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**ADEQ Early Bird**

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## **STATEWIDE**

### **1. AZ legislators favor nuke waste storage site**

Associated Press

April 24, 2012

The Arizona Legislature is going on record as saying it wants the federal government to consider establishing a site in Arizona to store spent nuclear fuel.

The House on Tuesday approved a Senate-passed memorial that says placing a permanent storage site for spent nuclear fuel in Arizona would create thousands of jobs both during construction and afterward.

The legislation sponsored by Republican Sen. Al Melvin of Tucson has no binding effect. Passage means the memorial will be sent to congressional officials.

Democratic Rep. Tom Chabin of Flagstaff says the legislation is a waste of time and irresponsible. He says most Arizonans don't want nuclear waste in their backyard.

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## **COCHISE**

### **2. Thompson elected to SSVEC board**

San Pedro Valley News-Sun  
April 25, 2012

Sulphur Springs Valley Electric Cooperative (SSVEC) members in the St. David, Pomerene, Cascabel and Huachuca City areas have elected Leslie E. Thompson to serve on the cooperative's board of directors.

His election was announced to cooperative members at the 74th annual meeting of SSVEC in Willcox on Thursday evening, April 19.

In district 5 (St. David, Pomerene and Huachuca City) Thompson received 267 votes, Nelson Daley received 265 votes, Patrick M. Kaletka received 167 votes and one ballot was declared invalid.

In three districts incumbents facing re-election were unopposed. Following the cooperative's bylaws, no election was held in those districts and the incumbent directors Kathy Thatcher from District 1 (Willcox, Bowie and San Simon), Harold Hinkley from District 9 (Sierra Vista), and Gene Manring from District 13 (Sierra Vista and Hereford) were deemed re-elected.

An election committee composed of SSVEC members Jilene Hatch of Willcox Stewart District, Suzette Pulvirenti of Cochise and Albert Fernandez of Benson met on April 18 to count the ballots cast in the director election.

Following the annual meeting on April 19, the SSVEC Board elected officers for the coming year. Kathy Thatcher (Willcox) was elected board president, Pat English (Elfrida, McNeal, Double Adobe and San Bernardino) was re-elected vice president, Joe Smith (Dragoon, Cochise, Pearce-Sunsites, and Kansas Settlement) was re-elected secretary and Harold Hinkley (Sierra Vista) was re-elected treasurer.

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## COCONINO

### 3. Indian Water Rights - 'complex, obscure and expensive'

Navajo-Hopi Observer  
April 24, 2012

At the very minimum, "Indian water settlements are complex, obscure and frequently, very expensive," according to Ryan Smith, an attorney for Brownstein, Kyatt Farber Schreck in Washington, D.C.

Smith, who wrote a recent news piece on congressional processes regarding Indian water rights settlements, gave an overview to the 112th Congress in Washington recently on how seriously complicated this legislative process is for Indian tribes, one of which is being experienced right here, right now in the home reservations of Hopi and Navajo.

The Navajo Nation's series of seven town hall meetings, three of them completed so far, have all been heavily policed and extremely lengthy, despite the pre-set time frame of a 90-minute PowerPoint time slot, with very limited three-minute question or public statement times for community members to even have their questions or positions put on public record. These constraints are all imposed by Navajo Nation President Ben Shelly and his Water Commission members.

In addition to the internal Navajo meeting constraints on public input, there has been heavily attended public protesting outside of every venue opposing the Kyl-McCain Bill, Senate Bill 2109 by Navajo and supporting Hopi grassroots members.

Shelly, along with Vice President Rex Jim and some of the Navajo council delegates are hearing resounding "no deal" sentiments from just about every single attendee at the recent Tuba City, Pinon and Ganado chapter houses last week, which indicates the Shelly-endorsed Little Colorado River (LCR) Settlement agreement is not going to get the Navajo community approval that he and his Water Commission are desperately looking for before their June cut-off date to finalize the congressional process.

On the Hopi side, there have been two recent central government presentations, one at Hotevilla Village April 13 and another hosted by the Hopi Tribes' Cultural Preservation Program at the Wellness Conference Center at Kykotsmovi April 17.

At the Hotevilla meeting, the village membership did not want Hopi Chairman LeRoy Shingoitewa's tribal attorneys to give their usual presentation that has been very structured and rigid. Instead, village members insisted that only Shingoitewa and his Water-Energy Team Chairman George Mase and team members be present to answer questions in both Hopi and English.

Along with few Hopi council members, Shingoitewa and Mase were scolded and questioned by the attending Hopi crowd for their lack of public disclosure and lack of Hopi public input prior to the "agreement in principle" that Shingoitewa and the Water-Energy Team agreed to in March.

"How many of us really understand this?" asked Hotevilla Village member Mary Felter. "Your presentation is jumping all over the place and is just making this settlement issue more confusing. I would like the chairman and the water-energy team to come back and further educate us about the LCR issue because it's so complicated. We really need more information and more time to understand this. One meeting isn't going to do it."

Neither Shingoitewa nor Mase responded to Felter's immediate request. Hotevilla Village is planning on requesting a follow-up for Shingoitewa and Mase to come back up to their village a second time for further information and education for a full-day LCR work session in the next few weeks.

"It just seemed like it was a courtesy presentation so Shingoitewa could say, we held it, there were people in attendance and now that's a done deal at one village, lets move onto the next," said Jennifer Joseph. Joseph has been monitoring most of the Hopi presentations being held on both the Hopi grassroots "Kill the Bill" group presentations as well as the presentations being sponsored by the Hopi chairman and Water-Energy Team.

While the lack of public disclosure, public information or explanation has been an issue with both Navajo President Shelly and Hopi Chairman Shingoitewa's closed door approach to the water settlement issue, at the root of the SB2109 is the entire lengthy process of how Indian water rights settlements have been enacted and how they are processed at the congressional and federal level.

According to Smith, "Congressional approval is required before any water rights settlements can become enforceable. Once a tribe settles its water rights claims with the relevant local parties it must then face the daunting task of moving its settlement through the federal legislative process, which can and does take years."

Smith further states, "The looming federal budget deficit and current ban on 'earmarks' have made it even more challenging to advance an Indian water settlement through Congress. Given these challenges, in order for an Indian water settlement to have any chance to become law, as a threshold manner it cannot increase the federal deficit. Moreover, settlement parties must be able to distinguish their settlement from an 'earmark' and demonstrate to congressional members that their settlement's value warrants its federal price tag."

Western water law is complicated, Indian water law is even more complicated. Water rights for Indian reservations are based on the "Winters Doctrine," which basically says that when the federal government creates an Indian reservation, that it also must "reserve enough water" to sustain and fulfill the purposes of the reservation. (Winters v. US 207 U.S.564, 576-577, 1908).

The priority date of reserved water for Indian reservations is also the date that the reservation was created by executive order, treaty or by Congress. Because most western Indian reservations were created in the 1800s and early 1900s, tribes generally have "senior water rights" over "non-Indian water users."

But historically since very few tribes have had financial resources to assert or develop their water rights, many "non-Indian water users" have become extremely reliant on tribal water.

Also, the unique way that settlements are drafted and processed, they might never become law.

An important aspect of the settlements act is that they comply with what is called the Pay-As-You-Go (PAYGO) Act Pub.L.No.111-139 (2010). PAYGO requires that any direct spending and revenue provisions in a bill not increase the federal deficit.

There are two types of federal spending, "discretionary" and "direct."

Direct spending is generally established in permanent law and includes federal government spending on entitlement programs as well as other budget outlays controlled by laws other than the appropriations process. If direct spending is included in a bill, the funding becomes available automatically. Direct spending is not contingent on the annual appropriations process.

A bill with "discretionary spending" merely authorizes an appropriation. It does not actually appropriate or authorize any actual funds.

The Navajo-Hopi Little Colorado River Water Settlement agreement draft does not attach any "direct funding" to its passage, which is only part of what is causing many Hopi and Navajo grassroots opposition members to have serious concerns.

According to Smith, "In the era of budget cuts and the newly-imposed Republican party ban on 'earmarks' the future of Indian water settlements in the 112th Congress and future Congress appears to be uncertain at best."

Certain members of Congress have argued that water settlements are "earmarks" because they authorize spending for a particular tribe in a specific state.

Another factor that has not been addressed by Shingotewa or Shelly is the federal government's trust relationship with Indian tribes and what results as "the federal government's federal duties and trust responsibilities to the protection, development and management of tribal resources, including water." (*Pyramid Lake Paiute Tribe v. Morton*, 354 F. Supp. 252,257).

In addition, there is the formal Indian Policy of the US Bureau of Reclamation, which states: "Trust Resources: The United States government has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian tribes or Indian individuals by treaties, statutes and executive orders. Reclamation, as a federal executive agency, also shares this responsibility."



Finally, Shingoitewa and Shelly have not explained the "value of tribal water" to their tribal memberships during their heavily structured, limited local meetings. What is the "real value" of tribal water and what are Hopi and Navajo really giving up as a part of the settlement?

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## **4. 2 Ariz schools honored for environmental education**

Associated Press

April 24, 2012

The federal government is recognizing two Arizona schools for their science and environmental education.

The STAR School in Flagstaff and Phoenix's Roadrunner Elementary School are among 78 first-ever U.S. Department of Education Green Ribbon Schools.

The federal recognition program began in September. The White House made the announcement Monday.

Green Ribbon schools create "green" environments through reducing environmental impact, promoting health and ensuring a high-quality environmental and outdoor education to prepare students for jobs in the global economy.

The 78 schools were chosen from among about 100 nominees submitted by 30 state education agencies, the District of Columbia and the Bureau of Indian Education.

About 350 schools completed applications to their state education agencies.

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## **5. Volunteers take ownership of Schultz burn area replanting**

Cyndy Cole, Arizona Daily Sun  
April 24, 2012

Jaydon, 5, Rebecca, 10, and mom Laura Horner drove from Winslow for a second weekend to plant trees in the area burned two years ago in the Schultz fire.

"It seems like a good chance to spread a positive message for them," Horner, a former Flagstaff resident, said of her children. "Hopefully, they can drive through here with their kids and say 'we planted these trees.'"

Laura's niece, Adriana, joined her cousins in digging holes and dropping in saplings from seeds collected after the wildfire, then grown in a greenhouse in California.

Their group was tasked with planting some 50 ponderosa pine saplings off Schultz Pass Road as part of a series of volunteering weekends with the Friends of Northern Arizona Forests.

Dozens of volunteers took to the margins of Schultz Pass Road west of Timberline on Saturday to plant trees as part of a 5- or 6-year effort to replant up to a quarter of the 15,075 acres burned in the Schultz fire.

The likely cost for all the replanting over the years: \$1.2 million to \$1.6 million, says Andy Stevenson, silviculturist for the Flagstaff Ranger District of the Coconino National Forest.

Up in the zones of standing dead trees, the Forest Service has hired an Idaho contractor to replant trees. It expects to cover some 600 acres this spring in total.

The ponderosas, Douglas fir and limber pine seedlings coming to reforest the area will likely be grown in northern Arizona greenhouses, including in Fort Defiance and at Northern Arizona University in Flagstaff.

The Forest Service is also felling burned trees in a crisscross pattern to try to protect some new aspen sprouts from being eaten by elk.

"We need to protect them if we want the aspen to come back," Stevenson said.

He estimates 95 percent of the new aspen growth so far shows signs it's being munched.

Friends of Northern Arizona Forests' calls for volunteers to replant trees on Saturdays in April filled up within a couple weeks.

### **KIDS DIG HOLES**

A number of volunteers out Saturday brought kids to dig holes some 9 inches deep, install saplings and protect them with a tan-colored tube.

Ruby Heinonen, 9, moved dirt around a young sapling.

"I just like planting and gardening a lot," she said, as friend Mya Zahn, 10, helped.

Madison Kennedy, 12, pointed to a grub she carried to a safe spot in a green plant.

Dad Scott Kuhr worked alongside son A.J. in the still air, as the sun started to intensify.

"We heard about it and thought it would be good to have the kids do a little community service," Scott said.

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## **6. More Kaibab thinning proposed**

Cyndy Cole, Arizona Daily Sun  
April 24, 2012

Re-establishing grassy prairies.

Saving dying aspen.

Protecting rare waterways.

Making the forest less prone to very large wildfires.

Those issues rise to the top of the list as the Kaibab National Forest plans for the next 15 years. U.S. Forest Service officials are re-doing the overall blueprints guiding its work into the future.

Changing the conditions that lead to very large wildfires is deemed most important.

"The most apparent need for change is to reduce the risk of uncharacteristic fires and restore the structure, species composition and function of forested ecosystems. This emerged as the highest need for change in the ecological sustainability report and as a very high need in the socioeconomic sustainability analysis," planners wrote.

That means the Kaibab National Forest proposes to thin five to nine times more ponderosa pine annually than it does today. It might have prescribed fires at levels similar to today, or at levels three times greater if the public can tolerate more smoke.

"These plans are really focused on desired conditions, on moving toward sustainable, healthy conditions," said Ariel Leonard, the forest's planner.

For springs, that might mean monitoring data about the water in them, adding more fencing to keep out livestock or securing water rights where water has been diverted.

The Kaibab National Forest is one of the country's driest in terms of surface water. Aside from one perennial stream less than 2 miles long, most of the waters on the forest are small springs or ephemeral water sources.

### ASPEN PROTECTION SOUGHT

For aspen, the Forest Service might clear-cut small trees and burn small areas to promote new aspen growth, as these trees thrive on disturbance.

"On the Williams Ranger District, most stands are generally considered unhealthy. These aspen stands are dying or are dead because they have been overtopped by conifers and are unable to recruit new individuals due to heavy browsing and bark stripping by (deer and elk)," the agency wrote.

As for grasslands, the agency proposes to reduce trees on 5,000 to 10,000 acres of prairie each year, to make more habitat for prairie dogs, various snakes, pronghorn antelope and burrowing owls.

The agency also proposes to modify more fences for pronghorn, which will go under the fences if they aren't made of barbed wire but won't jump over them.

Climate change gets some consideration in this plan, with the Kaibab National Forest officials saying increased temperatures could increase wildfire risks, change the kind of vegetation that grows in different areas, lead to insect infestations or diseases and add more demand for water.

"Fire frequency and severity are likely to increase as temperatures rise and precipitation decreases," stated agency projections.

#### GIVING CREDIT AND CRITICISM

More than a dozen conservation groups -- from the Sierra Club and the Friends of Anderson Mesa to Public Employees for Environmental Responsibility and Great Old Broads for Wilderness -- weighed in on the plans earlier along, making suggestions.

The Grand Canyon Wildlands Council is backing a proposal to add some 44,126 additional acres of wilderness, some large areas for animal conservation (a "North Kaibab Wildlife Habitat Complex" of 260,000 acres that would be thinned and then maintained with fires), and preserve trees that were here before Europeans arrived.

"Near as we can tell, it's the largest stand of old-growth ponderosa left in the Southwest," said Kim Crumbo, GCWC conservation director.

His group would like to see protections for mule deer herds on the North Kaibab, north of the Grand Canyon, to connect that herd to its pastures near Bryce Canyon.

"It's really valued by the hunting community, that deer herd," Crumbo said.

Crumbo gives kudos to Leonard and other forest planners for talking about climate change in the plan and how the forest might start addressing it.

"I think it's high time that we commend the forest staff for taking on those issues," he said.

But the Center for Biological Diversity's Jay Lininger, an ecologist, says the plan goes the wrong direction in removing specific numerical targets for conservation of some species.

"We have a concern that there are no binding standards for how the Forest Service is going to manage virtually any resource in the forest," he said.

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## **GILA**

### **7. Dump electronic waste for free this Saturday**

Payson Roundup  
April 24, 2012

Get rid of potentially dangerous electronic waste for free on Saturday, April 28 at the Payson Event Center.

The Arizona Department of Environmental Quality will host the third annual Electronics Waste Recycling Event to run from 9 a.m. to 1 p.m. at 1400 S. Beeline Highway.

Sponsors of the free disposal event include ADEQ, the Payson Water Department, Gila County, Northern Gila County Sanitary District, Town of Star Valley, Pine-Strawberry Water Improvement District, CH2MHill and E-Waste Harvesters of Phoenix.

Backers hope residents will turn in tons of unwanted televisions, computers, monitors, batteries, chargers, cell phones, VCRs, CD and DVD players, printers, small appliances, fax machines, cables and cords during the event. E-Waste Harvesters will use state of the art software to erase all hard drives and will provide companies and individuals donating e-waste a certificate of destruction.

“We are excited about returning to Payson again after the excellent events during the first two years of our free electronics waste recycling program in that area,” ADEQ Director Henry Darwin said. “This is a great opportunity for people to ensure that this potentially toxic stream of waste is disposed of responsibly.”

During the last two years of e-waste events in Payson, more than 15 tons of discarded electronics were collected from nearly 300 vehicles.

“These events are typically some of the most well-attended of all our various town events,” said Buzz Walker, Payson’s Water Department manager.

ADEQ has sponsored 64 events statewide since the e-waste program’s inception in August 2009 and collected more than 1.5 million pounds of electronics for recycling.

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## **GRAHAM**

### **8. Lightning-caused fire threatens Mount Graham**

Jon Johnson, Eastern Arizona Courier  
April 24, 2012

A lightning-caused fire is burning near West Peak of the Pinaleño Mountain range and is heading toward Mount Graham.

The Cedar Fire, which started around 6 p.m. on Monday, has grown to about 125 acres as of 11 a.m. on Tuesday and was listed as being 50 percent contained, according to Coronado National Forest Safford District Ranger Kent Ellett.

It is burning mesquite grass but is moving toward oak trees and juniper brush.

"If it gets into that, it will be a little more of a challenge," Ellett said.

The fire is burning on the steep, rocky terrain of Lindsey Canyon on the 76 Ranch. The area is southwest of Tripp Canyon and is about eight to 10 miles west of Riggs Lake as the crow flies.

A number of crews worked through the night to make sure structures in the area were not threatened and a burnout was very successful at stopping the fire's downslope growth, according to Ellett.

He said the Forest Service has had excellent support from the Pima Fire Department on its state land wildfire contract, a couple of Arizona Department of Corrections crews, a Hot Shot crew and the Graham County Sheriff's Office. Currently, three crews, five engines, two water tenders, a helicopter and a spotter single-engine lead airplane are actively engaged with the fire. The lead plane orchestrates air operations, but there has been only helicopter water drops to date and no retardant drops from air tankers.

"Last night, when the crews went out, we had downslope winds, and it was making a downslope run," Ellett said, "and so the priority was to head it off to protect the structures, and that was successful."

While the downslope growth was actively contained, the fire turned northward and is headed toward Mount Graham. It is listed as having moderate- to high-potential to continue to spread up West Peak. If the fire traverses West Peak, it will have to go through another canyon before it hits Mount Graham.

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## **9. Wildfire's advance toward structures stopped in eastern Arizona**

Arizona Daily Star

April 24, 2012

Crews battling a lightning-sparked fire near Safford have been able to stop the fire's advance toward about 20 structures near Klondyke in eastern Arizona.

The Cedar Fire, now estimated at 125 acres, was reportedly within a quarter of a mile of structures, said Heidi Schewel, a spokeswoman for Coronado National Forest.

Crews on Tuesday were able to conduct a burnout operation on the southeast side of the fire to stop its advance. None of the structures are now in imminent danger, officials said Tuesday afternoon.

The fire is about 50 percent contained.

The fire is burning 3 to 5 miles east of Klondyke, which is about 30 miles west of Safford. It's on state trust land in lower elevations in the vicinity of the Pinaleno Mountains. Coronado National Forest is managing the firefighting effort, which includes five engines, three hand crews, a helicopter and a plane.

The Northwest Fire District's Ironwood Hotshots were being activated to the area. In addition to the 20-person crew, Northwest Fire will also send two specially trained firefighters to assist at a local state land dispatch center, said its Capt. Adam Goldberg.

After a lightning storm with very little precipitation moved through the area Monday, Schewel said fire officials were expecting to hear of other fires. For example, there was a visual sighting late Monday of a single snag of tree on fire on Mount Graham, also near Safford, but "we believe it is surrounded by snow," she said.

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## LA PAZ

### 10. Discovery of Indian artifacts complicates Genesis solar project

Louis Sahagun, Los Angeles Times

April 24, 2012

The Feb. 27 letter from the chairman of the Colorado River Indian Tribes was pleading and tough. It asked President Obama to slow the federal government's "frantic pursuit" of massive solar energy projects in the Mojave Desert because of possible damage to Native American cultural resources.

The Obama administration didn't respond. But four days after Chairman Eldred Enas sent the letter, the Indians say they found an answer, delivered by spirits of the desert.

Howling winds uncovered a human tooth and a handful of burned bone fragments the size of quarters on a sand dune in the shadow of new solar power transmission towers. Indians say the discovery is evidence of a Native American cremation site not detected in Southern California Edison's archaeological survey before the towers were built.

The Indians reburied the remains a few hundred feet away. But while digging the grave April 3, they hit more ancestral bones.

It was the last straw, the third discovery of artifacts at or in the vicinity of the \$1-billion Genesis solar project 200 miles east of Los Angeles. All had been missed by archaeological surveys conducted in a rush to build.

"Mother Nature decided to show them what they missed in those surveys and said, 'Stop,'" said Sylvia "Cindy" Homer, vice chairwoman of the Colorado tribes.

Now the tribes, joined by others in the desert, are not merely asking the Obama administration to go slow because of potential harm. They are demanding it. Backed by the legally powerful Native American Graves Protection and Repatriation Act, the Indians say Genesis and the transmission line corridor are proof of damage to sacred lands. They are readying court challenges that could alter solar and wind energy projects across the desert.

"We're at a flash point over a general unwillingness to listen to and respect the tribal perspective and advice," said David Singleton, a program analyst with the California Native American Heritage Commission. "These are important public policy questions involving gigantic power plants sprouting up in rural areas that had gone undisturbed for thousands of years."

Genesis is one of 27 solar plants in the West that the U.S. Bureau of Land Management has identified as a priority, giving them a faster track to state and federal approval. Interior Secretary Ken Salazar has said the government is "on steroids" in its support for renewable energy.

But unless the developers and federal and state governments yield to the Native American concerns, they are headed for a showdown of complicated and competing values. It would come down to a single question: Does the cultural importance of long-buried Native American remains outweigh the need to rapidly build solar and wind energy projects to meet the enormous threat of global climate change?

In stark terms, should a project like Genesis be scuttled by what an executive for its owner called "a diffuse scatter of artifacts?"

The colliding interests are not new. They have been present for decades along the California coast, where most Native American village sites were destroyed by urbanization, said Jon Erlandson, director of the University of Oregon Museum of Cultural and Natural History and an archaeologist deeply knowledgeable about development in California Indian country.

"The relatively undeveloped deserts are next in line," Erlandson said. "But out there, fast-track processes that do not involve a lot of thorough research before building something are setting the stage for future conflicts and potential disasters."

Given the strength of the federal law protecting cultural artifacts, developers find that often it is less expensive "to slow down, consult with tribes and place projects in areas where they do the least amount of damage possible," he said.

Although a handful of solar projects are under construction in the desert, Genesis has emerged as a case study for Native Americans. As a federally recognized tribal group with sovereignty over a 264,000-acre reservation, the Colorado tribes were offended that the BLM approved Genesis without holding "nation-to-nation" consultations with them.

Before construction began, archaeologists had warned that the site near Ford Dry Lake was rich with Native American history. Florida-based NextEra Energy Resources redesigned the project to avoid land most likely to hold artifacts, then followed a streamlined method, approved by state regulators, for surveying the new site for remains.

The survey found nothing to alter the project. But during construction last November, workers uncovered a pair of grinding stones and what appeared to be a layer of charcoal. The Colorado tribes say they are evidence of a sacred cremation site. Genesis claims they are insignificant artifacts. But work has been halted on more than 125 acres since their discovery.

The human remains found months later were some seven miles from Genesis, near new transmission towers erected to carry power from the project.

The tribes now want large areas surrounding the cremation sites deemed off-limits, even if that means redesigning Genesis and rerouting Southern California Edison's transmission line corridor.

NextEra warns that yielding to the tribes' demands could result in costly delays that jeopardize completion of the 250-megawatt plant, which is being built on BLM land with the help of an \$825-million loan guaranteed by federal taxpayers.

Michael O'Sullivan, NextEra's senior vice president of development, acknowledged in a recent letter to the BLM that the economic damage could be "so severe that, had they been known at the time the investment was approved, Genesis would not have moved forward with the project."

California Public Utilities Commission spokeswoman Terrie Prosper said the human remains found recently were outside the boundary of the transmission line corridor and "no rerouting is necessary."

But Linda Otero, a leader of the Fort Mojave Indian Tribe, which is working with the Colorado tribes, said that even though the remains were outside of the boundary, they are part of "a living spiritual world." The utility has "disrupted the peace of our ancestors and our relationship with the land. There is no mitigation for such a loss."

Native Americans insist they are not against renewable energy. The problem is that some solar projects were approved for lands that are an essential part of Indian religion, culture and history — without consultation with affected tribes.

The Colorado tribes and others in the desert are now joining to pressure developers and mount legal challenges. In Imperial County, for example, the Viejas Band of Kumeyaay Indians touts the support of the Cocopah, Quechan and Colorado tribes in its effort to derail Pattern Energy's proposed Ocotillo Wind project, which would scatter across 12,500 acres of BLM land up to 112 turbines, each 450 feet tall.

"The problems inherent in this fast-track process are exacerbated by the sheer number of projects proposed," Colorado tribes chairman Enas pointed out in his letter to Obama. "Our current count places over 40 proposed projects within a 50-mile radius of the Colorado River Indian Tribes Reservation.

"For projects that have been proposed but not yet approved, we ask that our input be sought out early and often, and that BLM be willing and able to turn down ill-sited projects," Enas wrote.

Native American objections threaten to undermine the BLM's efforts to create a plan to develop renewable energy across six Southwestern states. The agency is trying to unify local, state and federal land use rules into a uniform plan that developers can rely on throughout the region.

The plan has gotten off to a rocky start in Indian country, with many tribes not cooperating. BLM Deputy State Director Thomas Pogacnik acknowledged in an interview that Native Americans had good reason to be angry about his agency's fast-track process, given that it relied almost entirely on information provided by developers to determine where to place the first "high-priority" wind and solar projects on public land.

Pogacnik promised that future projects will include more input from tribes. "We learned a lot from that first go-round of projects that there is a better way of doing things," he said.

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## **MARICOPA**

### **11. Data hint at better air quality in Valley**

Shaun McKinnon, The Arizona Republic

April 25, 2012

Air quality in the Valley has improved by at least one measure: the annual ranking of the nation's most-polluted cities by the American Lung Association.

The Phoenix area dropped five spots since last year to No. 7 among 25 metropolitan areas based on year-round dust pollution, according to the association's annual State of the Air survey, which is being released today. A year ago, Phoenix ranked No. 2, and in 2010, the Valley was listed as the nation's most-polluted metro area for dust.

The Valley ranked 19th for ozone pollution. It was not among the 25-most-polluted cities for dust pollution as measured over 24-hour periods.

Bakersfield, Calif., topped the list for year-round and 24-hour dust pollution. Los Angeles was listed as most-polluted for ozone, the primary component of smog.

Bill Wiley, director of the Maricopa County Air Quality Department, credited the improvement to a combination of more-favorable weather conditions and new pollution-control measures.

"Clearly, the whole community has been working very hard to improve things," Wiley said. "We still have our challenges, but individual actions that people take are critical."

The survey uses data from the U.S. Environmental Protection Agency. It calculates dust rankings based on dust particles that are 2.5 micrometers or less in diameter. The EPA also regulates dust particles that are 10 micrometers or less in diameter. The smaller particles are considered a greater health risk because they can move from the lungs into the bloodstream.

In its report, the lung association said that many of the cities near the top of its three lists had posted improvements over a year ago.

"We're making steady progress in cutting dangerous pollution from the air as a result of cleanup efforts required under the Clean Air Act," said Stacey Mortenson, executive director for the lung association in Arizona. "But millions of Americans across the country, including those in Arizona, are still forced to breathe unhealthy levels of air pollution as a result of air-quality standards that are outdated."

Maricopa County meets the EPA's standards for fine dust particles, known as PM-2.5, and has met the standard for ozone in recent years.

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## **12. Phoenix-based mining firm to pay \$6.8M for damages**

Associated Press

April 24, 2012

Phoenix-based mining firm Freeport-McMoRan has agreed to pay nearly \$7 million to settle federal and state natural resource damages claims involving the Morenci copper mine in southeastern Arizona.

State authorities and federal prosecutors filed a complaint on April 24 that Freeport-McMoRan was civilly liable for injuries to natural resources that resulted from hazardous substance releases at and from the mine site.

The complaint alleged that surface waters, terrestrial habitat and wildlife, and migratory birds have been injured, destroyed or lost as a result of releases of hazardous substances including sulfuric acid and metals.

Under the consent decree lodged Tuesday, Freeport-McMoRan will pay \$6.8 million to the Interior Department's Natural Resource Damage Assessment and Restoration Fund. The decree is subject to a 30-day public comment period and court review and approval.

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### **13. Defense Dept. on front lines of climate-change issue**

Rafe Sagarin , The Arizona Republic Opinion  
April 22, 2012

While the international community repeatedly stalls on taking meaningful action about climate change, there is one internationally focused organization that isn't waiting around -- the U.S. Department of Defense.

The generals and admirals there already see how climate change is affecting their operations and their strategic planning. The Navy sees melting ice caps as both a threat to security and an opportunity for increased mobility. The Marines see rising sea levels and increased coastal storm activity as complications to amphibious landing plans. Army and Air Force training on land and in the air are affected by the devastating wildfires that have been ravaging the western U.S.

The Southwest region of the U.S. in particular is a critical zone for Defense Department readiness, providing large land areas for its installations and a climate amenable to year-round exercises on land, sea and air.

But this region faces a wide range of likely interacting threats from climate change -- including higher temperatures in an already hot area, increased severity of droughts and floods, radically altered fire regimes and sea-level rise on the California coast -- that make it particularly important to train Defense Department managers on how to prepare for and adapt to the changing operational environment. The department got a preview of this in summer 2011 when Arizona's Monument Fire burned right up to the doorstep of the Army's Fort Huachuca. In short, the Southwest presents an intensified suite of climate-change impacts that Defense Department facilities are likely to experience.

Researchers from a wide range of fields at the University of Arizona -- from computer climate modeling and fire ecology to hydrology and social sciences -- have recently been selected by the Defense Department to help managers at Southwestern Defense facilities understand the risks they face with a changing climate and learn how to adapt to these risks. In a way, our approach is just a modern version of the agricultural extension model that was developed for land-grant universities such as UA. In this case, instead of working with farmers and sharing the latest crop-science research, we are working with base commanders sharing the latest regional climate-change information.

At the same time, we will never be able to provide perfect forecasts of the coming climate-change effects. Defense Department managers will need to deal with this constant uncertainty by becoming more adaptable. There is support for thinking about how to be more adaptable at high levels in the Pentagon, but there isn't a lot of clarity on exactly how to be adaptable.

As a biologist, I know something about adaptability from studying the 3.5-billion-year history of dealing with unpredictable threats and changes by life forms on Earth, and I've been asked to share some of the unclassified secrets of natural adaptability with security agencies such as the Defense Department and the Department of Homeland Security.



Fortuitously, Defense now has a well-trained force for implementing adaptable strategies among its ranks in the form of the young officers who have led soldiers and marines into battle almost continuously for the last 10 years.

To these officers, the need to adapt to climate change won't seem foreign, but simply another challenge they need to overcome to survive and thrive. The job for scientists working on climate-change issues will be to provide these adaptable leaders the tools they need to make the decisions that will allow their forces to continue to adapt in the future.

*Rafe Sagarin is an ecologist at the University of Arizona. He is a Guggenheim Fellow and a former AAAS Congressional Science Fellow. His books, "Natural Security" (2008, University of California Press) and "Learning From the Octopus" (April 2012, Basic Books), outline in full the multidisciplinary development of the linkages between biological evolution, adaptation and security.*

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## **14. Mesa meeting to provide info on light rail extension**

East Valley Tribune

April 24, 2012

Residents and businesses along the Metro light rail extension in Mesa can meet the project's contractor on Wednesday, April 25 to learn more about upcoming construction. Metro will introduce the designers and builders of the 3.1-mile segment through downtown, and share what the public can expect during construction. The work is expected to begin on Main Street in late May or early June, and the extension is scheduled to open in 2015. The new segment will go from Sycamore to east of Mesa Drive.

The meeting is scheduled from 6 p.m. to 7:30 p.m. at the East Valley Institute of Technology, 1601 E. Main St. A presentation will be given at 6:15 p.m. in the Health and Sciences Building. For more information, visit [www.metrolightrail.org/centralmesa](http://www.metrolightrail.org/centralmesa)

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## MOHAVE

### 15. Groups push for new national monument

Suzanne Adams, Kingman Daily Miner  
April 25, 2012

Mohave County and Arizona could be facing a new fight with the federal government over land in the near future.

Four organizations - The Grand Canyon Wildlands Council, the Wilderness Society Western Lands, the Sierra Club and the Center for Biological Diversity - are pushing for President Barack Obama to propose a new 1.7 million acre national monument surrounding the Grand Canyon National Park.

According to maps of the proposal, the proposed Grand Canyon Watershed National Monument would take up most of the Kaibab National Forest north and south of Grand Canyon National Park. That includes a large section of land in the Arizona Strip, north of the Grand Canyon, between Grand-Canyon Parashant and Vermillion Cliffs national monuments.

The organizations submitted the proposal to the St. George, Utah Bureau of Land Management Office earlier this month. The proposal states that turning the area into a national monument would protect old-growth forests, endangered species, and important water, archeological and natural resources. It would also create a wildlife conduit between the national monuments and Grand Staircase Escalante National Monument. It would protect the area from damage from overgrazing and prevent new mining claims, as well.

The proposal would still allow people to hike, observe wildlife, hunt, fish and conduct a number of other activities.

Typically, federal land can only be removed from grazing, mineral and other public uses by an act of Congress. However, Obama could follow President Bill Clinton's example and use the Antiquities Act to circumvent Congress and create a national monument. Clinton used the act to create Grand Staircase Escalante and Grand Canyon-Parashant as well as other national monuments in the 1990s.

According to the Associated Press, the proposal has a number of people and groups up in arms.

The Arizona Cattleman's Association opposes it saying it will close off land to one of the few remaining industries in the area, ranching.

According to the proposal, the new monument would not allow new ranching permits and would ask current ranchers to voluntarily give up their permits.

The Friends of the Arizona Strip, a non-profit organization made up of residents and friends of the area, also oppose the idea. The group's website says the proposal will not only close land to new mining, grazing and logging, but it will re-introduce wolves and grizzly bears to the area.

The proposal does not specifically state that bears and wolves would be re-introduced to the area, but that declaring the area a national monument may encourage such animals to move back into the area.

Sen. Orrin Hatch, R-Utah and Rep. Jim Matheson, D-Utah, have already voiced their strong opposition to the proposal, according to the Deseret News.

Mohave County Supervisors could not be reached for comment Tuesday, but the Board of Supervisors as well as state officials soundly denounced the Obama Administration's and the U.S. Interior Department's decision to remove more than 1 million acres, including several thousand acres in Mohave County, from new hard-rock mining claims earlier this year. The government withdrew the land from new mining claims to protect the natural beauty of the area, its historical sites and water sources such as the Colorado River.

The county and Quaterra Alaska teamed up to file a lawsuit against the department, Secretary of the Interior Ken Salazar, the Bureau of Land Management and BLM Director Robert Abbey a few weeks ago.

The company says it has invested more than \$12 million, approximately 30 percent of the company's total exploration expenditures for North America, in the area.

Quaterra claims that the Bureau of Land Management, which was responsible for the report that led to the removal of land, did not follow federal guidelines when creating its report. The report itself contradicts the department's reasons for withdrawing the land, according to the company.

The lawsuit states that the government also ignored science and facts and deprived the county, as well as Arizona, of "tens of millions of dollars in revenue and jobs, further inhibiting the state and local government efforts to recover from the worst economic recession in 80 years."

Supporters of the mining ban say that such claims are false, and the damage to tourism jobs from uranium mining is a greater threat to the state's economy.

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## PIMA

### 16. County endorses new intervention in Rosemont case

Tony Davis, Arizona Daily Star  
April 24, 2012

Pima County, long opposed to the Rosemont Mine, wants to intervene on another front - the mine's proposed power line.

The Board of Supervisors voted unanimously Monday to intervene in the ongoing conflict over whether Tucson Electric Power should extend a 13-mile set of power lines and poles to the mine in the Santa Rita Mountains. Intervening means the county would present its own witness testimony and cross-examine witnesses representing TEP and Rosemont Copper.

Given County Administrator Chuck Huckelberry's and the board's aggressive opposition to the mine, county intervention in the power-line case should mean more fireworks in a contentious process.

Last month, the Arizona Corporation Commission voted to reopen the case and take more testimony while granting conditional approval to the line route approved by the Arizona Power Plant and Transmission Line Siting Committee.

The power line is supported by officials of the Santa Rita Experimental Range, a 53,000-acre ranching/research facility through which much of the line would pass. It is opposed by an environmentalist coalition, residents along Arizona 83 and the Tohono O'odham Nation.

Huckelberry said in an interview he doesn't know if the county will formally oppose the line. "We are going to raise issues that have not been adequately addressed yet, and as the process goes forward we'll make a decision as to whether to oppose the line," he said.

County Supervisor Richard Elias, a Democrat, was blunter, saying, "I think we'll continue on in our efforts to make sure Augusta Resource is not successful in its Rosemont proposal," a reference to Rosemont Copper's Canadian-based parent company.

Rosemont Copper President and CEO Rod Pace denounced the county's plan to intervene, calling it a waste of taxpayers' money. Pace said, "A county that purports to be business friendly should not be interfering at every step."

The county, lacking expertise in utility matters, will hire outside counsel to intervene, at a cost now unknown, but that shouldn't be significant, Huckelberry said. The administrative law judge hearing the case will have to decide whether to accept the county as an intervenor.

Huckelberry wants to raise these points:

- The mine's broader environmental impacts.
- The impacts of the mine's energy use on water supplies and greenhouse gas emissions, since TEP gets most of its power from coal.
- Environmental impacts of the line on the desert and scenic views.
- His concern that mines in general are subsidized by residential power consumers. "They have the lowest rate of any user and significantly lower per kilowatt hour than a residential customer," he said.

Huckelberry drew on the research of TEP watchdog Marshall Magruder, which was based on TEP's parent company Unisource Energy Corp.'s filings with the federal Securities and Exchange Commission. They appear to show mines pay lower rates on average than residential, commercial or other industrial customers.

But when TEP looks at the cost of serving both residential and mining customers, "We don't believe residential customers subsidize mining customers," TEP spokesman Joe Barrios said. Without the mines, residential customers' bills would increase, because big users drive down smaller users' costs by buying in larger volumes, Barrios said.

According to Pace, "large power consumers like mines in fact subsidize residential ratepayers," Pace said.

The county's reasoning demonstrates that predisposed conclusions are used to attack and delay the mine, Pace added. "Discussing environmental impacts of our project in front of a state body that has no authority to regulate the activities only serves to waste money," he said.

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## **17. Rosemont says commission overstepped**

Tony Davis, Arizona Daily Star  
April 25, 2012

Rosemont Copper and Tucson Electric Power want the Arizona Corporation Commission to reverse its decision allowing opponents of a proposed TEP-Rosemont Mine power line to discuss the mine's environmental impacts.

The copper company also wants the commission to send the power-line case back to the Arizona Power Plant and Transmission Line Siting Committee for more hearings - not to an administrative law judge, as the commission decided.

In December the siting committee unanimously approved the 13-mile power-line proposal. That committee wouldn't consider the mine's environmental impacts, drawing complaints from opponents that it unfairly excluded relevant evidence.

The Corporation Commission conditionally approved the power line last month but ordered more hearings. The commission will discuss the latest requests today in Phoenix.

Rosemont and TEP's views:

The companies say:

- The commission lacks authority to consider environmental impacts of a power customer's land uses. The mine is subject to extensive federal regulation.
- State law limits the commission to analyzing impacts of electric generation and transmission facilities such as new power plants and lines.
- The commission established an untenable precedent, raising questions of whether it will now evaluate underlying effects of subdivisions, shopping malls, churches and industrial plants.
- While the commission said it lacks authority to return the case to the siting committee, state law doesn't prohibit the commission from doing that.

Opponents' views:

A coalition of environmental groups including Save the Scenic Santa Ritas and Sierra Club say:

- The commission can accept new evidence on the mine's impacts and has substantial latitude regarding what evidence it takes, with no legal limits on what impacts can be reviewed.

- State law gives the commission discretion to balance "in the broad public interest" the need for electric power with the desire to minimize impacts "on the environment and ecology of this state."
- The commission already ruled that evidence concerning mine impacts would be helpful in achieving this balance.
- Lawrence Robertson, an attorney for environmental groups, said it would be better to stick with the administrative law judge, who has already held a procedural conference on the case and has the information she needs to set up a schedule.

TO LISTEN IN

The Corporation Commission will discuss the Rosemont power-line issue today, probably at 11 a.m. To hear the discussion, click on [www.azcc.gov/divisions/it/streaming/events.asp](http://www.azcc.gov/divisions/it/streaming/events.asp)

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## YAVAPAI

### **18. Assessing the damage: Contamination cleanup, health studies continue in Dewey-Humboldt**

Sue Tone, The Daily Courier  
April 24, 2012

About 40 people showed up at the Humboldt Elementary School gym Wednesday to hear an update on the Superfund site in Dewey-Humboldt and to meet one-on-one with people from six agencies or groups - from the U.S Environmental Protection Agency to a D-H environmental advisory committee.

Jeff Dhont, remedial project manager for the EPA, offered an update on past and recent efforts to locate, measure and clean up contamination from the Iron King Mine on the west side of Highway 69 and the Humboldt smelter on the east side. The EPA declared the two areas eligible for cleanup as a Superfund site in 2008. The agency is still in the remedial investigation phase of the process, but already has taken cleanup action in areas with high contamination levels.

In 2006, the EPA removed from residents' yards soil that contained elevated levels of arsenic and replaced it with clean soil. Twelve residential yard cleanups near the smelter took place in 2011, and the EPA scientists have taken 184 soil samples from residents' yards.

Soil sampling efforts recently have expanded to the northeast and northwest of town to determine what levels of arsenic and lead occur naturally in the area.

Dhont said test results indicated low levels of lead on both sides of Highway 69, with slightly elevated levels near the smelter stack.

Arsenic levels tended to be higher on the east side of the highway, including a hot spot at the former smelter rail loading area.

Working with the EPA is the Agency for Toxic Substances and Disease Registry, a partner with the Center for Disease Control out of Atlanta.

This past Thursday, ATSDR and Arizona Department of Health Services personnel offered blood lead-level tests for local youths. The test consisted of a finger prick to produce a couple of drops of blood that go into a blood lead analyzer.

Parents received test results immediately. Capt. Robert Knowles from ATSDR said if a child has a level greater than 5 grams per deciliter (g/dL), that child should get a venous blood test (taken from a vein in the arm) to confirm the levels. The screening that he does is to answer any concerns quickly in the short term. The full metal test takes longer, is more complicated, and costs more, he said, adding that the CDC recommends all children aged 6 and younger be tested for lead levels.

EPA continues to collect additional soil and groundwater samples at the Iron King Mine tailings pile. It also recently re-applied a temporary soil sealant called Gorilla Snot to the ash piles at the smelter to help contain dust emissions.

#### Re-vegetation project

Raina Maier, Ph.D., reported on the re-vegetation project taking place on top the main tailings pile at the Iron King Mine. The project began two years ago through the Superfund Research Program at the University of Arizona.

"The plants are thriving far beyond my imagination," Maier said.

North American Industries, the property owners, are supplying irrigation water from one of the on-site wells. Maier said preliminary results indicate that the plants have reduced airborne dust from the tailings by 60 percent. She will be repeating the tests to verify results, she said.

"The next big question is: If we stop irrigation, will the plants survive?" Maier said.

Dr. Walt Klimecki, head of the Metals Exposure Study in Homes, said he has hired four local residents to work with families with children ages 1 to 11 living within 3 miles of the mine or smelter. His study will determine if exposure to contaminants is leading to health effects in children.

David Cooper, EPA community involvement coordinator, said he structured the meeting so people could ask their questions of the professionals after the updates. Some in the audience favored a more public question-and-answer period for everyone's benefit. Cooper said after the previous community EPA meeting, he received comments from attendees requesting their individual questions be answered one-on-one.

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## **19. Public lands volunteers can get free training this coming weekend**

The Daily Courier  
April 23, 2012

People who volunteer on public lands and want to get more training have a perfect local opportunity this weekend.

The Central Arizona Public Lands Volunteer Academy takes place from 9 a.m. to 4:30 p.m. Saturday and Sunday at Arcosanti near Cordes Junction. Free lunch and snacks are included. People can camp overnight at Arcosanti for a fee.

A few slots for the academy are still available. For information, call Bruce Maurer at the Community Forest Trust at 443-8230 or email him at [bmaurer@fs.fed.us](mailto:bmaurer@fs.fed.us). Also see the non-profit Forest Trust website at [communityforesttrust.com](http://communityforesttrust.com) for more information about its volunteer opportunities.

Academy participants must already be volunteering on public lands through an existing contract with a volunteer group or individually.

The workshop will help volunteers expand their skills and take on more advanced volunteer tasks.

People will get hands-on training on the use of GPS units, first aid and CPR; preservation of historic and prehistoric sites; and trail monitoring, maintenance and tool use.

They also will learn about the rights and responsibilities of volunteers, and how to deal with disruptive public lands visitors.

The Community Forest Trust, which organizes volunteers for the Prescott National Forest, is sponsoring the workshop through a grant from the S.L. Gimbel Foundation.

Workshop partners include the Prescott National Forest, Arizona Wilderness Coalition, Arcosanti, Black Canyon Trails Coalition, Back Country Horsemen of Central Arizona, U.S. Bureau of Land Management and the Upper Agua Fria Watershed Partnership.

A later session will train people to become volunteer crew leaders.

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## **20. The Daily Courier**

Steve Ayers, The Verde Independent  
April 24, 2012

The U.S. Fish and Wildlife Service has once ruled again that Arizona's desert nesting bald eagles do not warrant protection under the Endanger Species Act (ESA).

In the ruling issued last Friday, the agency determined the eagles, several of which nest along the Verde River and its tributaries, would not qualify as a Distinct Population Segment (DPS) because they were not "significant" to America's bald eagle population, as a whole.

USFWS also determined that if the desert eagles went extinct it would not constitute a significant gap in the range of bald eagles. They also determined that they do not constitute the only surviving occurrence of bald eagles and they do not possess genetic differences that differ markedly from other bald eagles.

The ruling is another blow to conservation groups and Native American tribes who have fought for years to protect the birds and their dwindling habitat.

"There is nothing new. It's not a surprise. They are still following the same corrupt marching orders that they have followed for their last two decisions.

"It's the third time they have chosen to ignore three decades of consensus opinion of every desert eagle biologist," said Robin Silver of the Center for Biological Diversity.

Friday's decision came as the result of a court ruling in November 2011, in which the USFWS was ordered to re-evaluate a similar ruling it made in February 2010.

The decision, says Steve Spangle with the USFWS, does not mean the agency does not see the eagles as significant, only that under there agency's interpretation, the birds did not qualify as a DPS.

"I believe the decision was a good one. It's scientifically based. When you have a species that has done nothing but improve for 30 years and has no threats on the horizon, it's pretty tough to list the species as threatened or endangered.

"The problem with the word significant is that the eagle is very significant to the cultural and religion of the tribes. But that is a different definition of significant," said Spangle.

Jamie Driscoll, raptor programs manager for Arizona Game and Fish, said he has not read the entire 158-page ruling, but said he was a bit surprised.

"I don't know what their rational was, I'll have to see when I read the document," he said.

AZGF has supported giving the eagles DPS status, but has not favored listing under the ESA, since 2007.

Silver said the Center for Biological diversity would file suit to have the decision overruled.

"We'll be back in court. We have no other choice. If we don't want to lose our bald eagles we have no other choice," said Silver.

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## YUMA

### 21. Area transit workers vote to unionize

Darren DaRonco, Yuma Sun  
April 24, 2012

Yuma transit workers voted unanimously Tuesday to join a Phoenix-based union.

After the 23-0 vote, the employees of First Transit will now have the opportunity to join Amalgamated Transit Union (ATU) Local 1433 and have it represent them during any future negotiations with the company.

First Transit is the company that staffs and operates the Yuma County Area Transit system.

“At First Transit, we have a freedom of association policy,” said First Transit's general manager Donald Kilner after Tuesday's vote. “So it's up to the (employees) and we just have to deal with what comes next.”

Once the employees determine what terms they want, the ATU will contact First Transit and request that the company enter into negotiations.

While it is too early to speculate on what impact, if any, this will have on public transportation in Yuma, transit director John Andoh said the issue is entirely between First Transit and its employees.

“Our contractual arrangement with First Transit is fixed and there's no more money available,” Andoh said. “So it's something that if the drivers are looking for more money or more benefits, they will have to negotiate with First Transit.”

Since Arizona is a right-to-work state, no current or future employee of First Transit will be required to join the union as a term of employment.

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## **NATIONAL**

### **22. Engineer Arrested in BP Oil Spill Case**

Clifford Krauss, The New York Times  
April 24, 2012

Two years after the immense BP oil spill that killed 11 people and blackened beaches along the Gulf of Mexico, federal prosecutors have filed the first criminal charges related to the accident, accusing a former company engineer of destroying evidence by deleting text messages that discussed the amount of oil leaking from the stricken well.

The stricken well spewed millions of barrels of oil over a period of months, sickening birds and marine life and idling oil rigs.

Federal authorities arrested the engineer, Kurt Mix of Katy, Tex., on Tuesday and charged him with two counts of obstruction of justice in a complaint filed in the Eastern District of Louisiana and unsealed on Tuesday.

However, court documents filed with the charges and Mr. Mix's relatively low rank within BP suggested that the charges were just the opening salvo in the government's case against the company and the contractors involved in the explosion of the Deepwater Horizon drilling rig and oil spill on April 20, 2010. The stricken well spewed millions of barrels of oil over months, sickening birds and marine life, idling oil rigs and fishing vessels, and causing economic damages in the billions of dollars.

The long-term effects of the spill are still being assessed, and the government has yet to levy fines against BP for the pollution it caused.

The attorney general, Eric H. Holder Jr., said the criminal investigation was still developing. "The Deepwater Horizon task force is continuing its investigation into the explosion and will hold accountable those who violated the law in connection with the largest environmental disaster in U.S. history," he said in a statement.

The prosecution's interest in the text messages, legal analysts said, indicated that prosecutors might argue that corporate officers had wanted to hide the full extent of the spill to protect BP from fines and bolster its falling stock price.

BP has already reached a multibillion-dollar settlement with lawyers representing individuals and businesses for economic losses and medical claims. But criminal prosecution would be a stinging slap to the company, based in London.

It has tried to portray itself as doing everything it could to make amends for the accident. If criminal charges were brought against the company itself, its participation in government contracts could be suspended.

Richard J. Lazarus, a Harvard law school professor who was executive director of the panel appointed by President Obama to investigate the BP spill, said he would be surprised if Mr. Mix were the only person charged. "The government is trying to use what they have against some people as leverage to implicate higher-ranking people," Mr. Lazarus said.

According to an affidavit filed with the criminal complaint, Mr. Mix, a drilling and completions project engineer for BP until last January, was involved in efforts to monitor and stop the oil leak.

In October 2010, despite notices from BP that he must retain all information about the well, Mr. Mix deleted a string of more than 200 text messages with a BP supervisor, the complaint said. Some of the messages suggested that company officials had known that an effort to stop the leak in the early days of the spill — a procedure known as a top kill — was likely to fail, in part because of the great amount of oil flowing out.

According to the affidavit, BP's internal estimates of the flow exceeded 15,000 barrels a day, far higher than the rate the company acknowledged at the time.

During the top kill procedure, senior BP executives, including Tony Hayward, then the chief executive, estimated that chances for success were 60 to 70 percent even as people involved in the effort were telling reporters that the flow was probably too powerful to control.

"The information contained in the arrest warrant raises anew questions whether BP was forthcoming with the government and the public about the size of the spill during the spring of 2010," said David M. Uhlmann, a law professor at the University of Michigan and former head of the Justice Department's environmental crimes section.

"If there is sufficient evidence, it is possible the government may charge BP and senior BP officials with misleading the government and the public about the size of the spill," he said.

Professor Uhlmann also suggested the company might have tried "to bolster its stock price at a time when the stock price was plummeting."

The flow rate of the spill was also important because the Clean Water Act sets a civil fine of \$1,100 for every barrel of oil released in a spill, in addition to payments for cleanup and economic loss. And if the government determines that a spill was caused by gross negligence, the fine can jump to \$4,300 a barrel.

"If people at BP knew and failed to disclose to the government what the flow rate was, that obstructed more than justice," Mr. Lazarus said. "It may have impeded the effort to contain the flow and allowed it to continue longer than it did, increasing the damage."

BP said in a statement Tuesday that it was cooperating with the Justice Department and other official investigations. "BP had clear policies requiring preservation of evidence in this case and has undertaken substantial and ongoing efforts to preserve evidence," the company said. "We will not comment on the government's case against former BP employee Kurt Mix."



The criminal complaint said that in August 2010, the S.E.C., in coordination with the Justice Department, subpoenaed BP for all flow rate documents.

A few months later, the government said, Mr. Mix deleted from his iPhone more than 200 messages with a supervisor, and he deleted an additional 100 messages before the phone data was copied by a contractor working for BP lawyers.

Joan McPhee, Mr. Mix's lawyer, said the contents of the deleted messages were also available in e-mail and other messages provided to the government. "These misguided charges over failure to retain text messages constitute startling government overreaching," she said.

According to the government, on May 26, when BP was trying but failing to plug the well, Mr. Mix sent a text that said, "Too much flow rate — over 15,000," an apparent reference to a rate of greater than 15,000 barrels a day. Two days later, the complaint noted, "BP continued publicly to state that top kill was broadly proceeding according to plan."

On May 29, the top kill procedure was stopped, the complaint noted, and "BP's stock price dropped approximately 15 percent on the next trading day."

A technician involved in BP's efforts to plug the well said on Tuesday that there were various opinions on the flow rate among the experts at the time.

The technician, who spoke on condition of anonymity because he was not authorized to discuss the internal workings of the response effort, said that Mr. Mix had personally resisted accepting the high estimates of some contractors, insisting that much less oil was flowing out.

BP has already spent \$14 billion responding to the spill and paid \$8 billion to individuals and businesses for damages related to the accident.

Investigations have shown there were multiple causes of the blowout, leaving the possibility of prosecution of not only BP, which designed the well, but also Halliburton, the company that was in charge of cementing the well, and Transocean, which owned and operated the rig itself.

Mr. Mix, wearing a light purple shirt and pair of khakis without a belt, surrendered in Houston. A judge agreed to release him on \$100,000 bond but said that he could not travel outside of Texas and Louisiana.

If convicted, Mr. Mix faces a maximum penalty of 20 years in prison and a fine of up to \$250,000 for each count.

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## **23. Mad cow disease found in California dairy cow**

Los Angeles Times L.A. Now Blog  
April 24, 2012

The animal was found at a rendering facility, John Clifford, the USDA's chief veterinarian, told reporters Tuesday in a briefing in Washington. Its meat did not enter the food chain and the carcass will be destroyed, Clifford said.

This is the fourth confirmed case of the brain-wasting disease in the U.S. cattle herd since the first case was discovered in December 2003 in an animal that came from Canada.

[Updated at 1 p.m.: The carcass "was never presented for slaughter for human consumption, so at no time presented a risk to the food supply or human health," Clifford said in a statement.]

Mad cow disease, which humans can get by eating beef from infected cattle, has killed 171 people and been responsible for the deaths of more than 4 million cattle, slaughtered in attempts to eradicate the disease.

Officially known as variant Creutzfeldt-Jakob disease, the infection is caused by prion proteins that cause the brain to start breaking down.

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## **WORLD**

### **24. Restrict shale gas fracking to 600m from water supplies, says study**

The Guardian

April 25, 2012

Controversial "fracking" for shale gas should only take place at least 600 metres down from aquifers used for water supplies, scientists said on Wednesday.

A new study revealed the process, which uses high-pressure liquid pumped deep underground to split shale rock and release gas, caused fractures running upwards and downwards through the ground of up to 588 metres from their source.

The research, published in the journal *Marine and Petroleum Geology*, found the chance of a fracture extending more than 600 metres upwards was exceptionally low, and the probability of fractures of more than 350 metres was 1%.

Researchers said the study showed it was "incredibly unlikely" that fracking at depths of 2km to 3km below the surface would lead to the contamination of shallow aquifers which lie above the gas resources.

Shale gas extraction has been controversial in the US because of claims that cancer-causing compounds used in the process have polluted water supplies, and that the flammable methane gas itself can pollute drinking water.

But Prof Richard Davies, of Durham University, said it was more likely any contamination came from drilling down through rock containing methane and where the cement or steel well casing failed, rather than the separate fracking procedure carried out kilometres down where shale gas forms.

Davies said: "What everyone's interested in is: how far can fractures go upwards from that depth? Could they go far enough to intersect and contaminate aquifers with fracking fluids or create pathways for methane to contaminate aquifers.

"There's a lot of debate over contamination of water supplies and that could be the case if they are less than 600 metres above shale gas fracking."

He said that if the process was taking place 1km to 2km below aquifers it was very unlikely to be the source of pollution.

In most cases fracking occurs around 2km to 3km below the surface, where geological conditions are right for shale gas to form, but in one case in Wyoming it took place at about 600 metres down and there is now evidence of chemicals in the water supply.

Davies said there was "just reason to be cautious" and said regulators should set a distance limit, which should be well in excess of 600 metres when fracking in new areas where there was no existing data on possible fractures.

He said the UK's only shale gas exploration scheme near Blackpool, carrying out fracking 3km down, would not affect water supplies in the area, which are around 300 metres below the surface.

The scheme was halted in 2011 after it caused two small earthquakes. But on 17 April, ministers were advised to allow fracking to be extended in Britain, despite the emergence of doubts over the safety of the wells that have already been drilled.

The researchers from Durham University, Cardiff University and the University of Tromsø, Norway, looked at thousands of natural and induced rock fractures in the US, Europe and Africa, and found none of the artificially caused ones were more than 600 metres.

However, the largest measured fracture found naturally occurring in the world – created over millions of years – was 1.1km high, prompting the researchers to suggest the 600-metre limit should be an "absolute minimum guideline".

Davies added: "Based on our observations, we believe that it may be prudent to adopt a minimum vertical separation distance for stimulated fracturing in shale reservoirs. Such a distance should be set by regulators; our study shows that for new exploration areas where there is no existing data, it should be significantly in excess of 0.6km."

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## **25. Governments failing to avert catastrophic climate change, IEA warns**

Fiona Harvey, The Guardian  
April 24, 2012

Governments are falling badly behind on low-carbon energy, putting carbon reduction targets out of reach and pushing the world to the brink of catastrophic climate change, the world's leading independent energy authority will warn on Wednesday.

The stark judgment is being given at a key meeting of energy ministers from the world's biggest economies and emitters taking place in London on Wednesday – a meeting already overshadowed by David Cameron's last-minute withdrawal from a keynote speech planned for Thursday.

"The world's energy system is being pushed to breaking point," Maria van der Hoeven, executive director of the International Energy Agency, writes in today's Guardian. "Our addiction to fossil fuels grows stronger each year. Many clean energy technologies are available but they are not being deployed quickly enough to avert potentially disastrous consequences."

On current form, she warns, the world is on track for warming of 6C by the end of the century – a level that would create catastrophe, wiping out agriculture in many areas and rendering swathes of the globe uninhabitable, as well as raising sea levels and causing mass migration, according to scientists.

Van der Hoeven, whose deputy will present the IEA's findings to the Third Clean Energy Ministerial, put the blame squarely on policymakers, and challenged ministers to step up.

She said: "The current state of affairs is unacceptable precisely because we have a responsibility and a golden opportunity to act. Energy-related CO2 emissions are at historic highs, and under current policies, we estimate that energy use and CO2 emissions would increase by a third by 2020, and almost double by 2050. This would be likely to send global temperatures at least 6C higher within this century."

The prime minister has caused controversy because a planned "keynote" speech for Thursday at the meeting – which would have been his first on green issues since being elected – has been scaled back to only a few introductory remarks at a round table meeting.

"The speech was a planned and much-anticipated major intervention, so his decision not to deliver it is a massive failure of leadership," said David Nussbaum, chief executive of WWF-UK, the group that took Cameron on his famous "husky-hugging" trip to the Arctic in 2006. "Now, with his government's approach to climate and energy policy in disarray, people are asking where the prime minister stands on these key issues."

Energy experts speculated he was unwilling to make a long public appearance in front of the press during a what has been a torrid few weeks.

In its report, *Tracking Clean Energy Progress*, the IEA, widely regarded as the gold standard for energy research, ranked progress on 11 key low-carbon indicators, including renewables, nuclear energy and carbon capture and storage. It found the world was on track to meet just one of these targets.

Some technologies that governments have been relying on to reduce emissions – such as carbon capture and storage – were not even off the ground yet, despite years of development.

To meet the carbon cuts that scientists calculate are needed by 2020, the IEA says, the world needs to generate 28% of its electricity from renewable sources and 47% by 2035. Yet renewables now make up just 16% of global electricity supply.

On carbon capture and storage, the picture is even worse: the world needs nearly 40 power stations to be fitted with the technology within eight years, and so far none at all have been built.

Plans for new nuclear plants have been affected by last year's nuclear accident at Fukushima, Japan, and expectations for atomic energy capacity in 2025 have been scaled back by 15%.

That shortfall will have to be made up elsewhere, such as by further increases in renewables, if the world is to avoid temperature increases of more than 2C above pre-industrial levels – the limit of safety, scientists say, beyond which climate change becomes catastrophic.

There were some bright spots on the low-carbon energy scene, the IEA said – "mature" renewable technologies, such as onshore wind, hydro-electricity and solar panels, were broadly on track.

However, the capacity for some of these technologies is limited – most of the best locations for hydroelectricity in many countries are already in use, for example. The world urgently needed to bring forward other technologies, such as offshore wind, if the targets were to be met, one of the report's authors said.

Energy efficiency is the most cost-effective way to cut emissions and increase energy security, but businesses and governments were failing to invest in it, the report found. Progress was also slow on electric vehicles and more efficient cars, while of the coal-fired power stations being built, about half continued to use old inefficient technology instead of more modern designs.

The ministers meeting on Wednesday are expected to discuss international co-operation on low-carbon energy, and ways of encouraging businesses to invest in the infrastructure needed.

Van der Hoeven said: "The ministers meeting this week in London have an incredible opportunity before them. It is my hope that they heed our warning of slow progress, and act to seize the security, economic and environmental benefits that the clean energy transition can bring."

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