</sup> All decisions discussed below concern cases filed in 2017 or 2018 from the underlying dataset unless explicitly noted otherwise.

- *Oil & Gas Leasing*: Two federal court decisions from early 2019 on oil and gas leasing upheld legal obligations for agencies to consider greenhouse gas emissions during environmental review. A Colorado District Court recently found that BLM failed to comply with NEPA by not taking a hard look at the reasonably foreseeable indirect impacts from combustion of oil and gas, but deferred a final ruling on the remedies until further briefing is received.<sup>165</sup> Another recent decision concerning Wyoming leases, (which was not part of the dataset because it was filed in 2016), resulted in a decision from the D.C. District Court to remand the environmental review back to the agency upon a finding that the review failed to take a

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<sup>161</sup> [Martin County, Florida v. U.S. Department of Transportation](#), No. 1:18-cv-00333 (D.D.C., filed Feb. 13, 2018)(alleging federal defendants did not take a hard look at the project's environmental impacts under NEPA, including adverse environmental impacts from sea level rise).

<sup>162</sup> [Norwalk Harbor Keeper v. U.S. Department of Transportation](#), No. 3:18-cv-00091 (D. Conn., filed Jan. 18, 2018)(contending that the defendant agencies had failed to consider the reasonable alternative of a fixed bridge that would promote resiliency to climate change and severe weather events, and particularly to heatwaves).

<sup>163</sup> [Save the Colorado v. Semonite](#), No. 1:18-cv-03258 (D. Colo., filed Dec. 19, 2018)(alleging failure to take a hard look at how climate change will likely affect the ability of the project (as compared to other alternatives) to satisfy Denver Water's stated purpose and need).

<sup>164</sup> For a full analysis of changing legal requirements concerning greenhouse gas emissions accounting, see Burger & Wentz (forthcoming 2019), *supra* note 147.

<sup>165</sup> [Citizens for a Healthy Community v. U.S. Bureau of Land Management](#), No. 1:17-cv-02519 (D. Colo. order Mar. 27, 2019).

“hard look” at downstream GHG emissions or consider the cumulative impacts of the emissions. The court enjoined issuance of these leases and remanded the reviews to the agencies to cure the defects, but did not vacate the agency’s determination.<sup>166</sup> These cases demonstrate the courts’ role in upholding legal requirements under NEPA to consider greenhouse gas emissions—even in light of the Trump Administration’s attempts to undermine these requirements—and capacity to slow down the development of fossil fuel resources on federal lands, but still may choose to not vacate an agency’s decision and can only enforce the procedural requirements of NEPA to give a hard look to these issues. Recent decisions concerning environmental review of oil and gas development in the NPR-A were found to be time-barred<sup>167</sup> or not necessary prior to site specific analysis.<sup>168</sup>

- *Pipeline & Natural Gas Infrastructure*: A complicated web of litigation surrounds proposed pipeline projects so these decisions are not necessarily fully representative of how the projects fare in court, but the recent climate-related decisions have met challenges under FERC and the courts. FERC has authorized projects and then denied rehearing in several petitions raising arguments around the adequacy of greenhouse gas emission considerations for the Atlantic Bridge Project,<sup>169</sup> the Mountain Valley Pipeline Project,<sup>170</sup> and the PennEast Project.<sup>171</sup> Two of these authorizations have been upheld by the D.C. Circuit and one is still pending before that court. Another challenge to FERC authorization for a natural gas compressor station project in New York (the New Market Project), marked FERC’s policy departure including estimates of upstream and downstream GHG emissions in its pipeline

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<sup>166</sup> [WildEarth Guardians v. Zinke](#), No. 1:16-cv-01724 (D.D.C., order Mar. 19, 2019).

<sup>167</sup> [Natural Resources Defense Council, Inc. v. Zinke](#), No. 3:18-cv-00031 (D. Alaska, order Dec. 6, 2018).

<sup>168</sup> [Northern Alaska Environmental Center v. U.S. Department of the Interior](#), No. 3:18-cv-00030 (D. Alaska, order Dec. 6, 2018).

<sup>169</sup> [Town of Weymouth v. Federal Energy Regulatory Commission](#), No. 17-1135 (D.C. Cir., pet. for review den. Dec. 27, 2018)(upholding FERC approval of Atlantic Bridge Project).

<sup>170</sup> [Appalachian Voices v. Federal Energy Regulatory Commission](#), No. 18-1114 (4<sup>th</sup> Cir., appeal dismissed and stay den. Mar. 21, 2018)(upholding FERC approval for Mountain Valley Pipeline and rejecting claims regarding review of downstream emissions).

<sup>171</sup> [Delaware Riverkeeper Network v. Federal Energy Regulatory Commission](#), No. 18-1128 (D.C. Cir., filed May 9, 2018)(challenging FERC approval of PennEast Pipeline project).

orders, but was recently dismissed by the D.C. Circuit for lack of jurisdiction.<sup>172</sup> A Fourth Circuit challenge to FERC authorization of the Atlantic Coast pipeline alleging inadequate greenhouse gas emissions review was scrapped as premature as the FERC petition for rehearing was still pending.<sup>173</sup> A few cases challenging issuance of CWA permits were also unsuccessful.<sup>174</sup>

- *Other Infrastructure*: The Ninth Circuit affirmed a decision of the federal district court for the Southern District of California upholding waivers of environmental requirements granted by the Department of Homeland Security for construction of certain border wall projects in California.<sup>175</sup>
- *Endangered & Vulnerable Species*: An Idaho federal court granted a preliminary injunction to plaintiffs and ordered BLM to apply 2010 procedures to oil and gas lease sale procedures in sage-grouse habitat.<sup>176</sup> While precedent does support consideration of climate change impacts in the ESA cases, climate does not appear to have been the major determining factor in vacating the grizzly bear delisting<sup>177</sup> and another suit concerning designation of critical

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<sup>172</sup> [Otsego 2000, Inc. v. Federal Energy Regulatory Commission](#), *supra* note 147.

<sup>173</sup> [Appalachian Voices v. Federal Energy Regulatory Commission](#), *supra* note 170.

<sup>174</sup> 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](#) No. 17-1533 (3d. Cir., Pet. Den. Aug. 30, 2017); [Delaware Riverkeeper Network v. U.S. Army Corps of Engineers](#), No. 17-1506 (3d. Cir., Pet. Den. Aug. 23, 2017). In another case, the Second Circuit upheld FERC's denial to reopen the record on a natural gas pipeline passing through New York, ruling that NYSDEC waived the right to deny a CWA permit (rather than on climate grounds). [New York State Department of Environmental Conservation v. Federal Energy Regulatory Commission](#), *supra* note 148.

<sup>175</sup> [In re Border Infrastructure Environmental Litigation](#), Nos. 18-55474, 18-55475, 18-55476 (9<sup>th</sup> Cir., affirmed Feb. 11, 2019). The district court found that the defendants had not violated any "clear and mandatory" obligations under the laws granting the waivers of requirements under the NEPA, ESA, and CZMA, and that in the absence of any such violations there was a jurisdictional bar to hearing any non-constitutional claims. The court rejected all of the plaintiffs' constitutional claims.

<sup>176</sup> [Western Watersheds Project v. Zinke](#), No. 1:18-cv-00187 (D. Idaho, mot. for preliminary injunction granted, Sept. 21, 2018).

<sup>177</sup> [Crow Indian Tribe et al v. United States of America et al.](#), No. 9:17-cv-00089 (D. Mont., delisting rule vacated and remanded Sept. 24, 2018)(challenging delisting of Yellowstone grizzly distinct population segment).

habitat for amphibians was dismissed on lack of standing.<sup>178</sup> A lawsuit to compel designation of critical habitat for the yellow-billed cuckoo went to settlement.<sup>179</sup>

#### 4.4 Advancing or Enforcing Climate Protections through the Courts

Municipalities, states, citizens, and nonprofits also shape the law and public discourse through affirmative litigation to advance climate change protections. These suits include innovative claims under state common law, the public trust doctrine, and the federal constitution. In particular, a wave of common law suits against fossil fuel companies for money damages can shape the public discourse and lead companies to pursue climate regulation in exchange for limiting their liability from such suits. Other suits in this category include administrative and statutory claims to prompt new regulation or to compel performance of reporting or legal obligations under existing climate law that are not currently being executed. If successful, these may also net or contribute to additional climate protection. 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. Even when unsuccessful in the courtroom, they can affect public perception of the climate crisis and prod climate action. These cases represent 18% of the data set and grew as percentage of the cases between 2017 and 2018.

##### By the Numbers:

- *Total Count:* This category contained 28 cases.<sup>180</sup> Eleven filed in 2017 and 17 filed in 2018.

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<sup>178</sup> [California Cattlemen's Association v. U.S. Fish & Wildlife Service](#), No. 1:17-cv-01536 (D.D.C. dismissed for lack of jurisdiction Mar. 27, 2019).

<sup>179</sup> [Friends of Animals v. U.S. Fish & Wildlife Service](#), No. 1:18-cv-01544 (D. Colo., settlement agreement reached Dec. 21, 2018).

<sup>180</sup> See Appendix A for a list of the cases.

- *Petitioners/Plaintiffs*: These cases were brought by municipalities (10), states/tribes (3), private citizens (7), national or international environmental NGOs (7), local/regional NGOs (6).
- *Defendants*: The defendants for these cases included a higher percentage of private companies than other categories: almost half were against companies (13/28). Among company defendants there were fossil fuel companies (11), a utility (1), and an aerospace company. Cases against federal government entities (12) included the EPA (7), the United States (2), DOE (1), and President Trump (2), DOI (1), DoD (1), USDA (1), USACE (1), and the DoT (1). State and local government defendants include the State of Colorado (1), City of Thornton, Colorado (1), and Connecticut officials (1).
- *Laws*: These cases were brought under state tort law (12), the CAA (5), the CWA (3), the EISA (1), securities law (2), the public trust (2), other federal statutory law (4), the U.S. Constitution (6), and the APA (5).

#### Issues Raised:

- *Suits Against Fossil Fuel Companies for Damages Caused by Their GHG Emissions*: Thirteen counties and cities across the United States sued major fossil fuel companies under a variety of common law and state statutory claims, seeking money damages for companies' continued production of GHG emissions they knew posed climate change harms to citizens.<sup>181</sup> As of May 2019, these municipal suits have been consolidated or related into 7 suits.<sup>182</sup> These municipal suits pursued a variety of state law claims including: public

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<sup>181</sup> While suits raising only claims under state statutory law are not included in the dataset, the defense of these cases raised issues under federal common law and other questions under federal law. The lower court decisions in two of these cases were determined based on questions of federal law. Since federal law questions are integral to the pending decisions in these cases, it puts them within the scope of this analysis of cases shaping federal climate change law and policy.

<sup>182</sup> [Board of County Commissioners of Boulder County v. Suncor Energy \(U.S.A.\), Inc.](#), No. 1:18-cv-01672 (D. Colo. notice of removal filed June 29, 2018); [City of New York v. BP p.l.c.](#), No. 18-2188 (2d. Cir. appeal filed Jul. 6, 2018); [City of Oakland v. BP p.l.c.](#), No. 18-16663 (9th Cir. appeal filed Sept. 4, 2018); [County of](#)

nuisance, strict liability for failure to warn, strict liability for design defect, private nuisance, negligence, negligent failure to warn, unjust enrichment, and trespass.<sup>183</sup> Baltimore and Boulder also alleged violation of state consumer protection acts. All suits sought some form of compensatory damages, including attorneys' fees, punitive damages, and disgorgement of profits. Oakland, San Francisco, Baltimore and King County each sought funding for adaptation programs to mitigate local harms of climate change. Several suits also sought injunctions to abate the harms. Building on the wave of municipal suits, in 2018, Rhode Island became the first state to file a similar suit<sup>184</sup> and the Pacific Coast Federation of Fisherman's Association became the first trade group.<sup>185</sup>

- *Investor & Shareholder-Related Lawsuits:* In 2018, lawsuits also sought to clarify responsibilities for companies to communicate climate-related risks and plans including a securities class action against a utility company in Southern California alleging misrepresentations regarding exposure to wildfire risk<sup>186</sup> and an action by the New York Attorney General alleging a fraudulent scheme by Exxon Mobil Corporation to deceive investors about the company's management of risks posed by climate change regulation.<sup>187</sup> New York City also sued to compel an aerospace company to include New York City

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[Santa Cruz v. Chevron Corp.](#), 18-16376 (9<sup>th</sup> Cir., consolidated Aug. 20, 2018)(consolidating appeal of remand order for claims from the county and municipality of Santa Cruz with claims from San Mateo, Marin, and Imperial Beach); [King County v. BP p.l.c.](#), No. 2:18-cv-00758 (W.D. Wash., stayed Oct. 17, 2018); [Mayor & City Council of Baltimore v. BP p.l.c.](#), No. 1:18-cv-02357 (D. Md. consent order for temporary stay Apr. 22, 2019). For more discussion of these cases see Michael Burger and Jessica Wentz, *Holding Fossil Fuel Companies Accountable for Their Contribution to Climate Change: Where Does the Law Stand?*, (Bulletin of the Atomic Scientists, 2018), available at <http://columbiaclimatelaw.com/files/2018/11/Burger-Wentz-2018-11- Holding-fossil-fuel-companies-accountable-fortheir-contribution-to-climate-change.pdf>.

<sup>183</sup> Different suits pursued different combinations of these claims.

<sup>184</sup> [Rhode Island v. Chevron Corp.](#), No. 1:18-cv-00395 (D.R.I. filed July 13, 2018)(alleging impairment of public trust resources and violations of the State Environmental Rights Act in addition to tort claims).

<sup>185</sup> [Pacific Coast Federation of Fishermen's Associations, Inc. v. Chevron Corp.](#), No. 3:18-cv-07477 (N.D. Cal. notice of removal filed Dec. 12, 2018).

<sup>186</sup> [Barnes v. Edison International](#), No. 2:18-cv-09690 (C.D. Cal., filed Nov. 16, 2018).

<sup>187</sup> [People of the State of New York v. Exxon Mobil Corporation](#), No. 452044/2018 (N.Y. Sup. Ct., filed Oct. 24, 2018).



Pension Funds' Shareholder Proposal for Greenhouse Gas Management Plan in its proxy materials.<sup>188</sup>

- *Compel Additional GHG Standards through Statutory Claims*: In 2017, 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.<sup>189</sup> Also in 2017, Sierra Club filed an action to compel EPA to submit reports on the Renewable Fuel Standard program.<sup>190</sup> In 2018, California and other states sought to compel EPA to implement and enforce emission guidelines for existing municipal solid waste landfills.<sup>191</sup> Also in 2018, a coalition of state and municipal entities also sought to regulate methane from existing oil and gas sources.<sup>192</sup> Both of these 2018 suits also alleged mandatory duties under the CAA.
- *Clean Water Act Updates Including Statutory Claims for Failure to Adapt*: Several suits have also sought to update the Clean Water Act to reflect a changing climate. A 2018 lawsuit challenged the U.S. Army Corps of Engineers' decision to reject a recommended change to the "high tide line" used by the Seattle District to determine the scope of its Section 404 jurisdiction.<sup>193</sup> Another 2018 suit filed by Center for Biological Diversity sought to compel EPA to list Oregon coastal waters as impaired by ocean acidification.<sup>194</sup> These join the "failure to adapt" case filed by the Conservation Law Foundation in 2017, alleging that a fossil fuel company violated its Clean Water Act permits by failing to prepare its energy infrastructure for the foreseeable impacts of climate change.<sup>195</sup>

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<sup>188</sup> [New York City Employees' Retirement System v. TransDigm Group, Inc.](#), No. 1:18-cv-11344 (S.D.N.Y., settled Jan. 18, 2019).

<sup>189</sup> [Humane Society of United States v. Pruitt](#), 1:17-cv-01719 (D.D.C. filed Aug. 23, 2017).

<sup>190</sup> [Sierra Club v. Wheeler](#), No. 1:17-cv-02174 (D.D.C., agreeing to partial consent decree Jan 30, 2019).

<sup>191</sup> [California v. EPA](#), No. 4:18-cv-03237 (N.D. Cal., order May 6, 2019).

<sup>192</sup> [New York v. Pruitt](#), No. 1:18-cv-00773 (D.D.C., filed Apr. 5, 2018).

<sup>193</sup> [Sound Action v. U.S. Army Corps of Engineers](#), No. 2:18-cv-00733 (W.D. Wash., mot. to dismiss den. Feb. 5, 2019).

<sup>194</sup> [Center for Biological Diversity v. EPA](#), No. 6:18-cv-02049 (D. Or., filed Nov. 27, 2018).

<sup>195</sup> [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



- *Rights of Nature and Right to Wilderness*: A 2018 suit made novel claims against the federal government alleging violations of a constitutional right to wilderness and seeking an order requiring the government to prepare and implement a remedial plan to mitigate climate change impacts.<sup>196</sup> This suit join a 2017 “rights of nature” case seeking rights for the Colorado River and alleging the impacts of climate change as one of the risks faced by the river.<sup>197</sup>
- *Public Trust*: Public trust arguments are an important element of innovative litigation seeking to advance climate change law. New suits were filed in 2017 and 2018 at the state level, but were outside the scope of this analysis since they raised no federal arguments.<sup>198</sup> The *Juliana* suit concerned a federal public trust doctrine continued to wind a complicated path through the courts in 2018.<sup>199</sup> Meanwhile, public trust arguments were also layered into the 2018 Rhode Island suit filed against fossil fuel companies and an unsuccessful 2017 suit 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.<sup>200</sup>

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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.”

<sup>196</sup> [Animal Legal Defense Fund v. United States](#), No. 6:18-cv-01860 (D. Or., filed Oct. 22, 2018).

<sup>197</sup> [Colorado River Ecosystem v. State of Colorado](#), No. 1:17-cv-02316 (D. Colo dismissed Dec. 4, 2017).

<sup>198</sup> See Appendix B.

<sup>199</sup> [Juliana v. United States](#), No. 18-36082 (9<sup>th</sup> Cir., oral argument heard Jun. 4, 2019).

<sup>200</sup> [Clean Air Council v. United States](#), No. 2:17-cv-04977 (E.D. Pa. dismissed Feb. 19, 2019). 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.

- *Other Constitutional Claims:* In 2017 and 2018, citizens and NGO plaintiffs have brought a few other constitutional challenges to advance climate change policies. Several of these arguments have been quickly dismissed or settled.<sup>201</sup>

#### Key Developments:

Many of these cases are still pending, but early decisions indicate that some of these strategies are more effective for advancing and enforcing climate protections than others. Several constitutional claims have been dismissed and while several of the suits against fossil fuel companies for damages from their GHG emissions remain pending, there have been two rulings against plaintiffs from federal district courts. Suits to compel agencies to fulfill statutory obligations have made more initial progress. New York City's five public pension funds also succeeded in getting an aerospace company to include their shareholder proposal requesting that the company adopt a management plan for greenhouse gas emissions in its proxy materials.<sup>202</sup> Further discussion of emerging successes and setbacks in common law, statutory, and constitutional suits follows below:

- *Suits Against Fossil Fuel Companies for Damages Caused by Their GHG Emissions:* Of the suits filed against fossil fuel companies for damages stemming from their GHG emissions, the San Francisco/Oakland and New York suits were dismissed by two different district

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<sup>201</sup> See [Holmquist v. United States](#), No. 2:17-cv-00046 (E.D. Wash. dismissed Jul. 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;" [Willmeng v. City of Thornton](#), No. 1:18-cv-02636 (D. Colo., stipulation filed Oct. 20, 2018);(arguing that Colorado city and its mayor violated the First Amendment for blocking two residents' comments about hydraulic fracturing); [de Mejias v. Malloy](#), No. 2:18-cv-00817 (D. Conn., Defs. Mot. Summ. J. granted Oct 25, 2018)(challenging Connecticut's transfer of funds collected from ratepayers and held by utilities for clean energy and energy efficiency purposes to Connecticut's General Fund.) Now appealed before the Second Circuit.

<sup>202</sup> [New York City Employees' Retirement System v. TransDigm Group, Inc.](#), No. 1:18-cv-11344 (S.D.N.Y., settled Jan. 18, 2019).

courts.<sup>203</sup> In light of the transboundary nature of the problem and the need for a broad-scale comprehensive solution, both courts ruled that any nuisance claims arose under federal common law and would be displaced by the Clean Air Act. Both decisions were appealed and the appeals remain pending. The San Mateo and Santa Cruz suits were remanded to state court and the defendants' appeals of the remand orders were consolidated, where some speculate the cases could fare better, and that remand has been appealed.<sup>204</sup> The King County suit has been stayed pending the appeal of the dismissal of the San Francisco/Oakland suit<sup>205</sup> and the Baltimore suit parties agreed to temporarily stay any remand order.<sup>206</sup> In the Boulder suit, plaintiffs have filed a motion to remand the case to state court.<sup>207</sup>

- *Suits to Compel Compliance with Statutory Obligations:* Plaintiffs have found some early success in these suits. A federal court found on summary judgment that EPA failed to fulfill mandatory duties to implement and enforce emission guidelines for existing municipal solid waste landfills.<sup>208</sup> An agreement was also reached that will compel report production to resolve a citizen suit alleging EPA failed to prepare timely reports on the renewable fuel standard program.<sup>209</sup> Another action to compel EPA to move forward with methane regulations for existing sources in the oil and gas sector continues to progress and an action to compel EPA to respond to a 2009 petition requesting that concentrated animal feeding operations be regulated as sources of air pollution was dismissed by stipulation of the parties.

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<sup>203</sup> [City of New York v. BP p.l.c.](#), No. 18-2188 (2d. Cir. appeal filed Jul. 6, 2018); [City of Oakland v. BP p.l.c.](#), No. 18-16663 (9th Cir. appeal filed Sept. 4, 2018).

<sup>204</sup> [County of Santa Cruz v. Chevron Corp.](#), 18-16376 (9th Cir., consolidated appeals of remand orders Aug. 20, 2018).

<sup>205</sup> [King County v. BP p.l.c.](#), No. 2:18-cv-00758 (W.D. Wash., stayed Oct. 17, 2018).

<sup>206</sup> [Mayor & City Council of Baltimore v. BP p.l.c.](#), No. 1:18-cv-02357 (D. Md. consent order for temporary stay of any remand order Apr. 22, 2019).

<sup>207</sup> [Board of County Commissioners of Boulder County v. Suncor Energy \(U.S.A.\), Inc.](#), No. 1:18-cv-01672 (D. Colo. notice of removal filed June 29, 2018).

<sup>208</sup> [California v. EPA](#), No. 4:18-cv-03237 (N.D. Cal., order May 6, 2019).

<sup>209</sup> [Sierra Club v. Wheeler](#), No. 1:17-cv-02174 (D.D.C., agreeing to partial consent decree Jan 30, 2019).

- *Constitutional Suits*: Several of the constitutional suits have been quickly dismissed or settled. Two cases brought by citizens, including one pro se claim against more than 120 defendants for failure to address climate change, were dismissed.<sup>210</sup> The case arguing for the rights of the Colorado River was also dismissed.<sup>211</sup> 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 for deregulatory activities was also dismissed.<sup>212</sup> Federal claims were dismissed without prejudice in a case concerning Connecticut's transfer of funds collected from ratepayers and held by utilities for clean energy and energy efficiency purposes to Connecticut's General Fund.<sup>213</sup> While not resulting in a decision on the merits, plaintiffs were more successful in a free speech lawsuit. Two Colorado residents who wrote about the dangers of hydraulic fracturing on their mayor's official Facebook page and were subsequently blocked from posting on the page filed a First Amendment lawsuit against the City of Thornton, Colorado, and its mayor pro tem. They were successful in getting a stipulation entered agreeing to unblock them from the mayor's official Facebook page.<sup>214</sup>

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

Representing 19% 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

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<sup>210</sup> [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 Jul. 14, 2017).

<sup>211</sup> [Colorado River Ecosystem v. State of Colorado](#), No. 1:17-cv-02316 (D. Colo. dismissed Dec. 4, 2017).

<sup>212</sup> [Clean Air Council v. United States](#), No. 2:17-cv-04977 (E.D. Pa. dismissed Feb. 19, 2019).

<sup>213</sup> [de Mejias v. Malloy](#), No. 2:18-cv-00817 (D. Conn., Defs. Mot. Summ. J. granted Oct 25, 2018). An appeal is pending before Second Circuit.

<sup>214</sup> [Willmeng v. City of Thornton](#), No. 1:18-cv-02636 (D. Colo., stipulation filed Oct. 20, 2018).

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.

These cases declined in 2018. Most likely this is due to the fact that the Obama-era policies have largely already been litigated or rolled back. New suits in this category targeted local officials and lawyers involved in the municipal suits seeking damages from fossil fuel companies for harms from their GHG emissions and state-level denial of permits to develop a coal terminal. They also included FOIA lawsuits concerning Obama and Trump Administration activities.

#### By the Numbers:

- *Total Count:* The data set includes 7 cases filed in 2018, 18 cases filed in 2017, and an additional 5 cases filed pre-2017. (As noted above, the only continuing cases considered are those 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).
- *Plaintiffs/Petitioners:* These cases came predominantly from industry voices in fossil fuel-intensive sectors including from private companies either individually or in coalition (13), trade groups (4), conservative think tanks (5), private citizens (3), and a state-level entity (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 the 25 cases filed in 2017 and 2018 included federal agency defendants at the EPA (5), the Dept. of State (4), DOI (2), Treasury (1), and DOE (1). Others challenged state-level entities (8), municipal officials or their lawyers (2), 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. (The defendants in the abeyance actions were not counted in the above figures because of how this litigation pivoted in 2017 to have the agencies cease defending the rules—see note in Part 3.2.2.)
- *Laws:* The eighteen cases from 2017 fall under several categories. They involved the U.S. Constitution (9), FOIA (5), the CAA (5), the APA (3), the CWA (3), the NGA (2), the federal energy statute (EISA, EPCA, or other)(2), the ESA or other wildlife law (2), the NEPA (2), the Racketeer Influenced and Corrupt Organizations Act (RICO)(1), other statutory law (3), a defamation action under common law (1), and an abuse of process claim 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).

#### Issues Raised:

- *Petitions for Review of Obama Administration Greenhouse Gas Emissions Standards:* In 2017, Industry actors, including trade groups and affected companies, petitioned EPA for review or reconsideration of rules concerning energy efficiency standards for lamps,<sup>215</sup> refrigerant standards,<sup>216</sup> GHG and fuel efficiency standards for light-duty vehicles,<sup>217</sup> and renewable

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<sup>215</sup> [National Electrical Manufacturers Association v. United States Department of Energy](#), 17-1341 (4<sup>th</sup> Cir. dismissed Jul. 10, 2017).

<sup>216</sup> [National Environmental Development Association's Clean Air Project v. EPA](#), No. 17-1016 (D.C. Cir. filed Jan. 17, 2017).

<sup>217</sup> [Alliance of Automobile Manufacturers v. EPA](#), No. 17-1086 (D.C. Cir. dismissed Mar. 29, 2017).

fuel standards.<sup>218</sup> Subsequently, the administration has taken action on three out of the four standards.<sup>219</sup>

- *FOIA Actions Seek Obama Administration Records*: Additional FOIA suits were filed in 2018 by the Competitive Enterprise Institute seeking records related to international climate change negotiations<sup>220</sup> and the Institute for Energy Research seeking domestic climate disclosures.<sup>221</sup> These joined 2017 FOIA suits also seeking information on international climate negotiations and associated interactions with external stakeholders (see Climate Litigation Report Year One for more information).
- *Attack Critics of the Fossil Fuel Industry*: Fossil fuel companies took legal action against their critics. In 2018, Exxon Mobil Corporation targeted municipal officials and their lawyers, seeking pre-suit depositions and documents in anticipation of potential claims of abuse of process, conspiracy, infringement of Exxon's rights in connection with California municipalities' climate change lawsuits seeking damages from fossil fuel companies for the harms caused by GHG emissions of those companies' products.<sup>222</sup> These joined a 2017 suit under the Racketeer Influenced and Corrupt Organizations Act (RICO) against Greenpeace International and other environmental activist groups who protested the Dakota Access Pipeline<sup>223</sup> and a defamation action against John Oliver for statements on the Last Week Tonight show.<sup>224</sup>

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<sup>218</sup> [Coffeyville Resources Refining & Marketing, LLC v. EPA](#), 17-1044 (D.C. Cir., filed Feb. 9, 2017).

<sup>219</sup> *Supra* Part 2.1.

<sup>220</sup> [Competitive Enterprise Institute v. U.S. Department of State](#), No. 1:18-cv-00276 (D.D.C., filed Feb. 7, 2018).

<sup>221</sup> [Institute for Energy Research v. U.S. Department of the Treasury](#), No. 1:18-cv-01677 (D.D.C. filed Jul. 17, 2018).

<sup>222</sup> [In re Exxon Mobil Corp.](#), No. 02-18-00106-CV (Tex. App., filed Apr. 9, 2018)(filing appeal).

<sup>223</sup> [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”).

<sup>224</sup> [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



- *Freeze Litigation over the Obama Administration Climate Rules:* In 2017, the EPA asked the courts to put litigation concerning major Obama Administration climate-related rules on hold while the current administration reviewed the rules.<sup>225</sup> In the case of the litigation over the Clean Power Plan, these abeyances are coupled with a judicial stay,<sup>226</sup> freezing the rule from taking effect and putting the EPA in violation of its statutory obligations under the CAA.<sup>227</sup>
- *Contest Denials of State Permits for Fossil Fuel Infrastructure:* In 2017, companies sought to advance their fossil fuel-related infrastructure projects by contesting state-level entities' permitting decisions and authorities.<sup>228</sup> In 2018, two new suits were filed by a coal terminal developer who was denied permits by Washington State.<sup>229</sup> Combined with the "pro" cases

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and Murray Energy "appear to be on the same side as black lung." Such cases could have a chilling effect on fossil fuel critics.

<sup>225</sup> 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).

<sup>226</sup> *W. Virginia v. E.P.A.*, 136 S. Ct. 1000, 194 L. Ed. 2d 17 (2016).

<sup>227</sup> In its August 2017 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).

<sup>228</sup> 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 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).

<sup>229</sup> [Millennium Bulk Terminals Longview, LLC v. Washington State Department of Ecology](#), No. 18-2-00994-08 (Wash. Super. Ct., filed Sept. 6, 2018); [Lighthouse Resources Inc. v. Inslee](#), No. 3:18-cv-05005 (W.D. Wash., stayed pending state court action Apr. 11, 2019). These both concern a Washington coal export terminal which the state denied permits. *Id.*



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.)

- *Potential Liability for Climate Adaptation in Decisionmaking*: In 2018, a developer challenged the Virginia Beach City Council’s denial of a rezoning application for a residential development on the basis that the developer failed to provide a stormwater analysis that accounted for 1.5 foot sea level rise and based on other flooding concerns.<sup>230</sup> The developer asserted that the defendants’ actions were arbitrary and capricious, ultra vires, and in violation of developer’s Equal Protection rights.

#### Key Developments:

While several cases remain pending, these suits have undermined climate protections in a few key ways.

- *Review of Rules to Limit GHG Emissions*: 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 Greenhouse Gas Emissions Standards Under the Midterm Evaluation.<sup>231</sup> The other, a petition for review of energy efficiency standards for lamps, was voluntarily dismissed upon the agreement of alternative means of resolution by

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<sup>230</sup> [Argos Properties II, LLC v. City Council for Virginia Beach](#), No. CL18002289-00 (Va. Cir. Ct., dismissed Apr. 24, 2019)(dismissing denial of application for residential development in flood-prone area).

<sup>231</sup> See documents available in case chart. [Alliance of Automobile Manufacturers v. EPA](#), No. 17-1086 (D.C. Cir. dismissed Mar. 29, 2017).

the parties.<sup>232</sup> 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."<sup>233</sup> Five cases involving Obama-era climate rules that were filed prior to 2017 remain held in abeyance. Two cases filed in 2017 concerning renewable fuel standards and an expansion of a ban on HFC's progressed after being held in abeyance. The expansion of the HFC ban was vacated on the same logic that the underlying HFC ban was vacated.<sup>234</sup>

- *Attacks on Critics*: The RICO suit against Dakota Access Pipeline Protestors was dismissed. 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<sup>235</sup> and the defamation action against John Oliver and others was remanded to state court.<sup>236</sup>
- *Pipeline & Infrastructure Project Developments*: Plaintiffs have had mixed initial success in attempting to overturn state-level denials of permits for pipelines. The Second Circuit declined to rehear a decision upholding New York's Denial of water quality certificate for the Constitution Pipeline and the Supreme Court declined to grant certiorari. However, the permit issue remains live because claims concerning the timeliness of the water quality permit were dismissed by the Second Circuit because they were under the jurisdiction of the D.C. Circuit. On February 28, 2019, the D.C. Circuit granted a FERC motion for voluntary remand of another case contesting the timeliness of New York's determination on a water quality certification for the Constitution Pipeline which FERC wanted to reconsider in light

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<sup>232</sup> See documents available in case chart. [National Electrical Manufacturers Association v. United States Department of Energy](#), No. 17-1341 (4<sup>th</sup> Cir. dismissed Jul. 10, 2017).

<sup>233</sup> 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>.

<sup>234</sup> [Mexichem Fluor, Inc. v. EPA](#), No. 17-1024 (D.C. Cir., order Apr. 5, 2019).

<sup>235</sup> [Turning Point USA \(TPUSA\) v. Macomb Community College](#), No. 2:17-cv-12179 (E.D. Mich. dismissed Nov. 13, 2017).

<sup>236</sup> [Marshall County Coal Co. v. Oliver](#), No. 5:17-cv-00099-JPB (N.D. W. Va. remand granted Aug. 10, 2017).

of *Hoopa Valley Tribe v. FERC*.<sup>237</sup> In another case concerning the Valley Lateral Project, another New York pipeline project, the Northern District of New York granted a pipeline company's request for a preliminary injunction barring NYSDEC from enforcing stream disturbance and freshwater wetlands permitting requirements to prevent the company from beginning construction on a pipeline. The court found that the company had demonstrated irreparable harm and a strong likelihood of success on the merits of the argument that the federal Natural Gas Act preempted state permitting requirements. A third case is still pending which challenges the Washington Department of Ecology's denial of a water quality certificate for coal export terminal in Washington.

- *ESA Delisting: Federal Court Upheld Denial of Petition to Remove Golden-Cheeked Warbler from Endangered Species List*.<sup>238</sup>
- *Potential Liability for Climate Adaptation Decisionmaking: A Virginia trial court reportedly ruled on April 24, 2019 that the Virginia Beach City Council properly denied a developer's application to build a residential development in an area prone to flooding, but a written order was not available for review at time of publication*.<sup>239</sup>

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<sup>237</sup> [Constitution Pipeline Co. v. Federal Energy Regulatory Commission](#), No. 18-1251 (D.C. Cir., mot. for voluntary remand granted Feb. 28, 2019).

<sup>238</sup> [General Land Office of State of Texas v. U.S. Fish & Wildlife Service](#), No. 1:17-cv-00538 (W.D. Tex., order Feb. 6, 2019).

<sup>239</sup> [Argos Properties II, LLC v. City Council for Virginia Beach](#), No. CL18002289-00 (Va. Cir. Ct., dismissed Apr. 24, 2019)(dismissing denial of application for residential development in flood-prone area).

## 5. CONCLUSION

In its first two years, the Trump Administration set a high-water mark for climate change deregulation, but extralegal rollbacks and other attempts to undermine climate protections by overreaching executive authority, violating statutory requirements for environmental review, or flouting administrative law 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 (81%) of the 159 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 (64%) 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. Twenty of the 129 “pro” climate cases, (16% of the “pro” cases), fell into this category of defending Obama Administration climate change policies and decisions. In 2017-2018, a dozen cases were filed that raised climate change as an issue of fact or law and concerned delay or suspension of climate-related rules. Five of these cases have resulted in a judicial decision against the Trump Administration (of which one has an appeal pending). Five pressured the Trump Administration to end the delay at issue in the lawsuit, and were then dismissed or otherwise allowed to lapse prior to a decision on the merits. Two are pending. These cases are building a body of precedent that clarifies limitations on the executive branch’s ability to destabilize duly promulgated regulations, to act without regard to proper procedure, and to make decisions that lack an evidentiary basis. None of the cases in the dataset concerning a revocation of climate regulations or implementation of weakened climate regulation had advanced to judicial or

other resolution by May 2019, but three cases concerning repeals or withdrawals of climate policy that passed through notice and comment rulemaking remain pending without any lower court decisions.

Courts have also checked the Trump Administration's efforts to promote fossil fuel extraction on public lands and in public waters when those actions violated statutory obligations for environmental review, failed administrative law requirements to justify a change in policy, or overreached executive authority. These decisions have affected policies attempting to reopen federal lands to coal leasing, reopen oil and gas leasing in previously protected areas of the Arctic and Atlantic Oceans, and reverse denial of a permit for the Keystone XL pipeline. Further, climate change litigation extends much more broadly than suits directly challenging the reversal of Obama Administration climate policies. Another 109 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 remain pending or have appeals pending in May 2019, but already cases have produced documents under FOIA, upheld obligations to consider climate change during environmental review, and statutory obligations to implement and enforce regulations for CO<sub>2</sub>, methane, and other emissions from existing landfills. A few other suits have upheld responsibilities to consider climate change during environmental review.

Additionally, roughly one-fifth (19%) 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 Trump Administration's efforts to bypass the requirements of administrative and statutory law to delay and expedite reversal of climate change policies have fared poorly in

court thus far. Nonetheless, the ultimate fate of the underlying policies remains uncertain. In 2018 and 2019, the Trump Administration's efforts to repeal and replace Obama Administration climate change policies through notice and comment rulemaking continue to progress. As these rules are finalized, more climate change litigation will likely seek to enforce the substantive judicial standards for deregulation. As these and other cases develop, the courts will continue to be an important arena for enforcing administrative, statutory, and other legal obligations and preventing the establishment of agency precedent that flouts these requirements.

## 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 (2017)						
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 NGO, Other Intl/Natl NGO	Federal Highway Administration	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 Group	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	Appliance, Industrial, and Building Standards	Challenge to U.S. Department of Energy's failure to publish final energy efficiency standards.



Natural Resources Defense Council, Inc. v. Perry	2d Cir.	Municipality, State Government Entity, Intl/Natl Env'tl NGO	DOE	Administrative Procedure Act (APA), Energy Policy & Conservation Act	Appliance, Industrial, and Building Standards	Challenge to the U.S. Department of Energy's decisions to delay the effective date for ceiling fan 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	NHWTS, 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.
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)	Appliance, Industrial, and Building Standards	Action to compel issuance of energy efficiency standards for manufactured housing.
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<b>Defending Obama Administration Climate Policies &amp; Decisions (2018)</b>						
<b>Case</b>	<b>Court</b>	<b>Plaintiff or Petitioner Type</b>	<b>Defendant</b>	<b>Principal Federal Law(s)</b>	<b>Sector</b>	<b>Summary</b>
California v. EPA	D.C. Cir.	Local/Regional Gov Entity	EPA	Clean Air Act (CAA)	Vehicle Emissions & Fuels	Challenges to EPA determination to withdraw its Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles because the standards appeared to be too stringent.
California v. U.S. Bureau of Land Management	N.D. Cal.	Local/Regional Gov Entity, Intl/Natl Envntl NGO, Local/Regional NGO	BLM, DOI	APA, FLPMA, MLA, NEPA , Indian Mineral Leasing Act (IMLA)	Fossil Fuel Extraction, Processing, & Transport	Challenge to BLM's repeal of 2015 regulations governing hydraulic fracturing on federal and tribal lands.
California v. Zinke	N.D. Cal.	Intl/Natl Envntl NGO, Local/Regional Gov Entity	BLM, DOI	APA, NEPA, MLA, FLPMA	Fossil Fuel Extraction, Processing, & Transport	Challenge to BLM's repeal of key provisions of the 2016 Waste Prevention Rule for oil and gas development on public and tribal lands.
Environmental Defense Fund v.	D.C. Cir.	Intl/Natl Envntl NGO,		Clean Air Act (CAA)	Vehicle Emissions &	Challenge to EPA "no action assurance"

EPA		Local/Regional Gov Entity			Fuels	memorandum that provided assurance that EPA would not enforce greenhouse gas emission and fuel efficiency standards against small manufacturers of glider kits and vehicles.
Natural Resources Defense Council v. Wheeler	D.C. Cir.	Intl/Natl Envntl NGO, Local/Regional Gov Entity	EPA	Clean Air Act (CAA)	Appliance, Industrial, and Building Standards	Challenge to EPA's decision to suspend the 2015 final rule prohibiting or restricting certain uses of HFCs under Clean Air Act's safe alternatives policy.
Rosebud Sioux Tribe v. U.S. Department of State	D. Mont.	Local/Regional Gov Entity (Tribes)	State Dept.	APA, NEPA, National Historic Preservation Act	Fossil Fuel Extraction, Processing, & Transport	Challenge to presidential permit for Keystone XL pipeline.

<b>Demanding Transparency &amp; Scientific Integrity from the Trump Administration (2017)</b>						
<b>Case</b>	<b>Court</b>	<b>Plaintiff or Petitioner Type</b>	<b>Defendant</b>	<b>Principal Federal Law(s)</b>	<b>Sector</b>	<b>Summary</b>
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.
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	D.D.C.	Intl/Natl Environmental	EPA	Freedom of Information Act	Government Records or	Action to compel a response by EPA to a Freedom of

Environmental Responsibility v. EPA		NGO		(FOIA)	Communications Request	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

<b>Demanding Transparency &amp; Scientific Integrity from the Trump Administration (2018)</b>						
<b>Case</b>	<b>Court</b>	<b>Plaintiff or Petitioner Type</b>	<b>Defendant</b>	<b>Principal Federal Law(s)</b>	<b>Sector</b>	<b>Summary</b>
Center for Biological Diversity v. U.S. Department of State	D.D.C.	Intl/Natl Env'tl NGO	State Dept.	APA, FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking Department of State records regarding U.S. Climate Action Report.

Center for Biological Diversity v. U.S. Department of State	D.D.C.	Intl/Natl Env'tl NGO	State Dept., FAA, EPA	APA, FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking to compel disclosure of records regarding aircraft emissions standards and U.S. participation in the 2016 International Civil Aviation Organization (ICAO) carbon dioxide rulemaking process.
Columbia Riverkeeper v. U.S. Department of Energy	D. Or.	Local/Regional Env'tl NGO	DOE	APA, FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking disclosure of documents related to proposed methanol refinery.
Defenders of Wildlife v. U.S. Department of the Interior	D.D.C.	Intl/Natl Env'tl NGO	USFWS, DOI, BLM	FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking documents about plans for fossil fuel development on the Coastal Plain of the Arctic National Wildlife Refuge.
Ecological Rights Foundation v. EPA	N.D. Cal.	Intl/Natl Env'tl NGO	EPA	FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking EPA disclosure of directives to EPA employees since beginning of Trump administration concerning public communications about EPA work and review of EPA work by political appointees.
Environmental Defense Fund v. Department of the Interior	D.D.C.	Intl/Natl Env'tl NGO	DOI, BLM	FOIA	Government Records or Communications Request (Fossil fuel extraction &	Freedom of Information Act lawsuit seeking disclosure of documents related to efforts to roll back Bureau of Land Management's Waste Prevention

					transportation)	Rule.
Environmental Defense Fund v. U.S. Department of Transportation	D.D.C.	Intl/Natl Env'tl NGO	DOT	FOIA	Government Records or Communications Request (Transportation)	Freedom of Information Act lawsuit seeking U.S. Department of Transportation officials' calendars and correspondence related to proposed and anticipated actions to roll back greenhouse gas and fuel efficiency standards for vehicles.
Natural Resources Defense Council v. EPA	S.D.N.Y.	Intl/Natl Env'tl NGO	EPA	FOIA	Government Record or Communications request (Vehicle Emissions)	Freedom of Information Act lawsuit seeking records related to the U.S. Environmental Protection Agency's model for assessing the cost and effectiveness of greenhouse gas emission standards.
Public Employees for Environmental Responsibility v. EPA	D.D.C.	Intl/Natl NGO	EPA	FOIA	Government Records or Communications Request (climate science or scientist participation)	Freedom of Information Act lawsuit seeking to compel EPA to disclose records regarding policies put in place and other measures taken after EPA cancelled scientists' and consultant's participation in Rhode Island climate change conference.
Sierra Club v. EPA	N.D. Cal.	Intl/Natl Env'tl NGO	EPA	FOIA	Government Records or Communications Request (Paris Agreement/anti climate lobbying)	Freedom of Information Act lawsuit seeking to compel disclosure of communications between EPA employees hired at the beginning of the Trump administration and the EPA



						Administrator or external parties.
Sierra Club v. EPA	N.D. Cal.	Intl/Natl Env'tl NGO	EPA	FOIA	Government Records or Communications Request (unethical fossil fuel influence)	Freedom of Information lawsuit seeking external communications and meeting records for EPA staff that Sierra Club alleged had "troubling ties to polluting industries."
Sierra Club v. U.S. Department of Energy	D.D.C.	Intl/Natl Env'tl NGO	DOE	FOIA	Government Records or Communications Request (power plants)	Freedom of Information Act lawsuit seeking correspondence and other documents related to the U.S. Department of Energy's alleged efforts to bail out the coal and nuclear industries
Sierra Club v. U.S. Department of Interior	N.D. Cal.	Intl/Natl Env'tl NGO	DOI	FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking disclosure of external communications of Department of the Interior officials.
Southern Environmental Law Center v. EPA	W.D. Va.	Local/Regional Env'tl NGO	EPA	FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking EPA communications with Heartland Institute regarding potential red team/blue team climate science exercise and other matters.
Union of Concerned Scientists v. U.S. Department of Energy	D.D.C.	Intl/Natl Env'tl NGO	DOE, FERC	FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking correspondence and other records related to potential federal coal and nuclear subsidies.
Wilderness	D.D.C.	Intl/Natl Env'tl	DOI	APA, FOIA	Government	Freedom of Information Act

Society v. U.S. Department of Interior		NGO			Records or Communications Request	lawsuit seeking documents related to the Interior Department's implementation of President Trump's executive order on energy independence.
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<b>Integrating Consideration of Climate Change into Environmental Review &amp; Permitting (2017)</b>						
<b>Case</b>	<b>Court</b>	<b>Plaintiff or Petitioner Type</b>	<b>Defendant</b>	<b>Principal Federal Law(s)</b>	<b>Sector</b>	<b>Summary</b>
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.
Bair v. California Department of Transportation	N.D. Cal.	Intl/Natl Envntl NGO, Local/Regional NGO, Individuals	Local/State Gov Entity	APA, NEPA, Wild and Scenic Rivers Act, Declaratory Judgment Act	Impacts on Land, Water, & Wildlife	Challenge to highway widening project in state park in California.
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.
California Cattlemen's Association v. U.S. Fish & Wildlife Service	D.D.C.	Trade Associations	DOI, USFWS	APA, ESA, Regulatory Flexibility Act	Impacts on Land, Water, & Wildlife	Challenge to designation of critical habitat in California for three amphibian species.

Center for Biological Diversity v. EPA	N.D. Cal.	Intl/Natl Environmental NGO, Local or Regional Group	EPA	Clean Air Act (CAA)	Power Plants, Renewables, and Energy Efficiency	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	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.

				Policy Act (NEPA)		
Citizens for a Healthy Community v. U.S. Bureau of Land Management	D. Colo.	Intl/Natl Env'tl NGO, Local/Regional NGO	BLM, DOI, USDA	NEPA	Impacts on Land, Water, & Wildlife	Challenge to federal actions authorizing oil and gas development in the Bull Mountain Unit in the Colorado River basin.
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	3d Cir.	Local or Regional Group	USACE	Administrative Procedure Act	Fossil Fuel Extraction &	Challenge to Clean Water Act permits for natural gas interstate

Corps of Engineers				(APA), Clean Water Act (CWA), National Environmental Policy Act (NEPA), Natural Gas Act	Transport	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.
In re: Border Infrastructure Environmental Litigation	9 <sup>th</sup> Cir.	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.
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	Impacts on Land, Water, & Wildlife	Challenge to approval of update to the Master Water Control Manual for federal dams and reservoirs in the Apalachicola-

				Policy Act (NEPA), the Water Resources Development Act, Fish and Wildlife Coordination Act		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.
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	D. Colo.	Intl/Natl Environmental	BLM, USACE	Administrative Procedure Act	Impacts on Land,	Challenge to approvals for project facilitating diversion of water

Reclamation		NGO, Local or Regional Group		(APA), Clean Water Act (CWA), National Environmental Policy Act (NEPA)	Water, & Wildlife	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 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	Impacts on Land, Water, & Wildlife	Challenge to approvals for copper mine in Arizona.
Sierra Club v. Federal Energy Regulatory	D.C. Cir.	Local/Regional	FERC	National Environmental	Fossil Fuel Extraction &	Challenge to natural gas pipeline project between Ohio and



Commission				Policy Act (NEPA), Natural Gas Act	Transport	Michigan.
Town of Weymouth v. Federal Energy Regulatory Commission	FERC, D.C. Cir.	Intl/Natl Env'tl NGO, Local/Regional NGO, State/Local Gov Entity	FERC	NEPA, NGA, CZMA	Fossil fuel extraction & transport	Challenge to FERC's approval of the Atlantic Bridge Project, which includes natural gas pipeline and compression facilities in New York, Connecticut, and Massachusetts.
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.

<b>Integrating Consideration of Climate Change into Environmental Review &amp; Permitting (2018)</b>						
Case	Court	Plaintiff or Petitioner Type	Defendant	Principal Federal Law(s)	Sector	Summary
Appalachian Voices v. Federal Energy Regulatory Commission	4th Cir.	Intl/Natl Env'tl NGO, Local Env'tl NGO, Other Local NGO	FERC	National Environmental Policy Act (NEPA), Natural Gas Act	Fossil Fuel Extraction, Processing, & Transport	Challenge to Federal Energy Regulatory Commission's authorization of the Atlantic Coast natural gas pipeline.
Atchafalaya Basinkeeper v. U.S. Army Corps of Engineers	5th Cir.	Intl/Natl Env'tl NGO, Local Env'tl NGO; Trade Industry Group	USACE	APA (National Environmental Policy Act (NEPA), Clean Water Act (CWA), Rivers and	Fossil Fuel Extraction, Processing, & Transport	Challenge to U.S. Army Corps of Engineers permits and authorizations for crude oil pipeline in Louisiana.

				Harbors Act, Executive Order 11988		
Birckhead v. Federal Energy Regulatory Commission	D.C. Cir.	Individuals	FERC	NEPA	Fossil Fuel Extraction, Processing, & Transport	Challenge to FERC approval of project involving construction and replacement of natural gas compression facilities in West Virginia, Kentucky, and Tennessee.
Center for Biological Diversity v. Ross	D.D.C.	Intl/Natl Env'tl NGO, Other NGO	Dept. of Commerce, NOAA, NMFS	APA, ESA, MMPA	Impacts on Land, Water, & Wildlife	Lawsuit alleging that authorization and management of lobster fishery violated federal law due to impacts on North American right whales.
Center for Biological Diversity v. Tennessee Valley Authority	N.D. Ala.	Intl/Natl Env'tl NGO, Local/Regional NGO	TVA	APA, NEPA	Power Plants, Renewables, and Energy Efficiency	Challenge to Tennessee Valley Authority's changes to rate structure, which plaintiffs alleged would discourage investment in renewable energy and energy efficiency.
Center for Biological Diversity v. Zinke	D. Alaska	Intl/Natl Env'tl NGO	USFWS, DOI	APA, ESA	Impacts on Land, Water, & Wildlife	Lawsuit challenging the determination that the listing of the Pacific walrus as endangered or threatened was not warranted.
Center for Biological Diversity v. Zinke	D.D.C.	Intl/Natl Env'tl NGO	USFWS, DOI	APA, ESA	Impacts on Land, Water, & Wildlife	Action to compel determination on 2013 petition to list the Tinian monarch as endangered or threatened.
Center for Biological Diversity v. Zinke	9th Cir.	Intl/Natl Env'tl NGO	USFWS, BOEM, DOI	APA, ESA, NEPA, OCSLA	Fossil Fuel Extraction, Processing, &	Challenge to federal actions authorizing oil and gas development project in the

					Transport	Beaufort Sea offshore of Alaska.
Dakota Rural Action v. U.S. Department of Agriculture	D.D.C.	Intl/Natl Env'tl NGO, Local/Regional NGO	USDA, Farm Service Agency	APA, NEPA	Animal Feedlots	Lawsuit challenging the U.S. Department of Agriculture Farm Service Agency (FSA) rule that categorically excluded FSA funding of medium-sized concentrated animal feeding operations from NEPA review.
Delaware Riverkeeper Network v. Federal Energy Regulatory Commission	D.C. Cir.	Local/Regional Env'tl NGO	FERC	NEPA, NGA	Fossil Fuel Extraction, Processing, & Transport	Challenge to FERC authorization of PennEast Pipeline project.
Friends of Animals v. U.S. Fish & Wildlife Service	D. Colo.	Intl/Natl Env'tl NGO	DOI, USFWS	ESA	Impacts on Land, Water, & Wildlife	Lawsuit to compel the U.S. Fish and Wildlife Service to designate critical habitat for the western distinct population segment of the yellow-billed cuckoo.
Gulf Restoration Network v. Zinke	D.D.C.	Intl/Natl Env'tl NGO, Local/Regional Env'tl NGO	DOI	APA, NEPA	Fossil Fuel Extraction, Processing, & Transport	Action challenging federal government's decisions to hold offshore oil and gas lease sales.
Idaho Conservation League v. U.S. Forest Service	D. Idaho	Local/Regional Env'tl NGO	USFS	APA, NEPA, National Forest Management Act (NFMA), Forest Service Organic Act)	Impacts on Land, Water, & Wildlife	Challenge to approval of a mining exploration project.
In re Appalachian Voices	4th Cir.	Intl/Natl Env'tl NGO, Local/Regional NGO	Industry (pipeline company)	Natural Gas Act	Fossil Fuel Extraction, Processing, & Transport	Petition seeking to stay order of Federal Energy Regulatory Commission authorizing the Atlantic Coast natural gas

						pipeline project.
In re PennEast Pipeline Co.	FERC	Local/Regional Env'tl NGO	Industry (pipeline company)	Constitution (Fifth Amendment – Takings), NEPA, CWA, Natural Gas Act, National Historic Preservation Act (NHPA)	Fossil Fuel Extraction, Processing, & Transport	Request for rehearing of authorization for natural gas pipeline from Pennsylvania to New Jersey and related facilities
Klamath-Siskiyou Wildlands Center v. Grantham	E.D. Cal.	Local/Regional Env'tl NGO	USFS	APA, NEPA, National Forest Management Act (NFMA)	Impacts on Land, Water, & Wildlife	Lawsuit challenging U.S. Forest Service plan to reduce wildfire risk.
Martin County, Florida v. U.S. Department of Transportation	D.D.C.	Local/Regional Gov Entity, Local/Regional NGO	DOT	NEPA, Internal Revenue Code	Resilient Infrastructure & Development	Challenge to federal allocation for passenger railroad in Florida.
Natural Resources Defense Council, Inc. v. Zinke	D. Alaska	Intl/Natl Env'tl NGO	DOI, BLM	APA, NEPA	Fossil Fuel Extraction, Processing, & Transport	Challenge to oil and gas lease sales in National Petroleum Reserve–Alaska.
Northern Alaska Environmental Center v. U.S. Department of the Interior	D. Alaska	Intl/Natl Env'tl NGO, Local/Regional Env'tl NGO	DOI, BLM	APA, NEPA	Fossil Fuel Extraction, Processing, & Transport	Challenge to decision to lease lands in National Petroleum Reserve–Alaska for oil and gas drilling.
Norwalk Harbor Keeper v. U.S. Department of Transportation	D. Conn.	Local/Regional NGO, Individuals	DOT, FTA, Local/State Gov Entity	APA, NEPA	Resilient Infrastructure & Development	Challenge to environmental review for railroad bridge replacement project in Norwalk, Connecticut, alleging failure to conduct adequate resiliency analysis.

Otsego 2000, Inc. v. Federal Energy Regulatory Commission	D.C. Cir.	Local/Regional Env'tl NGO, Individuals	FERC	APA, NEPA, NGA	Fossil Fuel Extraction, Processing, & Transport	Challenge to FERC authorization of natural gas infrastructure project in New York.
Rocky Mountain Wild v. Zinke	D. Colo.	Intl/Natl Env'tl NGO, Local/Regional Env'tl NGO	DOI, BLM	APA, NEPA, FLPMA	Fossil Fuel Extraction, Processing, & Transport	Challenge to 121 oil and gas leases in and around the Uinta Basin in northwestern Colorado and northeastern Utah.
Save the Colorado v. Semonite	D. Colo.	Intl/Natl Env'tl NGO, Local/Regional Env'tl NGO	USACE, DOI, USFWS	APA, CWA, ESA, NEPA	Impacts on Land, Water, & Wildlife	Challenge to dam project in Boulder County in Colorado.
Western Watersheds Project v. Zinke	D. Idaho	Intl/Natl Env'tl NGO, Local/Regional Env'tl NGO	DOI, BLM	APA, NEPA, FLPMA	Impacts on Land, Water, & Wildlife	Challenge to sale of oil and gas leases within and affecting sage-grouse habitat and to related Bureau of Land Management guidance.
WildEarth Guardians v. U.S. Bureau of Land Management	D. Mont.	Intl/Natl Env'tl NGO, Local/Regional Env'tl NGO (individuals)	DOI, Local/State Gov Entity	NEPA	Fossil Fuel Extraction, Processing, & Transport	Challenge to environmental reviews conducted for oil and gas lease sales on public lands in Montana.
WildEarth Guardians v. Zinke	D. Ariz.	Intl/Natl Env'tl NGO, Local/Regional Env'tl NGO	DOI, USFWS	APA, ESA	Impacts on Land, Water, & Wildlife	Challenge to recovery plan for Mexican wolves.
Wilderness Workshop v. U.S. Bureau of Land Management	D. Colo.	Intl/Natl Env'tl NGO	DOI, BLM	APA, NEPA	Fossil Fuel Extraction, Processing, & Transport	Challenge to federal approval of 53 oil and gas lease parcels on public lands in the Upper Colorado River Basin in western Colorado.

<b>Advancing and Enforcing Climate Protections (2017)</b>						
<b>Case</b>	<b>Court</b>	<b>Plaintiff or Petitioner Type</b>	<b>Defendant</b>	<b>Principal Federal Law(s)</b>	<b>Sector</b>	<b>Summary</b>
Adorers of the Blood of Christ v. Federal Energy Regulatory Commission	E.D. Pa.; Third Circuit	Religious Order	FERC	Natural Gas, Religious Freedom Reformation Act	Fossil Fuel Extraction & Transport	Action brought by religious order of Roman Catholic women that owned property in Pennsylvania to challenge FERC's authorization of natural gas pipeline that would pass through the property.
City of Oakland v. BP p.l.c.	Cal. Super. Ct., N.D. Cal., 9 <sup>th</sup> Cir.	Municipality	Industry (Fossil Fuel Companies)	Tort 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.
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 San Mateo v. Chevron Corp.	9 <sup>th</sup> Cir., N.D. Cal., Cal. Super. Ct., Bankr. E.D. Mo.	Municipality	Industry (Fossil Fuel Companies)	Tort 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	Actions by California municipalities seeking damages from fossil fuel companies for sea level rise.
County of Santa Cruz v. Chevron Corp.	Cal. Super. Ct., N.D. Cal., 9 <sup>th</sup> Cir.	Municipality	Industry (Fossil Fuel Companies)	Tort 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.	D.D.C.	Intl/Natl Environmental	EPA	Administrative Procedure Act (APA),	Animal Feedlot Emissions	Action to compel EPA to respond to 2009 petition

Pruitt		NGO, Other Intl/Natl NGO, Local or Regional Group		Clean Air Act (CAA)		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.
Sierra Club v. Wheeler	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.

Advancing and Enforcing Climate Protections (2018)						
Case	Court	Plaintiff or Petitioner Type	Defendant	Principal Federal Law(s)	Sector	Summary
Animal Legal Defense Fund v. United States	D. Or.	Intl/Natl Envntl NGO, Individuals	United States, DOI, Dept. of Ag, EPA, Dept. of Defense	U.S. Constitution (First Amendment, Fourth Amendment, Ninth Amendment,	Gov. Violation of Constitutional Rights (Not	Claims against the federal government alleging violations of a constitutional right to wilderness and



				Fifth Amendment—Due Process, Fourteenth Amendment—Due Process)	Speech)	seeking order requiring the government to prepare and implement a remedial plan to mitigate climate change impacts.
Barnes v. Edison International	C.D. Cal.	Individuals	Industry (Utility)	Other Federal Statute (Securities Act of 1933/Securities Exchange Act of 1934)	Climate Misinformation and Disclosures	Securities class action against utility company in Southern California alleging misrepresentations regarding exposure to wildfire risk.
Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.), Inc.	D. Colo.	Local/Regional Gov Entity	Industry (Fossil Fuel Companies)	Clean Air Act (CAA); Tort Law (Nuisance, Trespass, Conspiracy); State Law (Unjust Enrichment, Colorado Consumer Protection Act)	Fossil Fuel Co. Liability	Action by Colorado local governments seeking damages and other relief from fossil fuel companies for climate change harms.
California v. EPA	N.D. Cal.	Local/Regional Gov Entity	EPA	Clean Air Act (CAA)	Landfill Emissions	Action to compel EPA to implement and enforce emission guidelines for existing municipal solid waste landfills.
Center for Biological Diversity v. EPA	D. Or.	Intl/Natl Env't NGO	EPA	APA, CWA	Impacts on Land, Water, & Wildlife	Lawsuit alleging that EPA violated Clean Water Act by failing to identify waters off the coast of Oregon as impaired by ocean acidification.
City of New York v.	2d Cir.	Local/Regional	Industry (Fossil	State Law (Public and	Fossil Fuel Co.	Action brought by New

BP p.l.c.		Gov Entity	Fuel Companies)	Private Nuisance, Trespass)	Liability	York City against fossil fuel companies seeking damages for climate change-related injuries.
de Mejias v. Malloy	D. Conn.	Local/Regional Env'tl NGO, Other NGO; Individuals	Local/State Gov Entity	Constitutional Law (Fourteenth Amendment—Equal Protection, Contracts Clause); State Law (Connecticut General Statutes-Public Service Companies, Connecticut Sales and Use Tax Statute, Promissory Estoppel, Connecticut State Constitution)	Power Plants, Renewables, & Energy Efficiency	Challenge to Connecticut's transfer of funds collected from ratepayers and held by utilities for clean energy and energy efficiency purposes to Connecticut's General Fund.
King County v. BP p.l.c.	W.D. Wash.	Local/Regional Gov Entity	Industry (Fossil Fuel Company)	Tort Law (Common law: Nuisance, Trespass)	Fossil Fuel Co. Liability	Public nuisance and trespass action brought by King County in Washington State against fossil fuel companies seeking funding of climate change adaptation program
Mayor & City Council of Baltimore v. BP p.l.c.	D. Md.	Local/Regional Gov Entity	Industry (Fossil Fuel Company)	Tort Law (Nuisance, Negligence, Trespass, Strict Liability), Maryland Consumer Protection Act	Fossil Fuel Co. Liability	
New York City Employees' Retirement System	S.D.N.Y.	Local/Regional Gov Entity	Industry (Aerospace Company)	Securities Act of 1933/Securities Exchange Act of 1934	Climate Misinformation and	Lawsuit by New York City pension funds to compel aerospace company to

v. TransDigm Group, Inc.					Disclosures	include climate change-related shareholder proposal in its proxy materials.
New York v. Pruitt	D.D.C.	Local/Regional Gov Entity	EPA	APA, Clean Air Act (CAA)	Fossil Fuel Extraction, Processing, & Transport	Action to compel EPA to promulgate emission guidelines for methane from existing sources in the oil and gas sector.
Pacific Coast Federation of Fishermen's Associations, Inc. v. Chevron Corp.	N.D. Cal.	Industry Trade Group (Commercial Fishing Association)	Industry (Fossil Fuel Company)	Tort Law (Nuisance, Negligence, Strict Liability)	Fossil Fuel Co. Liability	Action by a commercial fishing industry trade group to hold fossil fuel companies liable for adverse climate change impacts to the ocean off the coasts of California and Oregon that resulted in "prolonged closures" of Dungeness crab fisheries.
People of the State of New York v. Exxon Mobil Corporation	N.Y. Sup. Ct.	Local/Regional Gov Entity	Industry (Fossil Fuel Company)	Tort Law (Fraud), State Claims (New York Martin Act, New York Executive Law § 63(12))	Climate Misinformation and Disclosures	Action alleging fraudulent scheme by Exxon Mobil Corporation to deceive investors about the company's management of risks posed by climate change regulation.
Rhode Island v. Chevron Corp.	D.R.I.	Local/Regional Gov Entity; Intl/Natl Env'tl NGO, Tribal Env'tl NGO, Regional Env'tl NGO	Industry (Fossil Fuel Company)	Tort Law (Common Law-Nuisance, Common Law—Negligence, Common law—Trespass, Common law—Strict Liability), State	Fossil Fuel Co. Liability	State of Rhode Island lawsuit seeking to hold fossil fuel companies liable for causing climate change impacts that adversely affect Rhode Island and jeopardize State-owned or -operated

				Claims (Rhode Island Constitution, Public Trust Doctrine, Rhode Island State Environmental Rights Act)		facilities, real property, and other assets.
Sound Action v. U.S. Army Corps of Engineers	W.D. Wash.	Local/Regional Env'tl NGO	USACE	APA, CWA	Impacts on Land, Water, & Wildlife	Lawsuit challenging the U.S. Army Corps of Engineers decision to reject a recommended change to the "high tide line" used by the Seattle District to determine the scope of its Section 404 jurisdiction.
WildEarth Guardians v. Chao	D. Mont.	Intl/Natl Env'tl NGO	Fed Gov (DOT, Pipeline and Hazardous Materials Safety Administration)	MLA	Fossil Fuel Extraction, Processing, & Transport	Lawsuit alleging that the Department of Transportation and Pipeline and Hazardous Materials Safety Administration unlawfully failed to cause annual examinations of oil and gas pipelines on public lands.
Willmeng v. City of Thornton	D. Colo.	Individuals	Local/State Gov (Municipal)	Constitution (First Amendment)	Speech or Protest Related to Fossil Fuels	First Amendment lawsuit brought by two Colorado residents against Colorado city and its mayor pro tem for blocking their comments about hydraulic fracturing.

<b>Deregulating, Undermining Climate Protections, or Targeting Climate Protections Supporters (2017)</b>						
<b>Case</b>	<b>Court</b>	<b>Plaintiff or Petitioner Type</b>	<b>Defendant</b>	<b>Principal Federal Law(s)</b>	<b>Sector</b>	<b>Summary</b>
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	Power Plants, Renewables, & Energy Efficiency	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.

Constitution Pipeline Co. v. Federal Energy Regulatory Commission	D.D.C., 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.
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.
Electric Power Supply Association 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, Renewables, and Energy Efficiency	Challenge to Illinois law that created a Zero Emissions Credit program allegedly to support uneconomic nuclear plants.
Energy &	D.D.C.	Conservative NGO	Dept. of State	Freedom of	Government	Action to compel disclosure of

Environment Legal Institute v. United States Department of State				Information Act (FOIA)	Records or Communications	State Department communications regarding climate change negotiations with China
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.
Ergon-West Virginia, Inc. v. EPA	4th Cir.	Industry (Fossil Fuel Company)	EPA	CAA, Energy Policy Act of 2005	Vehicle Emissions & Renewable Fuels	Challenge to EPA's denial of a small refinery exemption from the Renewable Fuel Standard program.
General Land Office of State of Texas v. U.S. Fish & Wildlife Service	W.D. Tex	Local or State Gov Entity	USFWS, DOI	ADA, ESA, NEPA	Impacts on Land, Water, & Wildlife	Lawsuit challenging continued listing of golden-cheeked warbler as an endangered species.
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.
Mexichem Fluor, Inc. v. EPA	D.C. Cir.	Industry(HFC Manufacturer)	EPA	Clean Air Act (CAA)	Appliance, Industrial, and	Challenge to 2016 rule expanding the scope of 2015

					Building Standards	regulations that classified hydrofluorocarbons (HFCs) and HFC blends as unacceptable for certain uses pursuant to the Significant New Alternatives Program (SNAP) under Clean Air Act Section 612.
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 Env'tl Conservation	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)	Appliance, Industrial, and Building 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)	Appliance, Industrial, and Building 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.

### Deregulating, Undermining Climate Protections, or Targeting Climate Protections Supporters (2018)

Case	Court	Plaintiff or Petitioner Type	Defendant	Principal Federal Law(s)	Sector	Summary
Argos Properties II, LLC v. City	Va. Cir.	Industry (Developer)	Local/State	U.S. Constitution (Fourteenth)	Resilient Infrastructure &	Developer's lawsuit challenging City of Virginia

Council for Virginia Beach	Ct.		Gov Entity	Amendment— Equal Protection), Virginia Planning, Subdivision of Land and Zoning Law	Development	Beach's denial of application to rezone property for residential development on the grounds that the developer failed to account for sea level rise in its stormwater analysis.
Competitive Enterprise Institute v. U.S. Department of State	D.D.C.	Conservative NGO	State Dept.	FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking Department of State records regarding international climate change negotiations
In re Exxon Mobil Corp.	Tex. App.	Industry (Fossil Fuel Company)	Local/State Gov Entity	Constitution (First Amendment), State Law (Common Law - Abuse of Process, Texas Constitution)	Fossil Fuel Co. Liability	Exxon Mobil Corporation petition seeking pre-suit depositions and documents in anticipation of potential claims of abuse of process, conspiracy, infringement of Exxon's rights in connection with California municipalities' climate change lawsuits.
Institute for Energy Research v. U.S. Department of the Treasury	D.D.C.	Conservative NGO	Treasury Dept.	FOIA	Government Records or Communications Request	Freedom of Information Act lawsuit seeking to compel the Department of the Treasury to respond to request for correspondence regarding climate change financial disclosures.
Lighthouse	W.D.	Industry (Company)	Local/State	Constitution	Fossil Fuel	Action against Washington

Resources Inc. v. Inslee	Wash.		Gov Entity	(Commerce Clause, Supremacy Clause), Other Stat (Interstate Commerce Commission Termination Act of 1995 (ICCTA), Ports and Waterways Safety Act)	Extraction, Processing, & Transport	State officials for allegedly taking unlawful actions to block coal export terminal.
Millennium Bulk Terminals Longview, LLC v. Washington State Department of Ecology	Wash. Super. Ct.	Industry (coal export developer)	Local/State Gov Entity	CWA, Constitutional (Fourteenth Amendment— Equal Protection, Fourteenth Amendment— Due Process), State Claims	Fossil Fuel Extraction, Processing, & Transport	Lawsuit challenging Washington Department of Ecology's denial of water quality certification for coal export terminal and alleging denial was based on improper grounds.
The Two Hundred v. California Air Resources Board	Cal. Super. Ct.	Individuals	Local/State Gov Entity	Constitution (Fourteenth Amendment— Equal Protection, Due Process), Federal Housing Act; State Claims	State GHG Reduction Measures	Lawsuit alleging that provisions of 2017 scoping plan under the Global Warming Solutions Act are unlawful, unconstitutional, and exacerbate poverty.

<b>Cases Filed Prior to 2017 and Held in Abeyance in 2017</b>						
<b>Case</b>	<b>Court</b>	<b>Plaintiff/Petitioner Type</b>	<b>Defendant</b>	<b>Principal Federal Law(s)</b>	<b>Sector</b>	<b>Summary</b>
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, Renewables, and Energy Efficiency	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, Renewables, and Energy Efficiency	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/>.

<b>Cases Primarily of State or Local Significance (2017)</b>	
<b>Case</b>	<b>Summary</b>
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 (2017)

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.

<b>Database Items Not Yet Before a Court (2017)</b>	
<b>Case</b>	<b>Summary</b>
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.
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<b>Cases Primarily of State or Local Significance (2018)</b>	
<b>Case</b>	<b>Summary</b>
Aji P. v. State of Washington	Action by young people under 18 years of age claiming that the State of Washington and state agencies and officials violated plaintiffs' rights by creating and maintaining fossil fuel-based transportation and energy systems.
California Fueling, LLC v. Best Energy Solutions & Technology Corp.	Lawsuit alleging conspiracy and fraud by defendants who produced and marketed an additive to reduce nitrogen oxides emissions associated with biodiesel.
California Native Plant Society v. County of San Diego	Challenge to San Diego County approvals for residential and commercial development project.
Center for Biological Diversity v. U.S. Fish & Wildlife Service	Lawsuit seeking to compel designation of critical habitat for western yellow-billed cuckoo.
Competitive Enterprise Institute v. Regents of the University of California	Lawsuit seeking correspondence and other records of UCLA Law School professors in connection with alleged work with outside parties to develop legal cases against opponents of climate change regulation.
Free Market Environmental Law Clinic, PLLC v. Schnare	Lawsuit against founder by limited liability company that pursued freedom of information law requests and litigation in connection with state attorneys general climate change investigations.
Friends of the River v. Delta Stewardship Council	Challenge to amendments to the Delta Plan for long-term management of the Sacramento-San Joaquin Delta.
Hawai'i Solar Energy Association v. Department of Business, Economic Development and Tourism	Challenge to Hawai'i's implementation of a law mandating inclusion of solar water heaters in new single-family homes.
Leach v. Reagan	Challenge to constitutional amendment initiative that would required 50% of all electricity sales to come from renewable energy.
United States v. Aux Sable Liquid Products LP	Clean Air Act enforcement action against natural gas processing plant in Illinois.



Reynolds v. Florida	Action by eight young people asserting that the State of Florida and its agencies and officials violated fundamental rights to a stable climate system under Florida common law and the Florida constitution.
Sierra Club v. City of Fontana	Challenge to City of Fontana's approval of the Southwest Fontana Logistics Project, which involves development of two industrial warehouse buildings totaling approximately 1.6 million square feet on 73.3 acres.
Sierra Club v. County of San Diego	Environmental groups' challenge to San Diego County's Climate Action Plan.
Sierra Club v. Talen Energy Corp.	Citizen suit against owner-operators of power plant in Pennsylvania.
Sierra Club v. County of Tulare	Challenge to San Diego County's approval of residential developments, allegedly without complying with requirements for enforceable measures to mitigate greenhouse gas emissions.
Sierra Club v. County of Tulare	Challenge to environmental review for Animal Confinement Facilities Plan, Dairy Feedlot and Dairy Climate Action Plan, and related actions approved by Tulare County in California to streamline approval process for dairies.
Smith v. Keurig Green Mountain, Inc.	Class Action Filed in California Court Alleging Misrepresentation of Recyclability of Single-Serve Coffee Pods.