Oregon Judge Rejects Property Protections Approved by Voters

By James Hoare

A county circuit judge in Oregon has ruled the state’s Measure 37 property protection law violates the Oregon Constitution. The ruling puts a temporary halt to the voter-enacted law, at least until the Oregon Supreme Court reviews the case.

Measure Won in Landslide

Measure 37, which voters passed in November 2004 in a landslide 61 to 39 percent vote, requires the state or local government to compensate private property owners for the lost value of their property when those governments impose environmental regulations or other prohibitions that restrict private land use.

Environmental activists are bitterly opposed to the law, fearing if state and local governments must pay the economic costs of their land-use prohibitions, rather than forcing affected private property owners to foot the bill, economics will prevent government regulations from being as far-reaching as the activist groups would like.

Recently appointed county judge strikes down voter initiative

Court Cited Multiple Rationales

Marion County Circuit Judge Mary James, appointed in 2003 by Gov. Ted Kulongoski (D), ruled on October 14 that Measure 37 is unlawful for a variety of reasons.

First, ruled James, Measure 37 unlawfully prevents the Oregon legislature from exercising its police power to pass and enforce laws. According to James, any voter initiative that limits the state’s regulatory power is an unlawful infringement on the government.

Real estate broker Harvey Kempema has filed a claim under Measure 37, Oregon’s sweeping new property rights law, to waive zoning restrictions and subdivide his 56-acre farm near Cornelius, Oregon.

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Jeb Bush Endorses Increase in Gulf Oil Production

By James M. Taylor

Florida Gov. Jeb Bush (R), a longtime opponent of oil and natural gas production in the eastern part of the Gulf of Mexico, has formally endorsed a proposal to allow production at distances exceeding 125 miles from the Florida coast.

Bush’s endorsement, announced by Florida Environmental Protection Secretary Colleen Castille on October 24, signals a shift among many Florida officials and environmentalists in favor of a more pragmatic approach to developing natural resources in an environmentally responsible manner.

Tough Restrictions
Production has been banned within 200 miles of the Florida Gulf Coast since 2001, when President George W. Bush and Florida Gov. Jeb Bush struck a deal to limit Gulf oil and natural gas production.

In 1997, then-president Bill Clinton had proposed opening 6 million acres of the Gulf, including some areas less than 200 miles from the Florida coast, to oil and gas production. Jeb Bush lobbied hard with his brother to scale back the Clinton proposal, ultimately persuading the current president to accept production in only 1.5 million acres of the Gulf, none of them within 200 miles of the Florida shore.

Prices Climb, Technology Improves
Key to Bush’s endorsement of more permissive oil and gas production are high fuel costs and a longstanding record of environmentally safe oil production in the Gulf.

Bush’s endorsement was favorably received by Floridians worried about high fuel prices, the future of Florida’s economy, and the state’s ability to pay for a variety of new environmental initiatives.

“The good things that Florida’s state and local governments do depend on having enough money to fund them while also keeping tax rates low enough to preserve a business-friendly climate,” observed J. Robert McClure, president of the James Madison Institute in Tallahassee, in the November 1 Tallahassee Democrat article. “Many of those good things include the obvious—such as the building of schools and roads. They also include a host of environment-friendly programs such as restoring the Everglades, acquiring pristine lands for wilderness protection, and safeguarding the aquifers where most Floridians get their drinking water.”

“It’s good to see that Jeb Bush is not afraid to reevaluate his positions when circumstances warrant. The facts show that oil and natural gas development more than 125 miles from shore does not pose a significant threat to Florida or its tourism industry.”

STERLING BURNETT NATIONAL CENTER FOR POLICY ANALYSIS

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“A September poll by the Pew Research Center showed most Americans disagree with Waxler’s assessment. Explained Pew, “The survey finds that the rise in energy prices also has had a perceptible impact on public views of the tradeoff between boosting the energy supply and protecting the environment. A solid majority (57 percent) now says it is more important to develop new energy sources than to protect the environment, up from 49 percent who expressed that view in March.”

“I think there is a change,” agreed Linda Stuntz, a former official with the U.S. Department of Energy, in an article in the November 7 Greenwire. “I think there is growing recognition that we are supply constrained in this country. ... People are willing to take a new look at ways to do that that are responsible.”

“Why shouldn’t Florida and other states be allowed to opt in to offshore oil and natural gas production?” Burnett wondered. Referring to pressure from Northeastern congressmen to keep the current moratorium in place, Burnett added, “What makes Massachusetts politicians better qualified than Floridians to determine what is best for the Florida shore? There is a reason why states such as Alabama, Alaska, Florida, Louisiana, and Texas support offshore drilling: It makes sound economic and environmental sense.”

James M. Taylor (taylor@heartland.org) is managing editor of Environment & Climate News.
Future of Coal Is Green, Say Montana and West Virginia
Economic, environmental dividends from coal

By James M. Taylor

Championing clean coal technology as America’s power source of choice for the twenty-first century, U.S. Senator Robert Byrd (D-WV) is lobbying American Electric Power (AEP) to locate a proposed state-of-the-art clean coal power plant in West Virginia.

AEP plans to build a 600 megawatt plant utilizing integrated gasification combined cycle technology, which gasifies coal into a highly efficient and low-emissions power source. After building a similar plant in Meigs County, Ohio, AEP has yet to decide where to build its next plant.

“West Virginia has the workforce, the coal, and the desire to be home to a new AEP power plant,” Byrd told the October 26 Huntington News.

“A new power plant, utilizing IGCC [integrated gasification combined cycle] technologies, would demonstrate that there is a long life ahead for West Virginia coal,” Byrd continued. “It would show what I have believed for a long time; namely, that energy production and environmental protection can work in tandem. We can burn coal more cleanly and efficiently, and we can find new ways to address climate change.”

Environmentally Friendly Coal

“Gas is no longer the obvious environmental choice as it was two years ago,” conceded Dominique Venet, vice president for natural gas at the French power company EDF, in an October 27 Reuters news report.

“The country has two options for energy until we build a bridge to a hydrogen economy. We can either continue to give money to dictators who want to destroy our way of life, or we can provide tens of thousands of jobs in America’s heartland.”

BIPARTISAN SUPPORT IN MONTANA

In Montana, meanwhile, Republicans and Democrats are uniting behind coal as the state’s primary energy source.

At an October 18 energy conference in Bozeman, 2004 Republican gubernatorial candidate Pat Davidson called for increased coal production in the state. “The stars are lined up,” said Davidson, reported the October 19 Billings Gazette.

“The people of Montana are becoming less afraid of development. These are the times that are ripe for coal development in Montana.”

Democratic Gov. Brian Schweitzer agreed. “The country has two options for energy until we build a bridge to a hydrogen economy,” said Schweitzer, according to the November 3 Billings Gazette. “We can either continue to give money to dictators who want to destroy our way of life, or we can provide tens of thousands of jobs in America’s heartland.”

Coal gasification “is a clean fuel, converted from coal by a chemical process,” Schweitzer told the Helena Independent Record on November 26. “We can produce enough of this in Montana to power every American car for decades.”

CLEAN COAL DEBATE

A house editorial in the November 26 Roanoke Times summarized critics’ concerns about clean coal technology.

“The good news is that the process makes the released carbon dioxide easier to capture than when coal is burned in power plants,” the Times noted. “The bad news is that, once the CO2 is captured, there’s no good way of disposing of it.

“Theoretically, the CO2 could be sequestered underground or even in the oceans, but there is no guarantee that these methods would work on a large scale. The liquefaction process is also expensive and energy intensive,” the Times added.

“The real question is whether the future of coal will be clean,” countered Lieberman, “but whether activists insist that it be so clean that it loses its economic advantages. Coal is inexpensive and domestically produced. Insisting on an excessive gantlet of unnecessary environmental regulations would likely force the United States to use foreign energy sources, expensive energy sources, or both.”

Progress in Montana

Regardless of the ultimate fate of clean coal technology, coal in one form or another is certain to fulfill Montana’s energy needs for decades to come, Jim Jensen, executive director of the Montana Environmental Information Center, told the October 18 Bozeman conference.

“It is quite clear that the central purpose of this meeting is to create an energy plan for Montana in which coal is the central long-term energy source,” Jensen said.

“In Montana, West Virginia, and the rest of the United States, coal is definitely the electricity source of the foreseeable future,” Lieberman agreed.

James M. Taylor (taylor@heartland.org) is managing editor of Environment & Climate News.

INTERNET INFO

For more information on American Electric Power and clean coal technology, visit the firm’s Web site at http://www.aep.com.

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House Bill Would Update 1872 Mining Law, Allow New Claims

By James M. Taylor

The U.S. House of Representatives on November 18 approved revisions to a century-old mining law that would update the purchase price of mining claims on federal lands and rescind an 11-year moratorium on new mining claims.

The General Mining Law of 1872 allows mining companies to purchase public lands at rock-bottom prices, Congress enacted a temporary moratorium on new land sales to mining companies. Congress has voted to renew the temporary moratorium for one year since 1994.

Land Prices Would Rise

Legislation proposed by Rep. Jim Gibbons (R-NV) would end the moratorium while dramatically raising the sale price of federal lands. Under the bill, federal lands would be sold to mining companies at fair market value, with no land being sold for less than $1,000 per acre. Land in national parks, wildlife refuges, national conservation areas, and national wilderness areas would be off-limits to new mining operations.

Another provision of the bill allows mining companies to purchase land upon the belief, rather than evidence, that there are precious minerals on the desired land. Additionally, upon completion of mining operations, companies would have the option of leaving certain improvements in place rather than being forced to return all lands to their preexisting condition. That provision is designed to allow local economies to benefit from roads, utilities, and other infrastructure built to facilitate mining operations.

“Many provisions of the 1872 Mining Law are antiquated, such as the $2.50 per acre patent price,” said Gibbons upon House approval of the bill. “Continuously suspending the patent process is not a solution, it is merely a temporary fix. In today’s budget reconciliation package, we were able to include meaningful reforms to address this longstanding problem in a manner that gives the American people a fair return on the patenting and purchase of mining lands.”

Help Local Economies

“It would be unfair to the American people if land valued higher than $1,000 per acre were sold for below market price,” Gibbons added. “Patenting and purchase of lands is absolutely vital to the health of Nevada’s rural communities because it expands the tax base of the local government, which in turn funds schools, emergency services, and other infrastructure. My amendment will help to encourage investment in domestic production and provide for the sustainability of mining dependent communities.”

“Not only is this rhetoric false, it is an affront to the rural American families whose livelihoods depend on sustained economic development. I find that appalling. We cannot allow the scare tactics of a few anti-energy, anti-development, and anti-private property special interests to threaten thousands of American families.”

The Gibbons amendments were developed as a result of over two years of field hearings and oversight hearings by the energy and minerals subcommittee, focusing on sustainable development in the rural West,” Skaer noted. “The amendments reflect what local school superintendents, county commissioners, etc. in the rural West seek for their communities. Forcing mining companies to destroy valuable roads, buildings, and infrastructure that benefit local communities is a counterproductive way to do business. This proposed law benefits local communities in a win-win situation.”

Whether the House bill becomes law will be determined in budget negotiations with the Senate, which passed a budget bill that did not contain the Gibbons proposal.

James M. Taylor (taylor@heartland.org) is managing editor of Environment & Climate News.

INTERNET INFO

The Gibbons amendments to the Deficit Reduction Act of 2005 are available through PolicyBot™. The Heartland Institute’s free online research database. Point your Web browser to http://www.heartland.org, click on the PolicyBot™ button, and search for document "8#Januaryxx8".

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U.S. REPRESENTATIVE - NEVADA

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The Ward Mining District is located south of Ely, Nevada. There was a mining boom in Ward in the 1870s, and these kilns were needed to provide charcoal for smelting silver ore.
Massachusetts Considers Using More Oil for Electricity

By Michael Coulter

A cold winter could force rolling electricity blackouts across the state, Massachusetts officials are considering allowing four large power plants to switch from natural gas to oil.

Natural Gas Supply Limited
According to Massachusetts energy officials, infrastructure shortcomings and strained natural gas supplies limit the amount of electricity the plants can produce from natural gas. An extended cold spell could cause demand to swell beyond capacity, resulting in rolling blackouts unless there is a backup plan in place.

While generating electricity from oil results in more pollution than generating electricity with natural gas, more pollution may be preferable to intermittent heat and power blackouts.

Government officials in Massachusetts began reviewing energy needs after Hurricane Katrina disrupted natural gas supplies and led to greater natural gas prices. Natural gas production in the Gulf region is still at less than half of its pre-Katrina level, and it is expected to take several more months before pre-Katrina gas production levels are resumed.

State Considers Proactive Approach
"We wanted to be proactive, rather than reactive, and so we started reviewing what we could do," said Ed Coletta, a spokesman for the Massachusetts Department of Environmental Protection (DEP).

The DEP is considering recommendations to the governor that would allow four power plants to burn oil for a prolonged period of time.

The plants are among 350 facilities that contribute to the New England Power Grid, which supplies power to six states. Nearly 40 percent of the grid’s power is produced with clean-burning natural gas, and all of the plants added in the past decade produce electricity using only natural gas. Nationwide, about a quarter of the electricity supply is produced using natural gas.

"While generating electricity from oil results in more pollution than generating electricity with natural gas, more pollution may be preferable to intermittent heat and power blackouts."

"DEP data show regional power company MassPower was authorized to burn 15,000 gallons of oil last year but burned less than 300 gallons. MassPower’s Bellingham plant, one of the four plants that may receive a higher oil-burning allowance this year, burned only 5 percent of its oil-burning allowance in 2004."

Law Foundation, told the Boston Globe on October 19, "My antenna is definitely up about it because of who is in the discussion—the owners of some of the nastiest, most polluting power plants in Massachusetts."

It would take a very substantial increase in oil burning this winter to approach federal or even the more restrictive state clean air limits. For example, DEP data show regional power company MassPower was authorized to burn 15,000 gallons of oil last year but burned less than 300 gallons. MassPower’s Bellingham plant, one of the four plants that may receive a higher oil-burning allowance this year, burned only 5 percent of its oil-burning allowance in 2004.

Conservation Not Enough
While Kaplan argued the state should push energy conservation instead of increased power capacity, Competitive Enterprise Institute Senior Fellow Marlo Lewis rejected a return to a 1970s energy strategy.

"The wheel has completely turned, and the irony is over the top," Lewis said.

"The reason why the U.S. switched from oil to coal in the 1970s was because we were becoming too dependent on petroleum imports. Environmental activists pushed a switch from oil to coal, and then from coal to natural gas. Now that the activists oppose new domestic natural gas production and block construction of natural gas import facilities, states like Massachusetts are required to consider more oil power. This is not what is best for consumer welfare, although it does show there is poetic justice in the world."

Moreover, said Lewis, "We tried this ‘energy conservation’ approach before, and it led to the nightmare known as the 1970s. You cannot restrict energy production and then magically ‘conserve’ your way into self-sufficient energy supplies."

Michael Coulter (mjcoulter@gcc.edu) teaches political science at Grove City College in Pennsylvania.
Las Vegas Views Desalination as Potential Water Source

By James M. Taylor

Seemingly endless disputes among Southwestern states regarding the allocation of Colorado River water may be less intense in the future if some government officials in Las Vegas and southern Nevada have their way. To quench the water needs of rapid growth in the Las Vegas metropolitan area, water managers are looking into building one or more desalination plants on the California coast.

Water Disputes Are Common

Water disputes have become common in the arid southwestern United States, especially over the region’s only major river, the Colorado River. As the human population in the region continues to grow, it creates growing demand for Colorado River water.

“The only factor that acts almost as a pressure relief valve is large desalination facilities,” said Southern Nevada Water Authority General Manager Pat Mulroy, quoted in the October 23 Las Vegas Sun.

Without direct access to the Pacific Ocean, the Southern Nevada Water Authority is looking into funding desalination projects in and for California. California, it is hoped, would in turn assign a corresponding amount of its Colorado River quota to Nevada.

“After five years of drought, it is apparent we need more diversity of water supply,” said J.C. Davis, spokesman for the Southern Nevada Water Authority. “We need to develop long-term solutions, and desalinated water can be one of them.”

Serious Obstacles Exist

On the surface, the idea seems like a win-win situation for everyone involved. However, there are potential obstacles. Desalted water is significantly more expensive than water drawn from lakes, rivers, and underground aquifers. The premium can be anywhere from 40 percent to 100 percent, depending on local conditions and economic factors.

Additionally, while many environmentalists applaud desalination plants for alleviating stresses on inland water sources, others oppose desalination plants for increasing the salt content of seawater in the plants’ discharge areas.

Florida Environmentalists Divided

In the Tampa Bay, Florida region, where the proposed construction of a large-scale desalination plant was debated and ultimately approved in 2001, a local group called Save Our Bays, Air, and Canals (SOBAC) bitterly opposed the plant. SOBAC claimed desalination plant discharge water would make the bay’s water too salty.

The Audubon Society and Sierra Club, however, supported the plant, arguing saltwater discharges would have little effect on Tampa Bay. “It’s just such a drop in the bucket when you compare it to the total quantity of water in the bay,” said the Sierra Club’s Lynn McGarvey.

The desalination plant was approved by the Southwest Florida Water Management District and the Tampa Bay water authority and is currently under construction.

“While the economic costs of desalinated water are relatively high, it certainly has a positive impact on inland water tables,” observed Sterling Burnett, senior fellow at the National Center for Policy Analysis.

California Support Uncertain

With those competing interests in mind, the California Coastal Commission, which has power to block any desalination project, may not approve proposals put forward by southern Nevada officials. The commission has approved 11 desalination plants to date, but each is relatively small compared to those envisioned by southern Nevada officials.

The 11 desalination plants produce a total of 3,300 acre-feet of water per year. Anatole Falagan, assistant manager for water resource management with the Southern Nevada Metropolitan Water District, foresees the region funding up to 150,000 acre feet of desalted water per year by 2025.

“I think you have a real, real hard thing to fight to get the California Coastal Commission approval on this,” Glen Peterson, director of the Southern California Metropolitan Water District, told the October 23 Las Vegas Sun.

Nevada Seeks Mutual Benefits

Southern Nevada Water Authority officials remain hopeful they can draft a plan that would benefit both California and Nevada.

“We have yet to discuss the issue with California officials, but we have discussed it internally in conceptual terms,” said Davis. “A mutually agreeable proposal for an environmentally responsible desalination plant would be very encouraging.

“A desalination facility would provide Southern Nevada with a water option beyond our limited Colorado River allocation,” Davis explained.

“It would not be a silver bullet, but it would be a welcome and viable component of our overall water strategy. This is more of a long-term solution than short-term fix,” Davis emphasized. The Southern Nevada Water Authority is not interested in funding a desalination plant unless the plant could be built and operated in an environmentally responsible manner.

“The key issues are: Where do you build it, how do you provide power to it, and how do you discharge the brine?” Davis observed. “Marine life tends to be particularly sensitive to changes in salinity. Nevada would not overlook environmental issues, and is as committed to a healthy Pacific Ocean environment as we are committed to our Nevada environment.”

James M. Taylor (taylor@heartland.org) is managing editor of Environment & Climate News.
Washington Considers Pesticide Notice Law

By James M. Taylor

The State of Washington’s Department of Agriculture has proposed to require farmers to notify all area schools, nursing homes, hospitals, and day care centers whenever they apply pesticides to their fields. Environmental activist groups are applauding the proposal, while farmers insist it is arbitrary and not backed by sound science.

The proposed rule forbids farmers to apply pesticides on their land unless they have given written notice 48 hours in advance to facilities located within one-half mile of their farms.

Disagree over Drift

“The proposed rule is a far cry from what is needed to protect farmers, workers, and children from pesticide drift,” said Carol Dansereau, executive director of the Farm Worker Pesticide Project. “It makes no sense to give notice only to select property owners when the whole community should be notified. Also, the notification zone is too small. We would like to see all property owners within one mile of farms given advance notice of pesticide application.”

Dean Boyer, spokesman for the Washington Farm Bureau, told the Associated Press the proposed regulations are unnecessary because the federal government already regulates pesticide drift. “We question whether this change is particularly necessary based upon the fact that there are very few documented cases of drift impacting the types of facilities that are addressed,” Boyer said.

“The Washington Department of Agriculture proposal seems to imply that spraying crops with approved pesticides is dangerous enough to warrant early notification and defensive measures. This has absolutely no basis in scientific fact.”

Gilbert Ross
American Council on Science and Health

“We would like to see steps taken to prevent drift from happening at all,” Dansereau said. “Drift is a major exposure route for farmers and their families. Currently, lack of enforcement of existing pesticide drift laws is a major problem. The proposed rule is important because a crucial part of enforcement is being able to have notice so as to document violations. Notice goes hand in hand with the ability to enforce.”

Federal Regulations in Place

“Ironically, the Washington proposal followed a call by the American Council on Science and Health (ACSH) for the federal Environmental Protection Agency (EPA) to eliminate “junk science” from the processes by which it determines whether a particular chemical is harmful to humans. According to an ACSH news release, “EPA routinely declares chemicals ‘carcinogens’—implying a likelihood of a health threat to humans—based solely on the creation of tumors in lab rodents by the administration of super-high doses irrelevant to ordinary human exposure levels. Furthermore, effects in a single species may not be applicable to another species (rat tests do not even reliably predict effects in mice, which are closely related to rats, let alone effects in humans), though similar effects in multiple species might be an indicator of a genuine problem.”

According to ACSH, “declaring substances ‘carcinogens’ (when they would more properly be called high-dose rodent carcinogens) is a chief source of health panics, public outcry, activist crusades against chemicals, and waste of resources from unnecessary abatement, cleanup, and product recall/reformulation/replacement.”

No Scientific Justification

ACSH Medical Director Gilbert Ross sharply criticized the lack of science behind the Washington Department of Agriculture’s proposal.

“The approved and regulated use of pesticides on crops and lawns poses no health threat to the American public,” said Ross. “There is not a shred of reliable scientific evidence linking the use of these pesticides to any adverse health effect, absent a specific individual with pesticide dust or spray.”

Ross described the proposed notification requirement as unnecessary and misleading. “The concept that pesticide spraying on crops a half-mile away might insidiously attack human beings, including children, has no basis in scientific fact. It can only be explained by agenda-driven alarmist rhetoric.”

“The Washington Department of Agriculture proposal seems to imply that spraying crops with approved pesticides is dangerous enough to warrant early notification and defensive measures,” Ross continued. “This has absolutely no basis in scientific fact.”

Crichton is RIGHT!

Michael Crichton’s new book, State of Fear (Harper Collins, 2004, $27.95), is a surprising book. Tucked inside a lively and entertaining tale of a philanthropist, a scientist, a lawyer, and two remarkable women who travel around the world trying to foil the plots of evil-doers is a detailed expose of the flawed science and exaggerations at the base of the global warming scare. It is also a devastating critique of mainstream environmentalism today and an eloquent call for change.

Like Crichton’s previous block-busters, The Andromeda Strain and Jurassic Park, this new book blends science and fiction in ways that teach as well as entertain readers. Crichton, who earned an M.D. from Harvard University and has written several nonfiction books, backs up his claims with footnotes, an appendix, and an annotated bibliography. Clearly, he wants the science in his book to be taken seriously.

Which raises the question: How much of the science in State of Fear is accurate, and how much is fiction?

The answer: Michael Crichton is right! His synthesis of the science on climate change is extremely accurate and the experts he cites are real. The Heartland Institute has been participating in the debate over climate change for more than a decade, and we have worked with many of the experts listed in the book’s bibliography. You can find more information at The Heartland Institute’s Web site, www.heartland.org, by clicking on the Crichton is Right button.
New England Communities Fighting Back Against Aquatic Weeds

Aquatic herbicides turning the tables on invasive nuisance
By James M. Taylor
With invasive weeds such as Eurasian milfoil choking an increasing number of freshwater lakes and ponds, communities in southern New England have decided to fight back.

Employing the newest advances in aquatic herbicides, communities are successfully restoring their water resources without harming non-targeted plants or polluting the environment.

Connecticut Lake Needs Attention
Bantam Lake, located in the Appalachian foothills of northwestern Connecticut, is the state's largest natural lake. The towns of Litchfield and Morris border the lake, which covers 916 acres. Although the hilly, forested region is scenic enough to bring tourists from throughout the northeastern United States, Bantam Lake is threatening to become a blight on the land.

“We've got a problem. We need to clean up the lake. If the community hadn't come together, the milfoil had completely overrun the lake. It had gotten completely out of control, and we should do the best we can to keep it that way,” Litchfield First Selectman Leo Paul told the November 25 Litchfield Enquirer.

State Funding Sought
Morris officials agree. First Selectman Phil Birkett has received a state permit to treat the lake with herbicides. But the milfoil has several years' head start, and Birkett must find funding to pay for the expected $50,000 per year it will cost to treat the lake until the weed is brought under control.

“It could be less, but for the foreseeable future, because of the shape the lake is in, we have to be aggressive in the treatment. Then, as time goes on, perhaps we will reassess the situation,” Birkett told the Enquirer. “The invasive plant species have had a field day here. They’ve just had every opportunity to grow and that’s why it’s so important that we stop this growth and clean up the lake.”

The two towns expect to share the costs of the chemical treatment with a local conservation center that owns a substantial portion of Bantam Lake shoreline. Working out the details of who pays how much of the treatment, however, could be problematic. Litchfield and Morris are trying to persuade the state government to contribute to treatment costs.

Dredging Effort Failed
A few years ago the state paid for a dredging project designed to eliminate, at least contain, the milfoil. But the weeds are back stronger than ever, and local officials realize herbicide treatment is the only effective option.

“We know that aquatic herbicides are safe and have been used effectively for over 30 years to remove invasive weeds,” said Allen James, president of Responsible Industry for a Sound Environment, a national not-for-profit trade association representing producers and suppliers of specialty pesticides and fertilizers. “Successful treatments are happening across the nation, in every state. However, communities that put off action until the invasive weeds are out of control pay a far heavier financial price than those that have the foresight to take action early.”

Success in Rhode Island
In the neighboring state of Rhode Island, the Lake Mishnock Preservation Association (LMPA) is further along the path of restoring its watershed. According to the LMPA, aquatic herbicides have delivered everything the association was hoping for.

Dan Albro, president of the LMPA, told the November 7 Kent County Times a recent milfoil infestation had rendered Lake Mishnock unsightly and unusable. Referring to the effect a milfoil invasion can have on an otherwise-healthy lake, Albro told the newspaper, “Even swimming isn’t fun in it.”

Responding to the Lake Mishnock crisis, local citizens formed the LMPA a little more than a year ago and have been investigating ways to treat the lake. “This is a grassroots organization that rolled up its sleeves and really did its homework,” said state Rep. Raymond Sullivan (D). “The members researched the issue, consulted with university officials, and did everything possible to educate themselves about their options.”

The LMPA decided to apply aquatic herbicides to eradicate the milfoil, and the results have been spectacular. “The milfoil infestation had completely overran the lake. It had gotten to the point where people could not boat or swim. It had completely choked the lake. If the community hadn’t come together and taken action against the milfoil, it’s scary to think what might have happened,” Sullivan explained.

“You should see the lake now,” Sullivan continued. “The difference is like night and day. Lake Mishnock is central to the community’s way of life, and the lake is absolutely beautiful again. They deserve all the credit. It’s a great story.”

“The neighborhood has really come together a lot around the lake,” agreed Albro.

Environmentally Sound
Importantly, reported Sullivan, aquatic herbicides have been applied in an environmentally responsible manner. “All treatments must be approved by our Department of Environmental Management. We have taken all appropriate steps to ensure application in an environmentally safe manner.”

Impressed by the LMPAs diligence and success, the town of West Greenwich, Rhode Island recently provided LMPA with a $2,500 grant, and Sullivan secured a state legislative grant for $9,000. Those funds are expected to help the LMPA keep milfoil in check during the coming years as well.

James M. Taylor (taylor@heartland.org) is managing editor of Environment & Climate News.

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UK Scrutinizes Climate Change Economics; Calls for Comments

By William Kovacs

I n a major move away from global warming orthodoxy, the United Kingdom is currently in the process of studying the economic challenges of addressing climate change. Sir Nicholas Stern, a fellow of the British Academy, is leading a major review of the economics of climate change to understand more fully the nature of the economic challenges and how they can be met both in the UK and globally.

Climate change is a complex and costly problem to address, with dollar estimates for stabilizing greenhouse gases in the atmosphere ranging from trillions to many tens of trillions of dollars. This has numerous nations, including the United Kingdom, worried about the costs of large-scale global economic disruption.

The Stern Review issued a global invitation to interested stakeholders—including academic, private sector, scientific, non-governmental organization (NGO), and other experts—to submit evidence on all areas relevant to the posted Terms of Reference (the issues that will be reviewed). The deadline for submissions of evidence was December 9, 2005.

Economic Review Commissioned
The UK Cabinet Office and Her Majesty's Treasury plan to report results of the Stern review to the prime minister and chancellor by autumn 2006.

The announcement of the review by the UK government attaches further importance to the climate change issue, following its announcement to make climate change a priority for the UK presidencies of the G8 and EU. Britain assumed the presidency of the G8 earlier this year. Prior to assuming the presidency, Blair promised to make climate change a focus of his leadership.

“Compliance with the Kyoto Protocol will punish even the existing energy-producing capacity by capping emissions. The cost of energy in Italy, already higher than the European average, will go up even more. Given the country’s lack of competitiveness, that can only be described as a self-inflicted wound.”
ANTONIO MARTINO
ITALIAN DEFENSE MINISTER

In addition to his appointment by the prime minister as advisor to the government on the economics of climate change and development, Sir Nicholas Stern is second permanent secretary at Her Majesty's Treasury and head of the Government Economic Service. The chancellor of Her Majesty's Treasury had announced Stern’s appointment on July 10.

Many Topics on Agenda
The Terms of Reference call for examining evidence on how future economic growth in developed and developing nations relates to energy demand and emissions; the costs and sequences of climate change in developed and developing countries, taking into account increases in climate volatility risks, possible irreversible impacts, climatic interactivity with other air pollutants, and possible actions and costs of adapting to a changing climate; the costs and benefits of actions taken to reduce greenhouse gas emissions from energy use and other sources; and the impact and effectiveness of national and international policies aimed at reducing emissions.

Following consideration of available evidence, the review will provide an assessment of the choices of policies and institutions, economics, and time needed to move to a low-carbon global economy, as well as an assessment of the potential of various approaches for adapting to climate change.

Economic Pain Predicted
If current cost estimates are correct,
British Prime Minister Blair Turning Away from Kyoto

U.S. position gaining consensus support
By James Hoare

In an editorial published in a leading British newspaper and in comments at a meeting of environmental ministers from the world’s leading economies, British Prime Minister Tony Blair distanced himself from the Kyoto Protocol and supported the longstanding U.S. position that developing nations must be included in any meaningful global warming treaty.

Blair also agreed with the U.S. stance that technological development rather than top-down government mandates must drive carbon dioxide reductions.

“The difficulties with the current climate change debate,” Blair wrote in an October 30 editorial in the London Guardian and Observer, titled “Get Real on Climate Change,” amount to “a reluctance to face up to reality and the practical action needed to tackle problems.

“We must understand that neither issue [climate change and energy supply] can realistically be dealt with unless the US, the EU, Russia, Japan, China and India work together,” Blair explained.

Kyoto Results Disappointing

Blair noted the Kyoto Protocol will not do what its advocates claim, even if it were to gain U.S. support.

“Kyoto doesn’t even stabilize [greenhouse gas emissions]. It won’t work as intended, either, unless the U.S. is part of it. It’s easy to take frustrations out on the Bush Administration but people forget that the Senate voted 95-0 against Kyoto when Bill Clinton was in the White House,” Blair observed. “We have to understand as well that, even if the U.S. did sign up to Kyoto, it wouldn’t affect the huge growth in energy consumption we will see in India and China. China is building close to a new power station every week.”

“The first Kyoto commitment period ends in 2012,” Blair noted. “The challenge is what will come next. Will it be another round of division or what we need: a sound, rational, science-based unity, which ensures the right legally-binding framework to incentivize sustainable development?” Blair asked.

“All of this is going to happen unless the major developed and emerging nations sit down together and work it out, in a way that allows us all to grow, imposes no competitive disadvantage and enables the transfer of the technology needed for sustainable growth to take place,” Blair concluded.

Blair followed up on his editorial, according to media reports, by telling the environmental ministers meeting in Britain, “The blunt truth about the politics of climate change is that no country will want to sacrifice its economy in order to meet this challenge. But all economies know that the only sensible, long-term way to develop is to do it on a sustainable basis.”

Australia, U.S. Vindicated

Blair leads a country that is a key signatory of Kyoto, yet he has left no doubt that the Kyoto Protocol simply will not deliver the reductions in greenhouse gases that are needed to curb the threat of climate change,” Australian Environment Minister Ian Campbell commented in a November 2 column in the Australian News.

“His comments mirror what Australia has said all along: that is, to have a real impact on climate change, it is imperative to have co-operation from all countries and all greenhouse emitters,” Campbell added.

Importance of Technology

“The argument that I have been making, repeatedly, on BBC is that Kyoto is futile,” said Pat Michaels, past president of the American Association of State Climatologists and senior fellow at the Cato Institute. “Tony Blair is realizing that encouraging the private sector to invest in technology is more effective than top-down government mandates. The last thing you want is to take vital away from people who would otherwise invest that capital into efficient technology investment.

“If the government had taken away my capital in an effort to fight global warming, I could not afford to buy or invest in hybrid automobile technology,” Michaels continued. “How do you create forces to develop the science and technology? Encourage the system that maximizes investment in science and technology. Allow people to invest in things that work.”

Data Indict Kyoto

Data released after Blair’s comments supported his statement that the Kyoto Protocol is failing to live up to expectations. The Reuters news service reported on November 11 that greenhouse gas emissions had risen in Kyoto-signatory Britain during the past two years while declining in the United States, which has not signed the treaty.

“It is difficult to criticize other countries, such as the United States, who will not meet their (Kyoto) targets if we are unable to meet our commitments,” Lord May, president of the Royal Society, the British national academy of science, told Reuters.

Reuters also reported that China, which is unencumbered by the Kyoto Protocol and is the world’s second-leading emitter of greenhouse gas emissions, continues to increase its greenhouse gas emissions and will likely refuse to enter any Kyoto-style treaty in the foreseeable future.

“China is unlikely to commit to cutting emissions in the next phase of the Kyoto Protocol, fearing it would retard economic growth,” Reuters reported.

CLIMATE continued

there is real cause for concern. Although the Kyoto Protocol will have virtually no impact on growing emissions of greenhouse gases, it is already causing economic pain. In addition, the International Council for Capital Formation reported this November that achieving agreed-upon Kyoto Protocol targets would lead to Britain, Germany, and Italy each losing 200,000 jobs. In Spain, more than 600,000 jobs would be lost.

In an October 7, 2005 article in the Wall Street Journal, Italian Defense Minister Antonio Martino remarked, “Kyoto will severely penalize the European economy. ... Compliance with the Kyoto Protocol will punish even the existing energy-producing capacity by capping emissions. The cost of energy in Italy, already higher than the European average, let alone that in the U.S., will go up even more. Given the country’s lack of competitiveness, that can only be described as a self-inflicted wound.”

Martino further observed, “that the [EU] would still insist on implementing the protocol must be seen as an institutional form of collective self-flagellation. Kyoto will severely penalize the European economy without bringing any real progress toward the noble aims proclaimed by the EU.”

“I think reality is setting in,” said Marlo Lewis, senior fellow at the Competitive Enterprise Institute. “The most recent data show that most of the EU is not going to meet its Kyoto obligations. An economic report unanimously adopted by the British House of Lords this summer says Kyoto is a dead end that and that the way to go forward is a technology-based plan. You need more R&D for future technologies before you can start mandating large-scale carbon reductions.

“Blair himself has recognized, and said more than once now, that countries will not sacrifice their economic future for Kyoto goals,” said Lewis. “Countries will not commit economic suicide. Interestingly, the House of Lords report also says more attention must be paid to adaptation to climate change rather than avoidance. This approach may well prove to be the best solution.”

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is vice president of the U.S. Chamber of Commerce’s Environment, Technology, and Regulatory Affairs Division.

INTERNET INFO


The International Council for Capital Formation’s work on climate change is available online at http://www.ictf global.org/research/climate/index.html.
Governments Address Kelo Backlash

By James Hoare

State and local governments are responding to a groundswell of citizen outrage over the U.S. Supreme Court’s June 23, 2005 decision in Kelo v. City of New London. As citizens prove adamant that government should not violate private property rights merely to enhance tax revenue by forcing one private citizen to sell his or her property to another, bills designed to end eminent domain abuse are being authored in legislatures across the nation.

Thirty-eight states have passed legislation restricting eminent domain abuses or are currently in the process of doing so. Support for reform legislation is remarkably bipartisan and evenly distributed throughout the country.

Kansas Represents Bipartisanship

The heartland state of Kansas provides a typical example of the broad-based support for eminent domain reform. State Senate Majority Leader Derek Schmidt (R-Independence) teamed with Sen. Greta Goodwin (D-Winfield) in September to unveil legislation limiting the circumstances under which government can take one citizen’s property and transfer it to another.

“The notion that property ownership is a right doesn’t have much meaning if a majority of the city council, county commission, or state legislature can vote to take a person’s property and give it to somebody else,” explained Schmidt, quoted in Greenwire on September 30.

“I certainly believe that some adjustments are in order to protect private property rights,” added Republican colleague Sen. Phil Journey (R-Wichita). “To give land to another person so that person can make money and grow the tax base is outside the purposes of eminent domain and outside the right of government to take private property. There needs to be a very high burden of proof for such actions.”

The proposed legislation is equally popular among Democrats. “I just think it’s an abuse of power” for government to take property from one private citizen and give it to another, state Rep. Harold Lane (D-Topeka) told the October 7 Topeka Capital-Journal.


Many States Taking Action

While the Kansas proposal waited to be formally addressed by the legislature, other states also took steps to curb eminent domain abuse. The Wisconsin Assembly passed eminent domain legislation on September 27 and forwarded it to the state Senate. The Pennsylvania House passed eminent domain legislation in November.

The Michigan Senate passed eminent domain legislation on November 9, and Ohio Gov. Bob Taft (R) on November 16 signed into law a measure preventing local governments from seizing unblighted land for economic development.

“Citizens have been rising up against eminent domain abuse,” said Scott Bullock, senior attorney at the Institute for Justice. “It has been an incredible thing to witness.”

“With 38 states either limiting eminent domain abuses or currently in the process of doing so, this is a grassroots movement of epic proportions,” Bullock said. “There is a real opportunity to change the law, and state legislators from both parties are taking notice.”

Local Governments Join Fray

In many cases, local governments decided not to wait for state legislative action and began the process of enacting private property protections of their own. In St. Charles, Missouri, City Councilman John Gieseke introduced a resolution on November 1 to prohibit the city from confiscating private homes for the purpose of giving the land to another private citizen for economic development.

“Can you imagine someone coming to your neighborhood and taking your home to put up a Walmart?” said Gieseke at a November 1 city council meeting, according to the November 6 St. Louis Post-Dispatch.

Local businessman Kevin Rogers, who owns a Dairy Queen, expressed disappointment during the meeting that the resolution applied to homes but did not safeguard other private property.

“I’m strongly opposed to somebody coming and taking away my Dairy Queen to develop it and make some developer rich,” Rogers said.

Acknowledging Rogers’ concern, Gieseke proposed to expand the resolution. “If the area’s not blighted and there’s a legitimate business, eminent domain should not be used,” Gieseke agreed.

Eminent Domain Abuser Dumped

Local officials who supported broad exercise of eminent domain power did so at their own peril. St. Louis Alderman Thomas Bauer was recalled from office by residents of his blue-collar neighborhood after he played a pivotal role in displacing local residents from their homes for the purpose of building a gas station and convenience store.

Bauer asserted his intention was to improve the neighborhood’s economy and convenience with the new business, but his words fell on deaf ears.

“California representatives are taking action to address eminent domain abuse—there are bills on the table. This is the way it has to be for communities to protect their homes,” said San Diego City Councilman David Alvarez.

“Any move to change the law is a positive move for the communities and property owners in California,” said Congressman Darrell Issa (R-Passadena).

“Citizens are fighting back against eminent domain abuse and our lawmakers are making changes.”

Kelo Describes Aggressive Taking

Prior to the November 3 House vote on H.R. 4128, the Private Property Rights Protection Act, Suzette Kelo described in September 20 testimony before the Senate Judiciary Committee the events surrounding the City of New London’s aggressive use of its eminent domain power and how it has affected her life.

“In 1997, I searched all over for a house and finally found this perfect little Victorian cottage with beautiful views of the water. I was working then as a paramedic and was overjoyed that I was able to find a beautiful little place I could afford on my salary. I spent every spare moment fixing it up and creating the kind of home I always dreamed of. I painted it salmon pink, because that is my favorite color ....

“So why did the City and the New London Development Corporation (NLDC) want to kick us out? To make way for a luxury hotel, up-scale condos, and other private developments that could bring in more taxes to the City and possibly create more jobs. The poor and middle class had to make way for the rich and politically connected ....

“My neighborhood was not blighted. It was a nice neighborhood where people were close. ... We don’t want to leave. None of us asked for any of this. We were simply living our lives, working, taking care of our families and paying our taxes. ...

“What is happening to me should not happen to any-one else. Congress and state legislatures need to send a message to local governments that this kind of abuse of power will not be funded or tolerated. ...

“Special interests—who benefit from this use of government power—are working to convince the public and legislatures that there isn’t a problem, but I am living proof that there is. This battle against eminent domain abuse may have started as a way for me to save my little pink cottage, but it has rightfully grown into something much larger—the fight to restore the American Dream and the sacredness and security of each one of our homes.”

— James Hoare

INTERNET INFO

More than two dozen documents addressing eminent domain, including the full text of the majority and dissenting opinions in the Supreme Court’s Kelo decision, are available through PolicyBotTM, The Heartland Institute’s free online research database. Point your Web browser to http://www.heartland.org, click on the PolicyBotTM button, and select the topic/subtopic combination Law/Eminent Domain.
Congress Moves to Protect Property Owners

By James Hoare

The U.S. House of Representatives on November 3 overwhelmingly voted to use the power of the purse to dissuade state and local governments from using eminent domain to take private property for the purpose of economic development.

Purse Strings Pulled

In a 376-38 vote, the House voted to prohibit state and local governments from using eminent domain to take private property for economic development during any fiscal year in which they have received federal economic development funds. Additionally, under provisions of the bill (H.R. 4128), the Private Property Rights Protection Act, any state or local government that uses eminent domain for such purposes may not receive federal economic development funds for the following two years.

The bill gives any private citizen whose property was taken for economic development the right to seek relief in court. Similarly, if a government agency is considered to have used eminent domain abuse, the bill permits private parties to seek damages from the relevant governmental entity.

The bill places the burden of proof on the government that uses eminent domain for private uses like condominums or shopping malls.

Most Connecticut Reps Agree

Notably, although the town of New London, Connecticut was the victorious defendant in the Supreme Court decision that caused the grassroots uproar against eminent domain abuse, four of the five Connecticut representatives supported the property rights protection measure. Democrat Rosa DeLauro joined Republicans Christopher Shays, Nancy Johnson, and Rob Simmons in support of the measure. Only Democrat John Larson, after publicly remaining on the fence until the hour of the vote, voted against the bill.

“Do you really want to tell voters you support this ridiculous Supreme Court decision that the government can take property against their will and give it to someone richer who will pay more taxes?” asked Rep. Louie Gohmert (R-TX), according to the November 4 Greenwire.

“We can justify our state or cities taking when it is for a road or a school or a public utility,” explained Rep. John Conyers (D-MI) in a statement.php.

Washington Post owner Richard Ahlman, called it “a victory for those who cherish the liberty of private enterprise and the right of each American to decide for himself whether he wants to work on his own or to join a cooperative project.”

Bipartisan Landslide

In a show of strong bipartisan support, 157 Democrats joined 218 Republicans and one Independent in voting for the bill. A roll call of the vote can be viewed at http://clerk.house.gov/evs/2005/roll568.xml.

“We can justify our state or cities taking when it is for a road or a school or a public utility,” explained bill supporter Rep. John Conyers (D-MI). “But we can’t agree for takings when it’s done for private uses like condominums or shopping malls.”

JOHN CONYERS
U.S. REPRESENTATIVE - MICHIGAN

“I support efforts to prevent the federal government from using eminent domain solely for economic development,” explained DeLauro, according to the November 2 issue of Newsday.

“The Kelo decision set a terrible and far-reaching precedent by allowing government to take our property for private, commercial uses,” Johnson told Newsday.

Development Plan Fizzles

Ironically, as the House voted to curb eminent domain abuse, the deal between the City of New London and a private company to develop Suzette Kelo’s land was falling apart. Unable to reach agreement over the particulars of the proposed course of development, the deal appeared dead.

The irony of the reprieve was not lost on Institute for Justice Senior Attorney Scott Bullock.

“This is par for the course of projects that rely on eminent domain abuse,” Bullock said. “They tend to be poorly thought out, heavily subsidized, and reliant on suspect central planning. One of the saddest things regarding the Kelos and other citizens whose property is subjected to eminent domain is the arrogance of the officials that conceive and execute the takings,” Bullock added. “Typically, they have so much land available for their projects, yet they still insist on callously taking property that people have centered their lives around. Eminent domain should be a last resort for essential public projects, not a first resort for private developers.”

James Hoare (Jhoare@mcgivneyan dkluger.com) is managing attorney at the Syracuse, New York office of McGivney, Kluger & Gunnan.

INTERNET INFO

The full text of H.R. 4128, the Private Property Rights Protection Act, as approved by the House of Representatives and submitted to the Senate, is available through PolicyBot™, The Heartland Institute’s free online research database. Point your Web browser to http://www.heartland.org, click on the PolicyBot™ button, and search for document #18155.
James argued, “the legislature may freely exercise the plenary power, and ... any limit on this exercise must appear in the constitution.” James observed there is no provision in the Oregon constitution that explicitly allows citizens to limit government’s ability to regulate.

Second, ruled James, Measure 37 unlawfully favors longtime property owners by giving them more compensation than more recent owners of property. James argued people who bought property decades ago have seen more increase in value than those who bought more recently. Therefore, if a more recent property owner seeks relief under Measure 37, that property owner probably will not receive as much money as the property owner would have received if he or she had purchased the property earlier. Hence, James decided, Measure 37 unjustly discriminates against the more recent property owner.

Third, ruled James, Measure 37 violates procedural due process protections of the U.S. Constitution. James asserts that prior to passage of Measure 37, Oregonians had a right to demand that land-use restrictions be enforced against their neighbors without having to compensate their neighbors for losses in property value caused by such restrictions. Because Measure 37 does not allow individual citizens the right to appeal each government decision to reimburse individuals or forego enforcement of land-use provisions, James ruled, Measure 37 violates citizens’ due process rights to challenge such government decisions.

Finally, James ruled, Measure 37 violates citizens’ substantive due process rights not to be deprived of property interests. Noting that compensation for one property owner must be paid by taxpayers in general, and arguing that forgoing land-use restrictions on some property owners violates the rights of other citizens to receive the benefits of such impositions on their neighbors, James ruled Measure 37 takes away citizens’ property interests in violation of the U.S. Constitution.

Decision Decried
Property rights supporters saw the judge’s decision as entirely unjustified. “The house of cards gets taller the farther one reads into the opinion,” said Rodney Stubbs, founder of the Oregon Property Rights Council.

Stubbs noted several specific problems: “Even though there is no such thing in the Oregon constitution as the ‘police power,’ and even though Measure 37 doesn’t prohibit the legislative assembly from enacting or enforcing new land-use regulations, [James ruled] Measure 37 nevertheless infringes the ‘police power’ of the legislature by prohibiting the legislative assembly from enacting or enforcing new or existing land use regulations.”

Added Stubbs, “The court says ... Measure 37 impedes upon fundamental rights of those opposed to property rights. ... This part of the court’s opinion is the icing on the cake because the court recognizes what it calls ‘the fundamental rights of neighboring property owners,’ but refuses to recognize the fundamental rights of Oregonians ... who have had everything taken from them through the exercise of the state’s nonexistent ‘police power.’”

The Oregon Supreme Court has scheduled oral arguments on the case for January 10.

“It will be interesting to see what the Oregon Supreme Court does,” said Andy Cook, an attorney with the Pacific Legal Foundation. “Many other states are considering initiatives or laws similar to Measure 37. The Oregon Supreme Court may provide important guidance regarding whether Measure 37 is the most effective way to combat unpopular and overly restrictive property laws.”

James Hoare (jhoare@mcgivneyan.dkluger.com) is managing attorney at the Syracuse, New York office of McGivney, Kluger & Gannon.

Washington Farm Bureau to File Petition Similar to Oregon’s

Undaunted by the circuit court ruling in Oregon, the Washington Farm Bureau is drafting a similar voter initiative for Oregon’s northern neighbor. Like Oregon’s Measure 37, the Washington initiative would require state and local governments to compensate private property owners for regulatory restrictions that devalue their property.

“There’s this culture of conflict out there because agencies come in and say we’re putting a buffer on your land,” explained Dan Wood, director of government relations for the Washington Farm Bureau. “They just change the rules on people. When the landowners feel they’re being disrespected, it’s very natural that they get really worked up about that. What we’re going to say is let’s just change the approach.

“There’s nothing wrong with environmentalism,” Wood added. “It’s just environmentalism on the cheap, when we’re expecting the private landowner to pay for the public benefit, that we have a problem.”

Owners’ Resentment Strong
The Farm Bureau needs more than 200,000 signatures to place the initiative on the November 2006 ballot. The group expects to have the signatures in time to file the petition with the Washington secretary of state’s office in January. January is also when the Oregon Supreme Court will hear arguments regarding Measure 37.

According to Wood, although the two initiatives are very similar, there will be a few differences. Unlike Oregon’s Measure 37, which retroactively compensates landowners from the time each citizen acquired his or her property, the Washington initiative would compensate property owners for loss of property value only from the time of the November 2006 vote.

“There has been pent-up resentment toward inflexible, confiscatory property laws that place severe limits on citizens’ ability to fully enjoy and realize the full benefit of their property,” said Pacific Legal Foundation attorney Andy Cook.

“Oregon and Washington have among the most restrictive land-use laws in the country, so the landslide ballot victory for Measure 37 and the subsequent proposal to put a similar measure in front of the Washington voters was certainly predictable.”

“There’s nothing wrong with environmentalism. It’s just environmentalism on the cheap, when we’re expecting the private landowner to pay for the public benefit, that we have a problem.”

DAN WOOD
WASHINGTON FARM BUREAU

Cook predicted Washington voters would be receptive to an initiative similar to Oregon’s Measure 37. “The sentiment in support of Measure 37-type land-use bills is at least as popular in Washington as it was when Oregon voters passed Measure 37. We have strong sentiment throughout the state of Washington toward the state’s Growth Management Act [a law restricting use of private land].”

— James Hoare
Judge Upholds Yellowstone Snowmobile Compromise

by Kerry Jackson

Snowmobiles are returning to the Yellowstone and Grant Teton national parks this winter following an October 14 decision by Judge Clarence Brimmer of the U.S. District Court for the District of Wyoming. Brimmer upheld a plan by the Bush administration to allow snowmobiles in the parks.

The plan includes restrictions strongly opposed by many local residents. The regulations place a cap on the number of snowmobilers who can be in the parks at any one time and require that commercial guides accompany those who go in.

Rules a Compromise

Although the current rules are more restrictive than in years past, they are more permissive than rules proposed by the Clinton administration, under which snowmobiling would have been banned entirely.

Snowmobilers had been allowed in the two parks for 40 years. Snowmobiling sustains the region’s winter economy and is an established recreational outlet during snowbound winter months. In a typical year, three-fourths of the winter visitors to Yellowstone used snowmobiles. In some parts of the parks, access during winter can be gained only by snowmobile.

The Clinton White House had concluded snowmobiles produced too much air and noise pollution in the parks and disrupted wildlife. The administration claimed the only way to control those problems was to implement a total ban on snowmobiling in the parks.

Under a temporary deal negotiated by the Bush administration, snowmobiles are allowed in the parks subject to the new restrictions. Only 720 snowmobiles will be allowed to enter Yellowstone per day, and the snowmobilers must have guides. The rules allow 140 snowmobiles to enter Grand Teton and to travel on the John D. Rockefeller Jr. Memorial Parkway, which connects the two parks.

Judge Upholds Restrictions

The Wyoming Lodging and Restaurant Association (WLRA) challenged the deal in court, hoping to have the new restrictions eliminated. Brimmer rejected the group’s arguments, saying the WLRA failed to show the National Park Service (NPS) did not offer a “reasoned explanation” for restricting snowmobile access.

Explained Brimmer, “We all must keep in mind that the NPS is the expert in this area and, consequently, is entitled to a great amount of deference when making such decisions. It is clear to this Court that the 2004 Temporary Rule, while not perfect in any sense, seems to be the best compromise currently available.”

Brimmer considered reasonable the NPS analysis that found allowing more than 720 snowmobiles per day would be detrimental to Yellowstone. “Surely, no one can argue that a decrease in irresponsible drivers does not reduce the impact on wildlife in the Parks,” Brimmer wrote.

That requirement, Welch said, will cost each snowmobiler $20 to $30 per day even if they have been using the parks for years and know their way around better than the guides do.

Nevertheless, Welch said his organization will not further challenge the restrictions this year.

Bipartisan Support for Snowmobilers

The opposition to the snowmobiling restrictions is unmistakably bipartisan. Local Democrats as well as Republicans bristle at the federal rules and rulings, which they see as telling Westerners that public lands are not really public. Wyoming Attorney General Pat Crank, a Democrat, was one of the plaintiffs in an earlier suit challenging the park on an unguided basis.

“Every concerned citizen and policy maker should read this book....everyone will be challenged by it to reexamine their beliefs and the environmental establishment’s claims.”

— NIGER RINN, NATIONAL SPOKESMAN, CONGRESS OF RACIAL EQUALITY

“Only 720 snowmobiles will be allowed to enter Yellowstone per day, and the snowmobilers must have guides.”

Mandatory Guides Challenged

Jack Welch, president of the Blue Ribbon Coalition, an organization of outdoor recreationists promoting safe, responsible, and environmentally conscious use of public lands, said most local residents oppose the new restrictions. “Our biggest problem is that everyone has to be guided in Yellowstone proper,” said Welch.

That requirement, Welch said, will cost each snowmobiler $20 to $30 per day even if they have been using the parks for years and know their way around better than the guides do.

Nevertheless, Welch said his organization will not further challenge the restrictions this year.

“Only 720 snowmobiles will be allowed to enter Yellowstone per day, and the snowmobilers must have guides.”

Drive their snowmobiles in Yellowstone without having a commercial guide,” Crank said.

Crank also said, however, that he is pleased Brimmer would retain jurisdiction over the snowmobiling issue in future disputes. That gives snowmobile supporters hope for a more favorable ruling in the future. Brimmer last year blocked a Washington, DC judge’s complete snowmobile ban for Yellowstone.

“To wait one more year is OK,” Lynn Birlefli, executive director of the Wyoming Lodging and Restaurant Association, told the Associated Press. “We had hoped to get some relief for our snowmobilers, but we’re certainly willing to go through this process.”

Clark Collins, founder and executive director of the Blue Ribbon Coalition, said staying on the offensive is the only way to retain snowmobiling rights in national parks. “The groups trying to eliminate snowmobiling in Yellowstone aren’t willing to share our public lands with snowmobiles and will not rest until we are shut out of every area of scenic recreational value,” Collins said.

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INTERNET INFO

California

Continued from page 1

Impressive Improvements

According to the San Francisco Bay Area Air Quality Management District, the San Francisco region exceeded the federal eight-hour ozone standard only once during 2005. That followed a successful 2004, when San Francisco had no violations. By comparison, San Francisco exceeded federal ozone levels seven times each year from 2001 through 2003, and had 16 violations in 1998.

Acording to the South Coast Air Quality Management District, Los Angeles and Orange County exceeded federal ozone standards 84 times in 2005. “That’s the lowest we’ve had since we started measuring in 1976,” reported the October 20 Greenwire. By comparison, Los Angeles and Orange County exceeded federal standards 109 times in 2003 and more than 200 times in 1977.

Interior Also Better

The interior San Joaquin region also showed significant air quality improvement. The region violated federal ozone standards 72 times in 2005, compared to 109 times in 2004.

“Amid the debate over global warming, rising levels of carbon dioxide in the atmosphere, and the continued increase in consumption of fossil fuels, it is easy for us to overlook the dramatic progress the Bay Area—along with much of the state and nation—has made in reducing air pollution,” observed the November 20 Contra Costa Times.

“In the 1980s, smog checks for cars began, lead in gasoline was banned, and national standards for tiny particulate matter were established,” the Times explained. “During this time, pollution began to decrease significantly. For the first time, there were no ozone violations in the Bay Area for an entire smog season.”

“Emissions of ozone-forming pollutants are in significant decline,” said Joel Schwartz, visiting fellow at the American Enterprise Institute. “Ozone pollution in 2005 was much, much lower than in years past. As a result, the last two years have been record low ozone years in California and also throughout the United States.”

Joel Schwartz
AMERICAN ENTERPRISE INSTITUTE

Future Remains Bright

Even with population growth and economic expansion, interior portions of the state expect air quality improvements to resume in the future. That would mirror the experience of California’s coastal cities.

“Those who were living in the area 50 years ago remember a time when considerably fewer motor vehicles spewed far more pollutants into the atmosphere,” observed the November 20 Contra Costa Times. “With a population less than half what it is now, the Bay Area produced considerably more air pollution.”

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By Michael Coulter

Voters in Livermore, California on November 8 rejected an initiative that would have allowed construction of the nation’s largest solar-powered community. Developers had sought to move the city’s urban growth boundary so that Livermore Trails, a development with 2,450 solar-powered homes and nearly 1,000 acres of open space, could be built by Pardee Homes, a division of Weyerhaeuser Real Estate.

The initiative was defeated 72 to 28 percent (19,593 to 7,624). There are approximately 75,000 residents of Livermore, which is 45 miles east of San Francisco and home to Lawrence Livermore National Laboratory, a federal facility for researching nuclear weapons and energy research.

Proponents Trumpet Renewable Power

Livermore Trails would have placed homes on 450 of the 1,400 acres of ranchland at issue. The remaining 950 acres would have been reserved for open space, habitat, and space for public schools. According to the proposal, the 950 acres would have offered sites for hiking, biking, jogging, equestrian trails, cricket fields, bocce ball courts, and community farming and gardening.

The 2,450 homes in the project would have been built using “available ‘green’ building and ecologically friendly landscape technologies ... [and] environmentally sound, healthy, and energy-efficient features,” according to the text of the initiative. The homes would have made use of solar technologies such as rooftop panels. The California Energy Commission supported the proposal because it felt the Livermore Trails project would promote energy efficiency.

Proponents also included some local businesses and outdoor recreationists who support local parks and recreation facilities. A statement posted on the city’s Web site by proponents of the measure claimed the proposal would benefit all city residents through investment in infrastructure and additional recreation facilities for all citizens.

In an attempt to reduce the environmental footprint of the community, a majority of the new homes would have been built within a quarter mile of the main mass transit corridors, and there would have been shuttles to the Bay Area Rapid Transit and downtown Livermore.

Voters Reject Solar-Powered Housing Development

“The world is full of tradeoffs, and sometimes ‘renewable power’ activists fail to recognize that.”

Ben Lieberman
THE HERITAGE FOUNDATION

Despite the promised benefits, opponents of the initiative included several local environmental groups, a majority of the city council, and the Livermore mayor. In a statement on the city’s Web site, Livermore city officials argued the measure would lead to greater traffic congestion, declining air quality, and unprecedented sewage hazards from Pardee’s privately operated wastewater treatment facility. They also argued the measure would set the stage for uncontrolled growth.

“The world is full of tradeoffs, and sometimes ‘renewable power’ activists fail to recognize that,” said Ben Lieberman, senior fellow and air quality expert at The Heritage Foundation. “Solar energy collectors must displace a tremendous amount of natural landscape to produce any significant amount of energy. And anything less requires a great deal of financial expenditures for very little and very inconsistent power.”

“There are no technology options without environmental impact,” said Marlo Lewis, energy policy analyst and senior fellow at the Competitive Enterprise Institute. “Environmental advocates would like us to believe that solar energy is a magical technology that is all benefit and no cost. But that is not true. There are not only environment vs. economy trade-offs, but also environment vs. environment tradeoffs, as this vote indicates.

“Solar power has a smaller emissions imprint than fossil fuels,” Lewis explained, “but a much greater impact on land use and site depletion. These are not renewable resources, because the amount of land we have is finite. The good citizens of Livermore have recognized this and voted accordingly.”

Michael Coulter (mjcoulter@gcc.edu) teaches political science at Grove City College in Pennsylvania.

James M. Taylor (taylor@heartland.org) is managing editor of Environment & Climate News.
“It is rather ironic to see self-proclaimed environmental activists bickering with each other about wind power. This just goes to show that no person, group, or activist viewpoint can claim an exclusive title of being ‘environmentalist.’”

BEN LIEBERMAN
THE HERITAGE FOUNDATION

Nantucket

Continued from page 1

The proposed wind farm is sparking a civil war among professional environmentalists, taking center stage in a debate encompassing everything from fossil fuels to migratory birds to the aesthetic beauty of famously pristine seashores.

At issue is a proposed complex of 130 wind turbines, many of which will be taller than 40-floor skyscrapers.

Covering 24 square miles and negatively affecting the ocean floor, migratory birds, navigation, fishing, tourism, and the aesthetic beauty of Nantucket Sound, the proposed wind farm would not produce enough electricity for even the area’s beach towns. At best, it might not produce enough electricity for even the area’s beach towns.

According to the November 10, Massachusetts Governor Mitt Romney (R) asked the U.S. Department of the Interior to delay a review of the proposed wind farm until the federal government draws up comprehensive guidelines applicable to all offshore wind farms. Romney’s letter mirrored the sentiments of local opponents to the proposed wind farm.

“These projects are typically much larger in scope than oil rig projects, and are not necessarily subject to competitive bidding, and have significantly different impacts, benefits, and consequences than other types of projects,” wrote Romney to Interior Secretary Gale Norton. “Clearly, they require a separate and distinct regulatory program.”

“Wind power will always be [just] a niche contributor to the electricity supply,” said Ben Lieberman, air quality expert and senior fellow at The Heritage Foundation. “Beyond the obvious negative effects wind turbines have on avian life and what used to be pristine wilderness, the wind blows intermittently and unreliably, which accounts for the high price of wind-powered energy.”

“The environmental and economic costs of wind power will always keep it as a marginal energy source unless it becomes more heavily subsidized by taxpayers than it already is,” Lieberman added.

Police Separate Kennedy, Activists
While the Romney letter is the latest salvo regarding the contentious issue, it is far from the most dramatic.

In what the August 21 issue of the New Bedford Standard Times called “a strange battle of boats,” environmental activist Robert F. Kennedy hosted an anti-wind farm cruise in mid-August in Nantucket Sound. Arguing the proposed wind farm would be too environmentally damaging, Kennedy drew the ire of pro-wind environmental activist groups Greenpeace and Clean Power Now.

According to the August 18 Cape Cod Today, a Clean Power Now protestor shouted, “Hey, Bobby, you’re on the wrong boat!” Police had to keep the two boats apart after Kennedy challenged the Clean Power Now protestors to “Come over here and listen to what I am saying!”

Cronkite Slights Inlanders
Supporting Kennedy, Walter Cronkite, the Nantucket-retired TV news anchor, told a reporter, “The problem really is Not in My Backyard version of environmentalism, which is really not environmentalism at all,” wrote the Times.

“Robert Kennedy sided with the Alliance to Protect Nantucket Sound, funded by wealthy property owners who don’t want to look at wind turbines,” the Times added. “Robert Kennedy has squandered his reputation as a real environmentalist to prevent any change to his own back yard.”

“It is rather ironic to see self-proclaimed environmental activists bickering with each other about wind power,” observed Lieberman. “This just goes to show that no person, group, or activist viewpoint can claim an exclusive title of being ‘environmentalist.’”

Dennis Avery (cgfi@rica.net) is director of the Center for Global Food Issues.
“This is an issue of tremendous international political importance. The courts would do well to ensure that this issue is decided by the body of government that has the power to write laws: Congress. Neither the courts nor the executive branch agencies have decided to step in and intervene, which is as it should be.”

LISA JAEGER
BRACEWELL & GIULIANI

Split Panel Supported EPA

In July 2005, a panel of the federal appellate court for the District of Columbia ruled in a 2-1 decision that EPA had acted properly. In the majority opinion, Judge A. Raymond Randolph assumed for the sake of argument that EPA did in fact have statutory authority to regulate greenhouse gas emissions. Randolph then concluded EPA acted reasonably in exercising its discretion not to regulate greenhouse gases at this time.

According to Randolph, substantial scientific evidence contradicts the alleged connection between atmospheric greenhouse gas levels and twentieth century temperature trends. Moreover, ruled Randolph, EPA was entitled to weigh various policy considerations even if a link had been proven between greenhouse gas concentrations and global temperatures.

In a concurring opinion, Judge David Sentelle ruled the court did not even need to examine the alleged correlation between atmospheric greenhouse gas levels and global climate because the plaintiffs lacked standing to sue. According to Sentelle, the plaintiffs were required to show they suffered an injury that was particularized to them rather than an injury alleged to affect society as a whole. Plaintiffs could make no such showing. Sentelle wrote, “Judge David Tatel dissented, writing a spirited argument that EPA had both the legal authority (under the Clean Air Act) and the scientific imperative to regulate and reduce greenhouse gas emissions.”

Plaintiffs Sought Rare Review

Although appellate court decisions are typically made by three-judge panels whose decisions are considered binding on all judges in the circuit, on rare occasions the entire court will review a panel decision. The plaintiffs in the July 2005 decision petitioned for a full-court review after receiving word of the 2-1 decision in favor of EPA. On December 2 the full court released a short notice saying it would not review the panel decision. The court gave no explanation for its decision, which typically indicates a majority of judges agree with the ruling and rationale of the panel decision.

Tatel, who had dissented in the July panel decision, again wrote a spirited dissent to the court’s decision not to review the July ruling. EPA has authority to regulate greenhouse gas emissions, Tatel reasoned, because the issue invokes “the threat of global warming, and its attendant consequences for human health and the environment, and therefore presents an issue of exceptional importance.”

Not only does EPA have authority to regulate greenhouse gas emissions, Tatel argued, but it has a scientific and regulatory imperative to reduce emissions. “EPA all but concedes that automobile greenhouse gas emissions cause, or contribute to, air pollution, which may reasonably be anticipated to endanger public health or welfare,” Tatel explained.

Court Defers to Political Process

Although the majority was content to let the July 2005 decision answer Tater’s December 2005 dissent, a number of environmental attorneys and global warming analysts stepped up to explain and defend the December decision. “Any alleged Clean Air Act authority for EPA to regulate carbon dioxide is just that: alleged,” said Lisa Jaeger, partner at the Washington, DC law firm Bracewell & Giuliani, who was EPA acting general counsel when the 2003 lawsuit was filed.

“The alleged authority simply does not exist,” Jaeger explained. “The Clean Air Act mentions CO2 but none of the references are in a regulatory context. There are no directives from Congress for EPA to use the Clean Air Act to settle what is essentially an international political issue. The panel decision grasped this reality, and the full court’s decision to not get further involved is a reaffirmation that this an issue that is best addressed by Congress rather than a regulatory agency or the federal courts.”

“We need to examine the alleged correlation between atmospheric greenhouse concentrations and global warming analysts stepped up to review the 21st century temperature trends. Moreover, ruled Randolph, EPA was entitled to weigh various policy considerations even if a link had been proven between greenhouse gas concentrations and global temperatures. In a concurring opinion, Judge David Sentelle ruled the court did not even need to examine the alleged correlation between atmospheric greenhouse gas levels and twentieth century temperature trends. Moreover, ruled Randolph, EPA was entitled to weigh various policy considerations even if a link had been proven between greenhouse gas concentrations and global temperatures.

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“[T]hrough public- and private-sector cooperation exemplified by a $100 million grant from ExxonMobil to the Stanford University-led Global Climate and Energy Project, the United States has cut its greenhouse gas emissions every year since its 2001 rejection of the Kyoto Protocol.”

Shortcomings feared by the Senate, Bush held firm and outlined a different U.S. approach to addressing climate change. Among global warming alarmists on both sides of the Atlantic, the reaction was vitriolic.

Alarmists Incensed

Time magazine, for example, called the U.S. a “rogue” nation whose “dangerous unilateralism” would end our role as world leader in international affairs.

Alarmists in Europe became downright ugly. The London Guardian called the U.S. rejection of Kyoto a “Taliban-style act of wanton destruction.”

Conveniently forgetting that other nations, including Australia, also opted out of Kyoto, and that nations such as Russia signed on only after publicly dictating substantial harm to European economies that abide by their Kyoto promises. Putting still more pressure on the already-reeling European economy, Kyoto would spark an approximately 25 percent jump in electricity prices and a roughly 2 percent reduction in gross domestic product if Europe were to meet its reduction targets, which it has yet to do. Any additional cuts required after Kyoto expires in 2012 would be even more punitive economically.

Tony Blair and other world leaders have come to realize that if you love “That 70s Show,” wait until you see a rerun of “That 70s Economy” throughout Europe if the EU fails to follow Bush’s lead on global warming.

James M. Taylor (taylor@heartland.org) is managing editor of Environment & Climate News.

U.S. Finding Redemption

But, much as an unjustly maligned cowboy on the silver screen inevitably returns with a large posse and truth on his side, our “rogue” nation has slowly but inexorably become the world’s leading consensus builder on climate change.

In July 2005, the United States led Australia, China, India, Japan, and South Korea in forming an international partnership to address climate change in a scientifically based and economically sustainable manner.

The transformation in U.S. global leadership was punctuated in November 2005, when British Prime Minister Tony Blair declared Kyoto and any other treaty demanding mandatory emissions cuts dead. According to Blair, mandatory emissions cuts are implausible unless technology is developed to make emissions reductions economically sustainable and until mandatory cuts apply to such nations as China and India.

Shortcomings Evident

Why did this dramatic transformation occur? There are many reasons. Despite the self-righteous statements of European Union leaders, the EU is failing miserably in its attempt to cut greenhouse gas emissions and is far short of its Kyoto goals. At the same time, through public- and private-sector cooperation exemplified by a $100 million grant from ExxonMobil to the Stanford University-led Global Climate and Energy Project, the United States has cut its greenhouse gas emissions every year since its 2001 rejection of the Kyoto Protocol.

Over the past three years, EU carbon dioxide emissions have risen (despite a tumbling economy), while U.S. carbon dioxide emissions have fallen (during a period of steady economic growth).

While the EU scores public relations points by vowing carbon dioxide cuts that never reach fruition, the U.S. has dramatically reduced emissions of methane, a far more potent greenhouse gas than carbon dioxide.

As the European economy stumbles under its Kyoto burden, energy-intensive industry is relocating to China, where the government refuses to cut greenhouse gas emissions and where the economy sizzles. As Blair and others have come to realize, all the promised cuts in European greenhouse gas emissions will fail to make any dent in atmospheric carbon dioxide levels if cuts in Western emissions are outweighed by corresponding increases in Chinese emissions.

EU Economy Endangered

The final blow to Europe’s Kyoto delusions may have been the November 7 release of an international study predicting substantial harm to European economies that abide by their Kyoto promises. Putting still more pressure on the already-reeling European economy, Kyoto would spark an approximately 25 percent jump in electricity prices and a roughly 2 percent reduction in gross domestic product if Europe were to meet its reduction targets, which it has yet to do. Any additional cuts required after Kyoto expires in 2012 would be even more punitive economically.

Tony Blair and other world leaders have come to realize that if you love “That 70s Show,” wait until you see a rerun of “That 70s Economy” throughout Europe if the EU fails to follow Bush’s lead on global warming.

James M. Taylor (taylor@heartland.org) is managing editor of Environment & Climate News.

GLOabal Satellite Temperatures

Still No Signs of Global Warming

Each month, Earth Track updates the global averaged satellite measurements of the Earth’s temperature. These numbers are important because they are real—not projections, forecasts, or guesses. Global satellite measurements are made from a series of orbiting platforms that sense the average temperature in various atmospheric layers. Here, we present the lowest level, which climate models say should be warming. The satellite measurements are considered accurate to within 0.01°C. The data used to create these graphs can be found on the Internet at http://vortex.nsstc.uah.edu/data/msun12/tltghimam_5.1.

October 2005

The global average temperature (top) for October was 0.34°C above normal. The Northern Hemisphere’s temperature (middle) was 0.41°C above normal. The Southern Hemisphere’s temperature (bottom) was 0.26°C above normal.
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Edited by Joseph L. Bast and Dennis Byrne
The Heartland Institute, 2005

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