

## **Lead NEPA Story: Groups tell Bernhardt COVID-19 warrants delaying Chaco plan**

**(Greenwire, 9/18/2020), Scott Streater, E&E News Reporter**

Conservation and Native American groups are once again asking Interior Secretary David Bernhardt for more time to comment on a land-use plan amendment that could expand oil and gas leasing near New Mexico's Chaco Culture National Historical Park.

Bernhardt has already extended the public comment period on the revised plan twice, including a four-month extension in May.

The latest comment period is slated to end next week, September 25.

But the letter — which was signed by 50 environmental and Native American groups and sent to Bernhardt yesterday — argued that the COVID-19 health crisis has prevented meaningful "in person engagement."

The multiple "virtual" public hearings the Bureau of Land Management hosted were "grossly inadequate and an affront to environmental justice obligations," they wrote.

"The vast majority of Navajo Nation and Pueblos lack adequate internet and phone access, and many families, struggling to stem the spread of a deadly virus, are unable to meaningfully participate in virtual meetings," they said. "Rural New Mexico has limited internet service, and for those who were able to participate in BLM's recent virtual meetings, many were cut off because of connectivity issues."

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## **Clean Air Act: How EPA came to regulate greenhouse gases**

**(Greenwire, 9/14/2020) Jean Chemnick, E&E News Reporter**

For more than half of its 50-year history, EPA did not regulate greenhouse gas emissions.

Bedrock environmental laws, like the Clean Air Act, enacted in the 1970s and 1980s were focused on issues grabbing public attention at the time, such as urban smog, toxic waste and polluted waterways bursting into flame.

It's not that climate change was unheard of; it just hadn't gained widespread recognition yet. And the young agency under successive administrations was consumed with building a new federal regulatory apparatus and grappling with how to balance economic concerns against environmental safeguards.

But as EPA worked to implement the Clean Air Act and its 1977 and 1990 amendments, the list of hazardous pollutants it regulated grew.

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Meanwhile, climate science was progressing. The Intergovernmental Panel on Climate Change published its first assessment on the state of climate science in 1990 and its second in 1995, establishing the link between human emissions and warming. And while the six greenhouse gas pollutants weren't mentioned in the Clean Air Act, by President Clinton's second term, environmental lawyers both in and outside of EPA were already weighing how they could be regulated using the tools provided by the landmark law.

"For Clean Air Act experts like me, it's long been just accepted wisdom that the law is there to deal with new and additional air pollutants as their dangers come into focus or are discovered," said David Doniger, senior strategic director of climate and clean energy for the Natural Resources Defense Council.

The work of establishing EPA's authority to regulate greenhouse gas emissions began in earnest in 1998. That was the year Doniger, who was then counsel at EPA's air office, first raised the idea internally that EPA already had Clean Air Act authority to regulate greenhouse gas emissions. And in the same year, at a tiny Washington nonprofit, a young lawyer named Joseph Mendelson was working on a petition to prod EPA to use that authority.

It would ultimately take nine years for the Supreme Court to settle the issue in the landmark *Massachusetts v. EPA* decision, and another two for EPA under President Obama to make the necessary finding to start regulating greenhouse gases under the Clean Air Act. But doing so catapulted climate action ahead years or maybe decades, experts say, because climate legislation has proved elusive.

"The Obama administration took the Bush administration's loss with *Massachusetts v. EPA* and then they ran with it for eight years," said Richard Lazarus, a Harvard Law School professor and author of "The Rule of Five," which chronicles the Supreme Court case in close detail. "They never got legislation, so [the court case] became the ballgame for climate change in the United States."

## A fateful memo

In 1998, Doniger represented EPA at an interagency task force on an Energy Department effort to reform electricity wholesale rates. He wanted to make greenhouse gas reduction part of that policy, but the Energy Department staff on the task force thought EPA lacked the authority to regulate them. Doniger disagreed, arguing that the agency could regulate any pollutant that endangered human health and welfare.

"One thing led to another, and I was tasked with writing a memo to explain how we already had this authority to regulate CO<sub>2</sub>," he said.

So Doniger penned a memo arguing that the agency had authority to regulate greenhouse gases under the Clean Air Act if it found them to meet that endangerment threshold. The memo was leaked to the publication *Inside EPA* — Doniger suspects DOE did it — days before then-EPA Administrator Carol Browner traveled to Capitol Hill to defend her agency's fiscal 1999 budget request to a House Appropriations subcommittee.

Browner said she hadn't heard of the Doniger memo before Republican Texas congressman Tom DeLay brandished it during the hearing, accusing her of trying to circumvent Congress to regulate greenhouse gas emissions and enforce the unratified Kyoto Protocol.

Then the House minority whip, DeLay appeared to believe *Inside EPA* was her agency's internal publication, Browner recalled in an interview with E&E News.

"I think I even said something like, 'Wow, if it was our publication, we'd get better coverage,'" she said.

He demanded EPA's legal opinion as to whether it in fact had Clean Air Act authority to regulate greenhouse gases, and Browner promised to provide it.

"I have very little doubt in my mind that Tom DeLay probably has no clue that he is the proximate cause of why EPA has the authority" to regulate greenhouse gas emissions, Browner said.

Lazarus said the exchange with DeLay helped Browner overcome the Clinton administration's

own reluctance to move the ball on greenhouse gas regulation during its second term.

"They were basically playing possum on the issue, because it was controversial," said Lazarus, who himself played a role in the landmark Supreme Court case. "They didn't want to upset Republicans, and they didn't want to upset Democrats from coal states. And they didn't want to upset [then-Vice President] Al Gore's prospects for winning in 2000."

But if a member of Congress asked, EPA had to answer. And EPA General Counsel Jonathan Cannon produced a memo later that year affirming, as Doniger had done, EPA's authority to regulate greenhouse gas emissions if it found that they endanger public health and welfare.

Browner said EPA under Clinton wasn't trying to avoid dealing with greenhouse gas regulation. After all, the second-term White House chief of staff was John Podesta, who would later oversee much of the second-term Obama administration climate agenda.

It was just that EPA had been busy, she said.

"We were very aggressive in our regulatory agenda by that point," Browner said. "We had survived the [Republican House Speaker Newt] Gingrich shutdown. We were now regulating pollutants that had never been regulated before," she said, pointing to sulfur in diesel fuel and new regulations for particulate pollution.

"It's not that you didn't have people who cared," she said. "It's just that there was a lot on the plate."

### **'A jumping-off point'**

But outside the Clinton administration, Mendelson was working to put climate change on EPA's plate as quickly as possible.

Mendelson, who had co-founded the wonkily named International Center for Technology Assessment to replace a federal office that had been disbanded after the Republican revolution of 1994, was busy drafting a petition requesting that EPA move toward regulating greenhouse gas emissions under the Clean Air Act, since it had the legal authority to do so, even before DeLay's standoff with Browner. He filed the

petition in 1999, a little over a year before the 2000 presidential election.

"The reason we filed it then is that we knew it would sit at the agency for a year plus, and at least that it might be a jumping-off point for the next administration, which at that point people thought was going to be a Gore administration," he said.

But Gore wasn't elected in 2000; George W. Bush was. Clinton's EPA requested public comment on Mendelson's petition in its waning days, but the Bush administration seemed to be a dead end for environmentalists' hopes that EPA would make progress toward regulating climate emissions.

That is, until EPA under Bush chose to issue a formal response denying Mendelson's petition in August 2003. Lazarus notes in his book that while Mendelson had sued EPA for a response, his hopes of persuading a court to intervene and compel EPA to answer his petition weren't great. EPA probably could have chosen to sit on his petition during the eight years of the Bush presidency.

But then-Assistant Administrator for Air and Radiation Jeff Holmstead hoped that by rejecting Mendelson's petition and defending that action in court, the Bush EPA could settle once and for all the question of whether EPA could regulate greenhouse gases under the Clean Air Act without new and explicit instructions from Congress.

"I don't think any of us were opposed to greenhouse gas regulation," Holmstead told E&E News. But he knew that EPA under Browner had affirmed that the agency had the statutory authority to regulate greenhouse gases as an air pollutant under the Clean Air Act, he said, and the idea of its doing so "just seemed kind of ridiculous."

"We really thought that it was pretty clear Congress hadn't intended EPA to regulate greenhouse gases under the Clean Air Act," Holmstead said. "And by answering that petition, we expected the courts would uphold our determination and that would really put the issue back in Congress where it belonged."

Many leading environmentalists feared what Holmstead hoped: namely, that by proposing to sue EPA over greenhouse gas regulation, Mendelson could help the Bush administration tie the hands of future administrations that might be more inclined toward climate action.

Leaders in the movement like Doniger, who was then back on staff at the Natural Resources Defense Council after his EPA stint, thought environmentalists should focus their energies pressing the Bush administration to grant California a waiver to implement its tougher-than-federal fuel economy standards instead.

### Legal strategies

But David Bookbinder, then the top climate lawyer at the Sierra Club, said he had a different perspective. Bookbinder was watching the Bush administration's success in winning speedy confirmation of its conservative, anti-regulatory judicial nominees. That convinced him time was of the essence.

"I was thinking the longer we wait, the worse the D.C. Circuit is going to get for this issue," said Bookbinder. He remembers running a spreadsheet in 2002 to estimate the odds of getting at least two Democratic appointees on a D.C. Circuit panel of three judges in 2002 versus in 2006, after more Bush appointees would be on the bench.

"My impetus was, you want to do this now, not then," he said.

EPA would ultimately deny California's request for a fuel economy waiver in 2007 after years of delay. *Massachusetts v. EPA* would be decided by the Supreme Court the same year.

Bookbinder persuaded a reluctant Sierra Club Executive Director Carl Pope to join Mendelson in his lawsuit after EPA denied his petition urging it to take steps toward greenhouse gas regulation. That partnership helped make *Massachusetts v. EPA* possible.

Lazarus said there was broad agreement that a state should take the lead. If the case ever reached the Supreme Court, he said, the goal would be to convince Justice Anthony Kennedy to cast the deciding vote with the four liberal justices and against his four fellow conservatives

— the "rule of five" Lazarus named his book for.

Kennedy had shown little inclination to back environmental challenges, Lazarus said, except when a state was lead plaintiff.

"You wanted it to be a state, because a state is not a self-appointed representative of the public interest," he said. "States have heightened responsibilities and heightened stature — including with conservative judges."

Lazarus' book provides a detailed account of the case, which took four years and destroyed many friendships among environmental attorneys involved.

"These people haven't talked to each other in 14 years, and they won the case," observed Lazarus, who helped James Milkey of the Massachusetts attorney general's office prepare for oral arguments in the case.

But the Supreme Court's decision on April 2, 2007, obliged EPA to consider whether greenhouse gases endangered human health and welfare, and to regulate them if they did. The finding was completed in 2009 under Obama, and forms the basis for all of EPA's greenhouse gas regulations.

The Bush EPA effectively wrote an endangerment finding for greenhouse gas emissions, but the Bush White House sat on it. Holmstead, now a partner at Bracewell LLP, was outside the administration when the Supreme Court decision came down. But he said he urged the Bush EPA and White House to regulate carbon rather than leaving it to the next administration.

"I thought they could do it in a way that wouldn't be too burdensome, and I was afraid that we could end up with a real mess if they left it to the next administration," he said.

Bookbinder, who is now chief counsel at the Niskanen Center, said *Massachusetts v. EPA* might yet help persuade Congress to enact climate legislation. If Democratic nominee Joe Biden wins the presidential election, his EPA might regulate industrial sectors that never came under regulation during the Obama years, Bookbinder said.

Biden released a climate platform early this summer that called for massive investments in clean energy and sectoral regulation.

"I think if we had an EPA that was actually interested in regulating CO<sub>2</sub>, it would be a useful

tool, because if they seriously started regulating industries, there would be a big industrial push for carbon legislation out of Congress," Bookbinder said.

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## **NEPA: Bureau of Land Management accused of eyeing Land and Water Conservation Fund land for disputed highway**

**(Greenwire, 9/10/2020) Scott Streater, E&E News reporter**

The Bureau of Land Management wants to route a hotly contested highway corridor across federal lands in Utah that were purchased with Land and Water Conservation Fund money for mostly habitat preservation purposes.

A coalition of conservation groups that reviewed BLM records says this is a misuse of funding for the LWCF, which was earmarked for outdoor recreation and the protection of habitat for the threatened Mojave Desert tortoise.

BLM is studying whether to allow the 4-mile-long corridor to cross a roughly 1.75-mile section of the Red Cliffs National Conservation Area in southwest Utah, as well as a section of a nearby 62,000-acre desert reserve that includes habitat for the tortoise.

The 500-foot-wide corridor would allow construction of a four-lane highway that proponents — including Utah Republican Sens. Mike Lee and Mitt Romney — say is badly needed to ease traffic congestion in the city of St. George, which is one of the nation's fastest-growing metropolitan areas.

BLM, in a statement, denied it is doing anything it's not authorized to do.

"The Bureau of Land Management is taking this action consistent with guidance from Congress," it said.

BLM also notes that no final action has been taken on the proposed "Northern Corridor" project.

But the "preferred alternative" route BLM identified last June in a draft environmental impact statement (EIS) would likely affect — directly or indirectly — 831 acres within the Red Cliffs NCA that were purchased with LWCF money, according to BLM records.

That includes directly paving at least portions of roughly 180 acres within Red Cliffs that were purchased with the LWCF at a final cost of nearly \$5 million. Two of the five parcels, totaling about 50 acres, were purchased last October and December, a review of the records shows.

"This discovery is an alarming development for all protected public lands acquired with LWCF monies," said Brian Sybert, executive director of the Conservation Lands Foundation.

BLM has not made any final decisions on the highway corridor. The "preferred alternative" in the draft EIS mostly follows the highway corridor route proposed in 2018 by the Utah Department of Transportation that is strongly supported by the state's congressional delegation.

Public comment on the draft EIS ends today.

BLM's statement said the bureau "will closely review public input to help develop the final environmental impact statement for the project."

The conservation groups say they will be closely watching BLM's actions on the project.

"We will not sit idly while BLM abuses the public's trust and diverts millions of dollars from the Land and Water Conservation Fund to pave paradise and put up a four-lane highway," said Todd Tucci, senior attorney for Advocates for the West, a Boise, Idaho-based law firm working with the groups.

Tucci noted President Trump's recent signing into law of the Great American Outdoors Act, which permanently funds the LWCF. Interior Secretary David Bernhardt and others have cited the bill as proof of the administration's commitment to conservation and public lands.

"The Great American Outdoors Act does not allow BLM to convert to a highway public lands acquired for conservation and wildlife habitat purposes, and we will fight for the integrity of the Land and Water Conservation Fund," he said.

### **Controversial history**

The concerns over LWCF money represent the latest development in a project that's been controversial from the start.

Local and national conservation groups and the Hopi Tribe have raised concerns about potential impacts to cultural resources, air quality, noise levels, water resources and wildlife.

The Trump administration announced last year it would begin the EIS process authorized by the Omnibus Public Land Management Act of 2009, which was signed into law by President Obama.

BLM is partnering with the Fish and Wildlife Service on the project review process, which is multipronged.

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To approve the corridor and allow the eventual construction of a four-lane highway across Red Cliffs NCA, BLM must amend the conservation area's resource management plan, as well as the management plan for BLM's St. George Field Office, to account for the additional 6,800 acres in the desert reserve that Washington County has proposed adding to offset the loss of tortoise habitat.

FWS is also evaluating an "incidental take permit" that would exempt the killing, harming or harassing of a certain number of desert tortoises "while ensuring conservation of the species by minimizing and mitigating the impacts from the anticipated take to the maximum extent practicable," according to the draft EIS.

FWS and Washington County are also working to amend a more than two-decade-old habitat conservation plan for the desert tortoise.

The conservation groups say BLM has already identified alternative routes that address traffic congestion concerns but avoid the Red Cliffs NCA.

"BLM considered community-driven alternatives that are outside of the Red Cliffs National Conservation Area, and even found those alternatives to be the better solutions," said Tom Butine, board president of Conserve Southwest Utah, in a statement.

"Yet the agency still states a preference for the proposed highway through the [Red Cliffs] NCA that directly violates the use of public funds, is less effective at traffic reduction, and ignores overwhelming public opinion," he added.

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## **Executive Order 12898 on Environmental Justice:**

### **EPA's biggest civil rights obstacle? Itself**

(*Greenwire*, 9/18/2020) Jeremy P. Jacobs, E&E News reporter

When President Clinton required federal agencies to consider environmental justice in 1994, it was hailed as a landmark achievement for the movement. But Clinton's executive order didn't anticipate one of its biggest obstacles: the agencies themselves.

Interviews with former staff and a new book suggest that nearly 30 years later, EPA's environmental justice efforts have been consistently hamstrung by intense resistance within the agency.

Environmental justice seeks to address the disproportionate pollution burden that people of color and other disadvantaged communities have endured in America for decades as refineries, landfills, power plants and other toxic emitters have been built in their neighborhoods.

Now, as social justice issues and training have gained traction nationwide, some advocates say EPA's rank and file has long resisted incorporating those issues into the agency's work.

President Trump's EPA has advanced the environmental justice programs begun by his predecessors. But the administration has also been hostile toward racial injustice issues. Recently, it banned training activities that discuss the idea of "white privilege," calling them "anti-American propaganda."

"Let me give it to you real," Mustafa Santiago Ali, who worked at EPA for 24 years and led environmental justice efforts in the Obama administration, told E&E News. "Folks were not willing to deal with the systemic racism that is built into policy, either intentionally or unintentionally."

The recently released book and interviews paint a picture of an EPA that, at best, has marginalized environmental justice efforts and, at worst, has ignored and refused to incorporate them.

They go a long way toward explaining why advocates continue to criticize the agency, despite the creation of an office dedicated to environmental justice and a grant program that has doled out more than \$28 million to community-based organizations since 1994.

Environmental justice, or EJ, staff faces a "remarkable degree of pushback from their peers," said Jill Lindsey Harrison, a sociologist and author of "From the Inside Out: The Fight for Environmental Justice Within Government Agencies."

Harrison interviewed dozens of current and former EPA EJ staff members across the country from 2011 to 2019. They reported pushback from other agency staffers who, she said, "don't see environmental justice as central to doing good environmental work."

Her book found several reasons for the resistance, ranging from beliefs that environmental policy should be "race neutral" or "colorblind" to blatantly racist tropes — including the idea that Black and Latino Americans don't manage their finances well and therefore shouldn't receive federal grants.

"Some staff," she wrote, "delegitimize the EJ program by using prejudiced arguments that working-class communities, those of color in particular, are undeserving of government assistance."

EPA has disputed the findings of the book.

Now, as the shooting of Jacob Blake and killing of George Floyd and other Black Americans have sparked a movement to confront systemic racism, environmental justice advocates say a good place to start is EPA.

"In this moment in our country, when we seem to be newly aware of systemic racism, the place where systemic racism is the worst is in the federal government," said Vernice Miller-Travis, a veteran EJ advocate.

"If you want to attack systemic racism, the place you have to go hardcore is the federal government itself."

The Trump administration isn't interested. Agency chiefs were ordered to cut trainings on diversity and inclusion in a Sept. 4 memo from the Office of Management and Budget. That led EPA to postpone a series on race this week.

Otherwise, it appears there may not have been much to eliminate.

Carlton Eley, who worked at EPA from 1998 to 2018, was repeatedly stunned by agency officials' response to race and EJ issues. Most of EPA's work is done by midlevel career managers, he said.

"Many don't have proficiency in addressing issues of race or social equity," he said. "And instead of taking the time to work on ways to become more proficient, they basically ignore it."

"That's where the rub lies," he said.

In a statement, EPA said the stories in Harrison's book took place "under previous administrations," despite the interviews taking

place between 2011 and 2019 — partially during Trump's presidency. EPA, spokesperson Margot Perez-Sullivan said in an email, "therefore cannot speak to these accusations."

"EPA," she added, "has zero tolerance for racism or any act of discrimination against our employees and we require that our workplace is safe and respectful for everyone."

And the agency said its EJ efforts have accelerated in the current administration.

"Under President Trump," the agency said, "EPA has taken meaningful steps to improve the health outcomes in EJ communities."

### **An early adopter**

EPA's Office of Environmental Justice was a pioneer in the federal government.

Originally the Office of Environmental Equity, it was established in 1992, largely due to the work of Miller-Travis and Robert Bullard, the Texas Southern University professor widely regarded as the father of environmental justice.

Clarice Gaylord set up the office on a shoestring budget, and she dedicated it to helping communities of color facing disproportionate pollution burdens.

Clinton's executive order, signed Feb. 11, 1994, enshrined that mission. It required every federal agency to "make achieving environmental justice part of its mission."

Much of the responsibility fell to EPA, which was also tasked with leading an interagency working group on environmental justice.

The office would encounter opposition from its infancy. Founding members said other EPA offices pushed back on incorporating environmental justice into their work.

"There was a general attitude of, 'This is not our problem, it's not my fault, I didn't do it, I have air regs to get out, leave me alone,'" said Edward Hanley, who worked at EPA from 1989 to 1993 as its deputy assistant administrator for administration and resources management.

The office has faced considerable hurdles since.

It lacks strong legal authority to enforce its mandates and has endured significant industry

opposition. And dedication to its mission has varied from administration to administration.

President George W. Bush's administration redefined environmental justice as applying to "all people regardless of race, color, national origin or income," essentially stripping away the consideration of race and poverty and raising questions about what EPA's office was supposed to be working on.

The Obama administration was the first to make strides in implementing environmental justice throughout the agency, Miller-Travis said.

"The truth of the matter is, it wasn't until the Obama administration and Lisa Jackson's leadership did the executive order get significant attempts to implement it," she said.

Jackson, as EPA administrator, created a senior-level position that reported directly to her and had authority over all the agency's offices.

Lisa Garcia was the first person to hold that job.

"I was able to walk into any meeting and ask, 'Did you consider the environmental justice implications?'" she said. "It wasn't problem free. But it started to tackle that problem."

Obama's EPA issued Plan EJ 2014, a comprehensive effort to integrate environmental justice into all EPA programs, including rulemaking, permitting and enforcement, and "fostering administration-wide action."

But Garcia recalled the opposition she received from career officials. She led the push to build EJSCREEN, a comprehensive mapping tool for identifying communities bearing a disproportionate pollution burden. The tool explicitly took race into account.

"We got huge resistance when I first introduced the idea of EJSCREEN," she said.

She set out to get buy-in from career staff so the tool would survive the next administration change, which it has.

But career officials often try to wait out the priorities of political appointees, she said.

"When you walk in after the Bush administration and everyone just stares at you like, 'We are not going to do this,' or, 'What exactly is environmental justice,' it became clear



to me that we had to work on internal tools before turning our attention outward."

She added: "You had to convince the people at EPA. That was almost 17,000 people in 2009."

Gina McCarthy, EPA's administrator after Jackson, said her predecessor was "forceful" on the issue and changed the agency for the better.

In particular, McCarthy noted that the EJSCREEN tool helped shift the agency to place-based initiatives, in which EPA led multiple agencies in engaging with local communities. That led to positive results in Detroit; Memphis, Tennessee; Spartanburg, South Carolina; and other places that took environmental justice into account.

But McCarthy, who is now the president of the Natural Resources Defense Council, also said there is inherent "tension" between the agency's offices and EJ efforts.

"The challenge at EPA is you're an agency that is under scrutiny and every decision you make is based on the judgment of what [a] court told you," she said.

Most staff, she added, is just "trying to color within the lines, and those lines have been there for 40 years."

Consequently, McCarthy said, it is up to leadership like Jackson's to "support and reward" new approaches that include environmental justice.

The Trump administration's approach to the office has been controversial.

It reshuffled the agency's organizational chart, moving the EJ office into the Office of Policy, a move many saw as minimizing its work. Trump has also proposed cutting the office's budget multiple times, including calling to zero it out in 2017. And critics have argued that EPA's numerous rollbacks of Obama-era air, water and climate regulations disproportionately affect EJ communities.

However, EPA Administrator Andrew Wheeler recently told EPA's National Environmental Justice Advisory Council that the reorganization "elevated" the EJ office, according to prepared remarks obtained by E&E News.

"Within EPA, we have taken steps to strengthen environmental justice," he said.

EPA also noted that the office has received an increase in funding during the Trump presidency — though that is largely a result of congressional appropriations. Further, the interagency working group led by EPA continues to meet, and the grant program is still doling out money.

The agency touted the administration's work to accelerate the cleanup of hazardous Superfund sites, many of which affect low-income areas and communities of color.

"This administration," EPA said, "recognizes the unique burdens facing environmental justice communities and is focusing efforts on improving the environment and health outcomes in these areas."

This year, Trump's budget proposal — widely seen as indicative of administration priorities — proposed cutting EPA's budget by more than a quarter, including slashing the Superfund program by more than \$100 million despite the billion-dollar program facing its largest backlog in 15 years.

Today, EPA's EJ program has a \$10 million budget and almost 35 full-time employees, comprising 20 within the Office of Environmental Justice and 13 spread across the agency's 10 regional offices.

### **Bipartisan pushback**

Harrison's book found that the resistance to EJ efforts has persisted at the agency regardless of what party is in the White House.

"This pushback against EJ reforms endures from one administration to the next," she wrote.

The University of Colorado, Boulder, sociologist conducted 89 confidential interviews from 2011 to 2019 with current and former EJ staff at EPA, the Justice Department, the Interior Department and several state agencies. Within EPA, she spoke with staff at headquarters, eight regional offices and a satellite office. She also observed meetings in person.

Her book reveals an approach to environmental justice within EPA that ranges from indifference to hostility.

Harrison found that agency staff members in other offices frequently refused to consider race in their daily work at all, let alone prioritize disproportionate pollution burdens on communities of color.

"My findings demonstrate how some environmental regulatory agency staff use colorblind and post-racial narratives to reject EJ reforms as violating their commitment to bureaucratic neutrality," she wrote.

That, Harrison wrote, leads to "bolstering a regulatory system that has disproportionately protected whites."

Santiago Ali, who is now vice president of environmental justice, climate and community revitalization at the National Wildlife Federation, said often regulators believe they are cleaning up the environment for everyone, so looking at race isn't important.

"People had the 'all boats rise' type of mentality," he said. "But if your boat has a hole in it, then, no, it doesn't."

Eley, the former EPA official, said the same.

"People make these skewed arguments — why should we make race an issue?" he said. "The reality is race is already an issue. If you are blind to it, you are enabling structural racism."

Before Eley worked in the agency's EJ office, he helped administer one of the agency's other grant programs. At one point, he pointed out that most of the grants were going to mainstream environmental groups that are overwhelmingly white.

He suggested diversifying the grant recipients, giving more to front-line communities of color.

The response: Why should we make race an issue?

"I was shocked," Eley recalled. "Don't you see you are already making race an issue?"

For EJ staff, Harrison also found that it consistently encountered arguments that racism was a thing of the past and that EJ efforts were a political fad.

Consequently, EJ staffers were frequently marginalized and ignored. Many even had formal complaints filed against them.

Managers who did incorporate their recommendations did so with a "check the box" mentality, Harrison found.

Like Eley, Santiago Ali said the problem typically lies with middle managers, the civil servants who are responsible for the nuts-and-bolts administration of air and water permits, as well as other agency programs.

They are motivated by results — like meeting their goals for the year and securing the budget for the next.

Environmental justice, Santiago Ali said, just adds to their to-do list.

Santiago Ali has advocated for adding environmental justice to performance reviews for middle managers, which he said would force them to prioritize it.

"Middle management was the greatest impediment to the true integration of environmental justice," he said. "But they are also the biggest opportunity for it."

### **An 'awakening'**

There are signs that EPA is taking more steps to address the problem, though the efforts appear to be coming from career — not political — staff.

Abu Moulta-Ali, a scientist in EPA's Office of Wetlands, Oceans and Watersheds, has worked for EPA for 15 years. For years, he said, EJ was not "ingrained" in most EPA offices.

"EJ itself at the agency is really considered an afterthought," said Moulta-Ali, who was previously president of the agency's African American Male Forum, a group that advocated promoting Black men into leadership positions.

"But I am happy to report that the Black Lives Matter [protests] are awakening a consciousness that we have to do better."

Moulta-Ali said Deputy Assistant Administrator Benita Best-Wong, a career official, has since held four meetings and has instructed staff to consider how EJ can be part of all of its regulatory responsibilities.

"We have begun systematically looking at everything we do through the EJ lens," Moulta-Ali said.

That includes developing a potential checklist or a blueprint for how EJ should factor into permitting. Also under consideration is including an EJ module in the office's popular Watershed Academy training course.

"I'm kind of happy," he said. "I just don't know where it will go."

Critics, however, said the new developments are coming nearly 30 years late.

Bullard, the Texas Southern University professor, said Harrison's findings confirm what he's encountered for three decades at EPA.

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"Until you change the infrastructure and the culture within government or institutions to acknowledge how the entities that are designed to protect are also designed to insulate the very industries that are creating the problems," he said, "you can't deal with racism if your organization itself is perpetuating the racism."

*Reporter Hannah Northey contributed.*

## **NEPA: 'Big win' for sage grouse as Bureau of Land Management cuts more than 347,000 acres from sale**

**(Greenwire, 9/18/2020) Scott Streater, E&E News reporter**

The Bureau of Land Management is temporarily withdrawing 347,525 acres from a planned Wyoming oil and gas lease sale set for next week because the 282 parcels in question intersect greater sage grouse habitat.

The decision to pull the parcels from the Sept. 24 lease sale is more fallout from a federal judge's decision in May that invalidated 440 leases from three separate lease sales in Montana and Wyoming.

The decision also tossed out a 2018 BLM instruction memorandum (IM) that removed previous requirements to prioritize leasing activity outside of grouse habitat.

Chief Judge Brian Morris of the U.S. District Court for the District of Montana ruled that the IM, and the subsequent lease sales in the two states, violated greater sage grouse conservation plans finalized by the Obama administration in 2015.

The bureau said in two recent notices announcing the latest deferral decision that "BLM Wyoming is in the process of developing a strategy which will meet the leasing prioritization management requirement set forth in the 2015 Greater Sage-Grouse land management plan revisions and amendments."

BLM still plans to offer eight parcels covering 4,425 acres outside of sage grouse habitat in next week's lease sale, according to the notices signed by Chris Hite, chief of BLM Wyoming's fluid minerals adjudication branch.

BLM did not respond to requests for information or comment on this story.

The Interior Department, state of Wyoming and Western Energy Alliance are challenging the Morris decision that threw out the 440 leases in the 9th U.S. Circuit Court of Appeals.

Morris, an Obama appointee, agreed last month to pause his order on the 440 leases until the appeal is resolved.

Kathleen Sgamma, president of the Denver-based Western Energy Alliance, acknowledged the uncertainty surrounding the Morris decision.

"Our appeal is moving forward and BLM is finishing up the rewrite of the 2015 plans," Sgamma said in an emailed statement. "There will be clarity eventually, but until then, BLM is of course complying with the judge's order."

Jeremy Nichols, climate and energy program director for WildEarth Guardians, said BLM's decision to remove the parcels from the planned lease sale "is a big win for the sage grouse and

public lands, although we have no illusion that the fight is over."

Nichols added, "The grouse thankfully won a reprieve here, but unless and until the Bureau of Land Management starts to truly heed the law, science and responsible land management, we expect to have to remain vigilant."

The deferrals in Wyoming are part of a broader legal battle being waged regarding the Trump administration's revisions to the Obama-era sage grouse conservation plans that allowed for exemptions and waivers of development in priority habitat.

In a separate ruling, Judge B. Lynn Winmill in the U.S. District Court for the District of Idaho last year issued a preliminary injunction that has prevented BLM from implementing those revisions. The bureau has been forced to use

provisions outlined in the Obama-era blueprint, which prioritized leasing outside grouse habitat.

The revisions adopted last year added "modifications, exemptions and waivers" to Obama-era mandates regarding compensatory mitigation, buffers around breeding grounds, and no-surface occupancy and seasonal restrictions near sensitive habitat that critics say will drive the bird toward extinction.

The revisions cover millions of acres of sage grouse habitat on federal lands in seven states: California, Colorado, Idaho, Nevada, Oregon, Utah and Wyoming.

BLM is attempting to convince Winmill to lift his preliminary injunction. The bureau in February released six draft supplemental environmental impact statements that it says address concerns that prompted Winmill's action.

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## **Lead NEPA Story** (continued from page 1)

The COVID-19 crisis has also hit the rural and Native American communities who would be most affected by the decision, they added.

"Furthermore, low-wealth communities and communities of color, including Indigenous communities, are being disproportionately harmed by this emergency, and these communities are also on the frontlines of oil and gas extraction in New Mexico," the groups said. "Environmental justice must be served."

WildEarth Guardians, which is a vocal critic of drilling in the area, circulated the letter. The group is part of a coalition suing BLM for what it says is a failure of the bureau to consider the air and water quality impacts to Native people of 30 leases sold east of Chaco.

"The agencies' determination to drill flies in the face of congressional mandates and tribal trust responsibilities," said Rebecca Sobel, WildEarth Guardians' senior climate and energy campaigner. "These broken promises cannot be tolerated."

BLM said in a statement today that it is working with the Bureau of Indian Affairs on public comments, and noted that the plan will be

subject to "a comprehensive 210-day comment period."

BLM added it has received more than 10,000 comments so far.

"BLM encourages this 'coalition' to use the resources they used on this letter and PR campaign to instead aid their constituents whom want to participate in the public process that has been continuing since 2019," the statement said.

But the letter to Bernhardt comes at a time when the relationship between the Interior Department and some Native American leaders is strained.

New Mexico's congressional leaders, particularly Rep. Deb Haaland (D), have accused BLM's de facto acting chief, William Perry Pendley, of a history of racist views and actions toward tribes.

Haaland said during a House roundtable this month that Pendley "disdains tribal practices and Native Americans as people," and she ripped the Trump administration for putting "a bigot front and center in the federal relationship with Native American tribes." Angelo Baca, cultural resources coordinator of the Utah Diné Bikéyah

tribal coalition, supported that view during the roundtable.

The congressional delegation has also criticized Interior's efforts at "meaningful" consultation with tribes on projects such as leasing near Chaco Culture National Historical Park — a UNESCO World Heritage Site.

BLM has been under fire for months not only for pressing forward with the update to the 2003 resource management plan for northwest New Mexico that includes the national historical park, but also for ongoing efforts to continue holding oil and gas lease sales and to permit drilling during the pandemic.

The resource management plan that BLM is updating not only includes the national historical park but also overlaps with the Navajo reservation.

The region in and around Chaco Canyon sits over the Mancos Shale/Gallup formation, which has drawn much interest from the oil and gas industry.

But development proposals have been met with stiff resistance from congressional Democrats and Native American tribal leaders worried about protecting ancient ruins within the national historical park and sensitive lands surrounding it.

Democratic New Mexico Senators Martin Heinrich and Tom Udall introduced legislation, S. 1079, that would ban oil and gas drilling and mining activity within a 10-mile buffer around the Chaco Canyon park.

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