HOT TOPICS

Billionaire’s AZ Ballot Battle
With funding from California billionaire Tom Steyer, anti-fossil-fuel activists placed an initiative on Arizona’s November ballot to require the state’s utilities to generate 50 percent of their electricity from renewable sources, such as solar and wind, by 2030. Page 7

Activists Halting Pipelines
Prompted by environmentalists, state officials are using a provision of the 1972 Clean Water Act to block new natural gas pipelines and export terminals for liquefied natural gas and coal. Page 13

Court Imposes WOTUS
A federal district court judge rejected the Trump administration’s two-year delay on enforcement of the Obama-era Waters of the United States rule. Now, 26 states not covered by existing court stays on the rule will have to comply with it. Page 15

California Adopts 100 Percent Renewable Energy Mandate

By Linnea Lueken
California Gov. Jerry Brown signed a bill mandating the state’s utilities transition their electricity production completely to sources that emit zero carbon dioxide by 2045.

Introduced by California state Sen. Kevin de León (D-Los Angeles), S.B. 100 requires the California Public Utilities Commission to increase its existing renewables energy requirement in a graduated fashion, mandating 50 percent of the electricity provided by utilities come from approved renewable sources, wind and solar, by 2026 and 60 percent by 2030. By 2045, 100 percent of the electricity generated in the state will need to come from sources that emit no carbon dioxide. The latter requirement will allow

Democratic Candidates Push to End All Use of Fossil Fuels

By H. Sterling Burnett
A bill introduced with relatively little public notice in September 2017, the OFF Fossil Fuels for a Better Future Act (OFF Act), is gaining support from Democratic Party political candidates across the nation.

As stated in the bill, the OFF Act would require “100 percent renewable energy by 2035 (and 80 percent by 2027), places a moratorium on new fossil fuel projects, bans the export of oil and gas, and also moves our automobile and rail systems to 100 percent renewable energy.”
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KEYNOTE SPEAKER
Judge Andrew P. Napolitano
Fox News senior judicial analyst and best-selling author of Suicide Pact

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The Heartland Institute is a national nonprofit organization based in Arlington Heights, Illinois. Its mission is to discover, develop, and promote free-market solutions to social and economic problems. For more information, visit heartland.org or call 312/377-4000.
Wash. State Voters to Consider a Carbon-Dioxide Tax

By Joe Barnett

This November, Washington could become the first state to impose a tax on carbon-dioxide emissions, and the first government anywhere to impose the tax through a direct popular vote.

Having rejected a ballot initiative proposing a tax on carbon-dioxide emissions just two years ago, Washington State voters will decide the fate of a newly proposed statewide carbon-dioxide tax during this November’s elections.

In contrast to California’s “cap and trade” scheme, which allows emitters to buy and sell unused credits for reducing emissions, Washington State’s Initiative 1631, like the rejected 2016 proposal, would impose a tax on emissions of carbon dioxide, methane, and other greenhouse gases emitted through transportation and by select utilities and manufacturers.

Prior Carbon Taxes Rejected

The measure rejected by Washington State voters in 2016 would have imposed a supposedly revenue-neutral tax on carbon-dioxide emissions, with the revenue raised returned to businesses and individual taxpayers through reductions in various state taxes. The Audubon Society was the only major environmental group to actively support the 2016 carbon tax initiative.

National and local environmental organizations also opposed legislation proposed by Gov. Jay Inslee in early 2018 to impose a tax on carbon-dioxide emissions and send the revenues to the state’s general fund.

Price Hikes Projected

Unlike 2016’s effort and Inslee’s proposal, the current carbon-dioxide tax initiative has widespread support within the environmental community, including from the Natural Resources Defense Council, the Sierra Club—which actively opposed the 2016 initiative—and the Union of Concerned Scientists. The current proposal would send the tax revenue to environmental projects these organizations are backing.

Initiative 1631 would impose a tax of $15 per metric ton on industrial, commercial, and transportation-related emissions of carbon dioxide. The tax would rise by $2 per ton each year until the state meets its goal of reducing emissions 50 percent below 1990 levels by 2050. If the state were to fail to meet its targets for 2035 and 2050, the oversight board could continue increasing the fee indefinitely.

Washington State has projected the carbon-dioxide tax would generate an estimated $2.2 billion in its first five years, with gasoline prices likely to rise by 13 cents per gallon and home heating oil costs rising by 15 cents per gallon in 2020, the year the tax would take effect.

Revenue for Environmental Causes

Technically, the proposed imposition is a fee under state law, because the revenue would not be returned to taxpayers or go to fund general state operations. Instead, under the initiative, a board would be created to spend the revenue on a variety of “clean energy” projects, mass transit, and so-called “environmental justice” programs.

Environmental groups have lined up in support of the present carbon tax initiative because they would largely control how the revenue is spent, says Todd Myers, environment director at the Washington Policy Center and a policy advisor to The Heartland Institute, which publishes Environment & Climate News.

“It would just raise costs with little effectiveness,” Myers says. “The ostensible aim of a carbon tax is to reduce emissions of carbon dioxide, methane, and other greenhouse gases, yet it is clear I-1631 contains a number of special-interest payoffs,” Myers said. “Since 2007, British Columbia, the Canadian province next door to Washington State, has had a carbon tax roughly twice as large as that proposed in Washington, yet it has only reduced emissions by 2 percent.”

‘Special-Interest Payoffs’

Initiative 1631 exempts from the tax some of the state’s largest private employers: airplane manufacturers, such as Boeing; Alcoa aluminum; pulp and paper mills; and the Centralia coal-powered electricity plant—companies that produce approximately 20 percent of the state’s carbon-dioxide emissions.

Myers says the exemptions, intended to prevent these industries from actively opposing the carbon tax, among other factors, would undermine its effectiveness.

“Myers says the exemptions, intended to prevent these industries from actively opposing the carbon tax, among other factors, would undermine its effectiveness.

“In Washington State, where most of our electricity comes from hydro, nuclear, and wind, our electricity is mostly carbon-free already,” said Myers. “So, even if we went to a 100 percent renewable mandate, there isn’t much CO2 reduction to be gained. It would just raise costs with little benefit.”

Joe Barnett (joepaulbarnett@att.net) writes from Dallas, Texas.
CO Approves Expensive Green Energy Replacement for Coal Power Plants

By H. Sterling Burnett

The Colorado Public Utilities Commission (PUC) approved a controversial plan by Xcel Energy to prematurely close two of the three coal power units at its Comanche Generating Station and replace them largely with renewable power sources.

The estimated cost of the plan is $2.5 billion.

Xcel decided to shut down the coal-powered units despite recent upgrades made to the units to reduce emissions, because profits from the units were low. Xcel’s plan to replace the coal units with renewable generating units allows the company to claim federal tax credits for the construction of wind and solar plants before the government phases them out in 2019 and 2021, respectively; tax credits for the power generated by such units; and business tax deductions for materials and labor expenses, plus a guaranteed rate of return of approximately 10 percent, which will be passed on to ratepayers.

Disagreement Over Solar
All three PUC commissioners—Jeff Ackerman, Frances Koncilja, and Wendy Moser—approved Xcel’s request to close two coal-fired units. Moser rejected Xcel’s replacement plan, saying it relied too much on solar power and battery storage. Ignoring Moser’s objections, the other commissioners approved Xcel’s plan to replace the two coal-powered electric generating units by building 1,100 megawatts of wind power, 700 megawatts of solar power, 380 megawatts of natural gas power, and 275 megawatts of battery storage.

Xcel’s plan calls for closing one of the coal power units in 2022, 11 years before its scheduled retirement date, and a second one in 2025, 10 years ahead of schedule. Xcel says prematurely closing the power plants will result in about 80 lost jobs. To replace them, Xcel would purchase two existing gas-fired generating plants in Colorado and add three wind farms and five solar farms, three with battery storage.

PUC approved Xcel’s plan even though its own staff expressed doubts about the utility’s claim the plan would save ratepayers $213 million over time. Bob Bergman, a member of the Public Utilities Commission staff, told commissioners the savings may never materialize, as they aren’t scheduled to occur until after 2034.

Predicts Higher Prices
PUC's approval of Xcel's plan virtually guarantees Coloradans will pay more for electricity, says James Taylor, a senior fellow with The Heartland Institute, which publishes Environment & Climate News.

“Colorado electricity consumers now face the certainty of $2.5 billion of unnecessary spending on replacement power facilities, with no guarantee consumers will ever recoup the costs,” said Taylor. “Xcel's massive lobbying efforts and cozy relationship with the PUC have paid off big time.

‘Misleading the Public’
Taylor says Coloradans already have experience with higher energy prices from the state government’s prior decision to force utilities to add renewable energy sources to their electricity generating mix.

“Politicians are misleading the public about the enormous costs of imposing expensive renewable power on Colorado households,” Taylor said. “When Colorado lawmakers hiked renewable power mandates in 2010 and 2013, politicians claimed the mandates would lower electricity bills.

“Not surprisingly, given the high costs of generating wind and solar power, Colorado’s electricity prices have risen by 20 percent since 2010,” said Taylor. “This Xcel plan, and any additional renewable power schemes imposed by politicians or the PUC, will only further impoverish Colorado taxpayers.”

End Run Around Legislature
Xcel turned to PUC to thwart Colorado’s state legislature, which had rejected Xcel’s proposal to replace coal-powered electricity with more-expensive renewables, says Colorado state Sen. John Cooke (R-Greeley).

“Xcel Energy tried to get this plan passed at the state legislature, and we rejected it for good reason, knowing it was never going to save money for Colorado’s ratepayers,” Cooke said. “So, Xcel bypassed the legislature and sought approval via regulatory fiat, which it got because the PUC commissioners do a better job of being Xcel lapdogs than being ratepayer watchdogs.

“PUC’s own staff knew Xcel’s numbers didn’t work and the cost savings will never happen, yet the commissioners approved the plan,” said Cooke. “Everyone knows this plan is meant to pad Xcel’s profits, not save money for hard-working Coloradans. Ask yourself, if wind and solar are ‘free’ and the price of natural gas is so low, why do rates keep going up?”

Says Trust Is Gone
Amy Oliver Cooke, executive vice president of the Independence Institute, says Xcel’s PUC win cost it the public’s trust.

“Despite knowing Xcel Energy can’t keep its promise to save ratepayers money with the Colorado Energy Plan, the Colorado PUC allowed the utility’s giant corporate welfare plan to proceed,” Cooke said. “Captive Colorado electricity customers will pay more for electricity while Xcel’s corporate leadership celebrates million-dollar bonuses and rising stock prices.

“While Xcel prevailed in the regulatory space, it lost the public narrative and the public’s trust,” said Cooke. “Many groups, including PUC staff, electric co-ops, editorial boards, labor groups, and others know Xcel’s cost savings and economic development claims are false or, at the very least, greatly overstated. No one should trust the company, ever.”

H. Sterling Burnett, Ph.D. (hsburnett@heartland.org) is a senior fellow at The Heartland Institute.
Texas is once again engaged in a battle to protect both a tiny reptile—the dunes sagebrush lizard—and the giant Permian Basin oil and gas industry.

Texas Comptroller Glenn Hegar has proposed a complete overhaul of an eight-year-old effort to balance lizard conservation and oil and gas production, in response to a new effort by environmentalists to have the lizard listed as endangered under the 1973 Endangered Species Act (ESA).

FWS Approved
In 2010, then-Texas Comptroller Susan Combs worked with oil and gas operators, ranchers, and other interested parties to create the Texas Conservation Plan (TCP), which relies on voluntary actions to help preserve the lizard’s habitat. The U.S. Fish and Wildlife Service (FWS) determined the plan was sufficient to justify denying a petition to list the lizard as endangered under the ESA.

The growth of fracking, which uses a particular kind of sand to produce oil and gas, in the Permian Basin and statewide, has led to a significant increase in frac-sand mining in Texas. With existing frac-sand mines expanding and new sand mines being proposed, the Center for Biological Diversity and Defenders of Wildlife petitioned FWS to consider listing the dunes sagebrush lizard as endangered, arguing sand mining could affect the lizard’s habitat in ways unaccounted for in the TCP.

To prevent FWS from listing the species as endangered, Hegar has proposed scrapping the eight-year-old plan in favor of an entirely new conservation plan.

The new proposal eliminates some conservation options in the existing TCP, proposes new ways for companies to avoid impacting lizard habitat, and would enact fees on some companies operating in the lizard habitat to support conservation efforts and offset habitat disturbances.

‘Gaming the ESA’
Environmentalists have mastered the art of using ESA to prevent economic development, says R. J. Smith, a senior fellow at the National Center for Public Policy Research.

“Environmentalists have a long history of gaming the ESA by seeking the most obscure species to stop development projects,” Smith said. “The less known about a species, the easier to justify a listing, because people cannot provide data to counter environmentalists’ arguments for listing.

“About half of the sand mining companies have been cooperating with the provisions of the voluntary Texas Conservation Plan,” Smith said. “Many are not thrilled with Hegar’s plan, preferring the new agreement to simply fix flaws in the existing plan, but nobody but environmentalists want to see the dunes sagebrush lizard listed.”

Calls It a Power Grab
Kathleen Hartnett White, the former chairperson of the Texas Commission on Environmental Quality and current director of the Armstrong Center for Energy & the Environment at the Texas Public Policy Foundation, says ESA is primarily about controlling people’s property.

“The Endangered Species Act was written so as to grant government near-absolute power to dictate how landowners can use property,” Hartnett White said. “FWS’s ‘habitat’ requirements for threatened or endangered species claim large areas as habitat without evidence a particular species is even present on the land or has even been present.

“FWS has not had a stellar history as far as accuracy in defining habitat or even in determining whether a particular species is actually threatened or endangered,” said Hartnett White.

Duggan Flanakin (dflanakin@gmail.com) writes from Austin, Texas.
Democratic Candidates Push to End All Use of Fossil Fuels

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Socialist Rise Raises Profile

Although the bill introduced by Rep. Tulsi Gabbard (D-HI) has lingered in committee for more than a year and has yet to receive a hearing, it recently began to garner more publicity following democratic socialist Alexandria Ocasio-Cortez’s high-profile upset victory in a Democratic congressional primary race in New York.

Ocasio-Cortez’s website has an extensive political platform, and its section on climate and energy says, “Climate change is the single biggest national security threat for the United States and the single biggest threat to worldwide industrialization.” To reduce that purported threat, Ocasio-Cortez proposes the United States transition to a 100 percent renewable energy system by 2035, which is what the OFF Act would require.

Recognizing a transformation of the massive U.S. energy system in just 17 years, a system that took more than 80 years to build, would be a herculean undertaking, which is why Ocasio-Cortez proposes a “Green New Deal” reminiscent of the Marshall Plan that rebuilt Europe after World War II. According to Ocasio-Cortez, her plan would require “the investment of trillions of dollars.”

Gabbard’s OFF Act has also received support from hundreds of Democratic Party candidates for local, state, and federal office in 2018 who have signed a pledge, developed by the lobbying group Food & Water Action, to push for the 100 percent renewable-energy mandate. The pledge calls the OFF Act “the most aggressive piece of climate legislation ever introduced in Congress.”

‘A Pipedream’

Ocasio-Cortez’s anti-fossil-fuel proposal is irresponsible, endangering the U.S. economy and our geopolitical standing, says Louisiana Attorney General Jeff Landry.

“The liberal outrage mob currently driving the Democratic political machine seems to think we can shed our need for fossil fuels by sheer willpower,” Landry said. “This goal is not only unattainable but fundamentally destructive to our nation’s security, economic, and environmental interests.

“To abandon our domestic energy industry in exchange for a pipedream is not just irresponsible, it’s geopolitical suicide,” Landry said. “If America abandons its energy economy, then unfriendly world powers like Russia, Venezuela, and Iran would gain significant clout in the global energy market.”

Expecting Political Repercussions

Ocasio-Cortez’s rise and the growing popularity of the OFF Act show the extent to which socialist thinking has captured the Democratic Party, says Peter Ferrara, a senior fellow of The Heartland Institute, which publishes Environment & Climate News.

“Democrats that are embracing these socialist zero-fossil-fuel energy proposals that would destroy millions of jobs and put the United States at a huge economic disadvantage when competing against other countries—especially China, India, and other developing nations—are plain nuts,” Ferrara said. “The proposal to phase out and ban fossil fuels is virtually guaranteed to produce mass poverty, mass starvation, and genocide, like socialism itself.

“Democrats pushing these policies might as well be chanting ‘Death to America’ at their political rallies,” said Ferrara.

‘An Attack on Consumers’

Policies restricting fossil fuels are part and parcel of modern-day green socialist central planning, says Rob Bradley Jr., CEO of the Institute for Energy Research and a policy advisor to The Heartland Institute.

“Energy is the master resource, and fossil fuels are the cornerstone of a modern energy system,” said Bradley. “An aspirational zero-fossil-fuel mandate is central economic planning in slow motion.

“This initiative is a backdoor carbon tax,” Bradley said. ‘Democrats’ war against mineral energies is an attack on consumers and taxpayers, one that voters will have an opportunity to veto in the voting booth.’

H. Sterling Burnett, Ph.D. (@hearthland.org) is a senior fellow at The Heartland Institute.

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‘To abandon our domestic energy industry in exchange for a pipedream is not just irresponsible, it’s geopolitical suicide. If America abandons its energy economy, then unfriendly world powers like Russia, Venezuela, and Iran would gain significant clout in the global energy market.’

JEFF LANDRY
LOUISIANA ATTORNEY GENERAL

By Tim Benson

Proposition 127, a ballot initiative to require Arizona utilities to generate 50 percent of their electricity through renewable energy sources such as solar and wind by 2030, will appear on the ballot this November after the Arizona Supreme Court dismissed a challenge to the signatures gathered for the petition.

Clean Energy for a Healthy Arizona, an organization funded almost entirely by activist California billionaire Tom Steyer, gathered and submitted 480,000 signatures in support of Prop. 127, well above the state’s 225,000-signature threshold. Arizonans for Affordable Electricity (AAE), a group opposing the ballot initiative, challenged the validity of many of those signatures.

AAE, which formed “No on 127,” a coalition of more than 60 members, including business groups, agricultural interests, local chambers of commerce, labor unions, and think tanks, to fight Prop. 127, expressed disappointment with the court’s decision.

“The outcome of the legal challenge is disappointing, but we always knew it would be an uphill fight to get the initiative’s invalid petitions thrown out,” said Matthew Benson, a spokesman for AAE.

High Costs, Big Losses

The U.S. Energy Information Administration reports Arizona’s retail electricity prices, currently 10.33 cents per kilowatt hour, are below the national average of 10.41 cents per kilowatt hour and the 15.23 cents per kilowatt hour in Steyer’s home state of California.

Citing research by the Seidman Research Institute (SRI) at Arizona State University, AAE says if the 50 by 30 initiative were to be adopted, Arizona would lose $72.5 billion in gross state product from 2018 to 2060, with Arizonans having $42 billion less in disposable personal income over that period. SRI’s analysis also predicts a loss of $5.8 billion in combined state and local taxes through 2060, including $1.7 billion in lost property taxes, causing an $858 million loss in school funding.

“Our focus is to ensure every Arizona family, senior, small-business owner, and ratepayer knows Prop. 127 will increase their electricity bills,” Benson said. “In many Arizona communities, the added cost for a typical household will exceed $1,000 per year.”

‘Sell Out Their State’

Ignoring the state’s Constitution and the costs of these proposed policies, liberals in Arizona are selling out for big bucks from out of state, says James Taylor, a senior fellow with The Heartland Institute, which publishes Environment & Climate News.

“The radical leftist who is bankrolling and directing Prop. 127, Tom Steyer, lives in San Francisco and has no particular connection with Arizona, and he doesn’t know Arizona law regarding the gathering of signatures,” Taylor said.

“The frightening part is environmentally leftist are willing to sell out their state and the Arizona Constitution to gain funding from a San Francisco billionaire.

“If Arizonans wish to self-impose higher prices and less energy reliability, so be it, but the proposal should have been written and paid for by Arizonans, not a San Francisco elitist,” said Taylor.

‘Campaign of Dishonesty’

Arizona state Rep. Mark Finchem (R-Tucson) says energy policy is a complex issue that should be left to elected officials to decide.

“Energy policy should not be decided at the ballot box but through an exhaustive, deliberative process that closely examines pros and cons of proposed policy,” said Finchem. “There have been no hearings on Proposition 127 to determine the real consequences of moving the 1.26 million Arizona households already suffering from energy poverty to increased reliance on wind and solar power.

“If adopted, Proposition 127 would tie Arizona’s future to technologies that do not deliver baseload electricity and are arguably worse for the environment as a whole than the dependable technologies we already have,” Finchem said.

Finchem says the push for renewable energy is about further enriching politically-connected elites.

“Unfortunately for Arizona ratepayers, there is a campaign of dishonesty underway to promote the interests of a few who stand to become even more insanely wealthy than they already are,” said Finchem. “This is not about clean energy; this is about the greed of the billionaires club.”

Money, Not Air

AAE’s Benson agrees Proposition 127 is not about protecting the environment.

“This campaign isn’t about clean energy,” said Benson. “Everyone supports clean energy. The question is whether Arizona voters are willing to double their electricity bills in order to approve Proposition 127.

“Once Arizonans know the facts, we’re confident they’ll vote no on Proposition 127,” Benson said.

Timothy Benson (tbenson@heartland.org) is a policy analyst with The Heartland Institute.

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Calif. Adopts 100 Percent Renewable Energy Mandate

Continued from page 1

electricity generated by geothermal power, limited biomass sources, hydropower, nuclear power, and natural gas combined with carbon capture and storage technology.

Hydropower, nuclear, and biomass combined currently generate 27 percent of California’s electricity.

On the same day he signed S.B. 100, Brown signed an executive order establishing a target for the state to become carbon-dioxide-neutral by 2045, by engaging in various activities, such as managing the state’s soils and forests.

‘Will Increase Energy Poverty’

California has some of the highest energy costs in the country, with residents paying around 40 percent more than the national average, says California Assemblywoman Melissa Melendez (R-Lake Elsinore). S.B. 100 will put a heavier cost burden on residents, Melendez says.

“S.B. 100 will increase energy poverty, as you already have people spending, at least in the Central Valley, up to 15 percent of their monthly income on energy costs,” Melendez said. “So, it is unclear how people, many of whom are already struggling to pay their electric bills, will be able to do so when you put S.B. 100 in place. There’s no cap on energy costs in the bill.

“The bill’s proponents don’t talk about the increased risks of blackouts, either,” Melendez said. “It’s typically in the triple digits in the summer for two, three months, meaning you have to run air conditioning. So, you’re left to wonder how wind and solar are going to generate enough energy for all the businesses and all the households in this state in a way that avoids blackouts, without forcing utilities to cycle electricity [planned rolling brownouts], resulting in people’s air conditioning not running when they need it.”

Ignoring Inconvenient Truths

Melendez says supporters of the new law also avoid acknowledging the environmental costs of renewable sources such as wind and solar.

“The bill is supposed to be about protecting the environment and improving human lives, yet no one talks about where the materials come from to build wind turbines and solar panels and the terrible toll it takes on people and the environment in areas where they mine the necessary resources,” Melendez said. “When it’s convenient to discuss the environmental impact of what energy people use, and the human impact, S.B. 100’s proponents talk about it. When it’s not convenient, they dismiss it.”

High Costs, Clean Alternatives

California’s current wind and solar mandates are a major factor in the state’s high electricity prices, says William F. Shughart, research director at The Independent Institute.

“California is home to the ‘cleanest’ electric power grid in the nation, with its heavy reliance on renewable energy sources going a long way toward explaining why electricity rates are so high there despite substantial taxpayer-financed subsidies,” Shughart said. “The costs of the infrastructure required to convert all power plants to 100 percent renewable will ultimately be shifted largely to ratepayers since, under current rules, regulators allow public utilities to add the cost of new capital equipment to the utilities’ rate bases, passing those costs on to consumers.”

Shughart says natural gas and nuclear energy would be a better choice for California, as they are reliable, offer environmental benefits, and don’t depend on potential, unproven technological advances.

“Natural gas is abundant and cheap, and burning it produces a much smaller carbon footprint than burning coal, while nuclear power emits no carbon dioxide and new modular nuclear reactors are much safer than those currently in use anywhere in the United States,” Shughart said. “Unless new technologies become available for storing the power produced by renewable energy sources, California may have to rethink its commitment to a 100 percent fossil-fuel-free world and consider the environmental benefits of natural gas and nuclear power.

“Anything else is wishful thinking,” said Shughart. “Good intentions don’t necessarily lead to good public policies, and the ‘perfect’ can become the enemy of the ‘good.’”

*

Linnea Lueck (linnea.heartland@gmail.com) writes from Laramie, Wyoming.

Heartland Institute Conference Rebuts Climate Action Summit

By James M. Taylor

The Heartland Institute, which publishes Environment & Climate News, hosted a conference rebutting California Gov. Jerry Brown’s Global Climate Action Summit on September 13 and 14 in San Francisco.

Brown began planning the summit after President Donald Trump pulled the United States out of the Paris Climate Agreement in June 2017. Brown lined up high-profile speakers such as Al Gore, Rep. Nancy Pelosi (D-CA), John Kerry, Michael Bloomberg, Van Jones, Tom Steyer, Alec Baldwin, Harrison Ford, and dozens of government officials from around the globe.

Working with the Independent Institute, The Heartland Institute livestreamed two 90-minute science rebuttals from a team of climate scientists and policy experts during lunch breaks in the summit’s two-day program. The experts included Heartland Institute Science Director Jay Lehr, Ph.D.; Terry L. Gannon, Ph.D., of the Independent Institute; Richard Keen, Ph.D., meteorology instructor emeritus at the University of Colorado at Boulder; Stanley Goldenberg, a hurricane meteorologist with the National Oceanic and Atmospheric Administration; and Tom Harris, president of the International Climate Science Coalition.

Speakers at the summit blamed natural disasters such as hurricanes and wildfires on global warming, without providing scientific evidence to support their assertions. Participants at Heartland’s event rebutted these claims, citing verifiable data to demonstrate the climate is not becoming more extreme or dangerous.

James M. Taylor (jbtaylor@heartland.org) is a senior fellow for environment and energy policy at The Heartland Institute.

INTERNET INFO

U.S.-Mexico Trade Deal Could Boost American Energy Exports

By Chris Talgo

After months of negotiations, the United States and Mexico reached a preliminary trade agreement that should significantly increase U.S. energy exports to its southern neighbor.

Speaking from the White House Oval Office on August 27, with Mexican President Enrique Peña Nieto joining by phone, President Donald Trump announced the two countries expect to complete a formal trade agreement by the end of September. The long, sometimes contentious negotiations came after Trump promised voters he would renegotiate the terms of the North American Free Trade Agreement (NAFTA).

NAFTA, adopted during the Bill Clinton administration, is a trilateral trade agreement among Canada, Mexico, and the United States. American and Mexican officials have reached a preliminary agreement to replace NAFTA, and officials from Canada and the United States are still discussing whether Canada will participate in a joint post-NAFTA agreement.

Big Energy Buyer

Although the final details of the agreement have not been revealed, it appears the framework will reinforce existing policies toward the energy sector.

Natural gas provides 35 percent of all energy used in Mexico, generating 60 percent of the country’s electric power. The United States currently supplies more than 50 percent of the energy consumed in Mexico. Natural gas makes up the vast majority of the energy exported to Mexico, with the United States supplying almost two-thirds of the natural gas consumed in the country.

The revised trade agreement should be a boon for both nations, says Nick Loris, the Herbert and Joyce Morgan Fellow in Energy and Environmental Policy at The Heritage Foundation.

“Mexico has been the largest importer of American natural gas, and NAFTA has been instrumental in allowing the natural gas trade relationship to blossom,” Loris said. “With the abundance of natural gas in Texas, and the new trade agreement, Mexican families and businesses will be an important customer for a long time, which will only serve to raise prosperity and economic growth in both countries.”

Could Increase LNG Exports

The U.S.-Mexico trade deal should also nurture increased American liquid natural gas (LNG) exports, says Thomas Pyle, president of the Institute for Energy Research.

“Mexico is a natural market for the abundance of shale gas in the Permian Basin,” Pyle said. “While LNG shipments to Asia and Europe have gotten a lot of recent headlines, our primary trading partner for LNG is our southern neighbor.

“In fact, the United States now supplies well over half of Mexico’s natural gas, and by maintaining tariff-free trade in this arena, the two countries foster growth for themselves and one another,” Pyle said. “For the partnership to be maximized, we need to expand pipeline infrastructure both north and south of the border.”

Mexico’s New President

Pyle says natural gas exports could grow even more with the election of Andrés Manuel Lopez Obrador as the incoming president.

“While the recent election of left-wing populist Andrés Manuel Lopez Obrador to the presidency could cause investor anxiety, if he follows through with the fracking ban he has suggested, Mexico might force itself to rely on imports of U.S. gas even more in the future than it does now,” Pyle said.

Chris Talgo (ctalgo@heartland.org) is an editor at The Heartland Institute.

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Amazon.com Best Seller (Public Affairs)
By H. Sterling Burnett

Burnett: Please tell our readers a little about your background and how you came to work on climate issues.

Spencer: I became interested in weather as a teenager, when I lived in the snow belt of the Upper Peninsula of Michigan. I majored in meteorology at the University of Michigan and University of Wisconsin, and I specialized in using satellite data to measure various aspects of weather.

After being hired by NASA, and after James Hansen [then director of the NASA Goddard Institute for Space Studies in New York City] testified before Congress about how sure he was the warm summer of 1988 was due to human carbon-dioxide emissions, John Christy and I collaborated on measuring global temperature changes with satellites, as a check on the surface thermometer measurements. At that time, atmospheric scientists were not well-versed in global climate issues. We’ve all had to learn about the emerging science of global warming as we went along.

Burnett: There are degrees of skepticism regarding the theory humans are responsible for climate change and whether its impacts will be negative. Some don’t believe humans are playing any role in present climate conditions, others think they have had a modest impact, and still others think humans are affecting climate but it’s not likely to have a dangerous impact. Where do you fall on the spectrum?

Spencer: As far as the strength of warming is concerned, I believe some of the recent warming we have measured is due to humans, but that it is relatively weak. I reject the premise this is necessarily a bad thing, though. Certainly, life on Earth is benefitting from more CO2 in the atmosphere. Global greening has been measured by satellites in recent decades. The benefits to agriculture have been estimated in the trillions of dollars. Modest warming is likely to be beneficial overall.

We must keep in mind there is good evidence the climate system was just as warm 1,000 and 2,000 years ago, so it is not even obvious how much of the modest warming we are seeing now is actually due to human greenhouse-gas emissions versus part of some natural cycle in the climate system.

Burnett: At the America First Energy Conference, you discussed the influence of government grants on the scope, direction, and conclusions in climate science. Could you briefly summarize your thoughts on the matter?

Spencer: President Dwight Eisenhower, in his 1961 Farewell Address, warned about the pitfalls of science being taken over by major government-funded research projects. Essentially, all climate research is now funded by government and thus is influenced by elected officials and political appointees if there are any policy implications of [related to that] research. As a result, the funding of climate science is biased in the direction of specific policy outcomes that favor more government control and power; for example, a carbon tax.

As a former government employee, I can say this isn’t a conspiracy theory; it’s just the way government works. Virtually all climate research now simply assumes climate change is almost entirely human-caused, and if a scientist has a theory about it being even partly naturally caused, he or she can forget about getting that research funded.

As Eisenhower predicted, a “scientific-technological elite” has taken the research field captive and determined the desired policy outcomes. This mutually benefits government and scientists whose careers depend upon a continuing stream of taxpayer dollars.

Burnett: What have you found to be the most disturbing aspect of the way the climate change debate and climate policy have developed?

Spencer: You might think I’d say the seven bullets that were fired into our building at the University of Alabama at Huntsville on the weekend of the 2017 March for Science is the most disturbing aspect. Instead, I’d say it is the way the global warming debate is framed by the media. The debate is typically described with two extremes: “real” scientists warning us of an inevitable climate catastrophe versus “deniers” who won’t accept scientific truth and [who] spread disinformation as part of a heavily funded campaign by Big Oil.

This narrative only exists in people’s imaginations. No skeptical scientist I’m aware of is funded by Big Oil. No skeptical scientist I know of denies either climate change or that humans probably have some influence on climate. Only about 60 percent of professionals surveyed by the American Meteorological Society believe humans are mostly responsible for recent warming, showing there is much more uncertainty on the subject than journalists lead people to believe.

The “97 percent of scientists agree” meme mostly included research studies that simply assumed warming was human-caused; they didn’t even address how much nature might be involved. It’s a worthless statistic.

Possibly the best-kept secret is even if humans are 100 percent responsible, the latest analyses of how much the atmosphere and ocean have warmed in the past century are consistent with the skeptics’ position the climate system is not very sensitive to human CO2 emissions.

Most journalists’ critical thinking skills have evidently been thrown out the window in their zeal to ‘save the Earth’ and win the next Pulitzer Prize.

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Fighting for Reliable Energy in Arizona

Editor’s Note: Arizona state Rep. Mark Finchem (R-Tucson) is serving his second term in the Arizona State Legislature. Finchem is vice chair of the House Federalism, Property Rights, and Public Policy Committee and the Military, Veterans, and Regulatory Affairs Committee. He is also a member of the Judiciary and Public Safety Committee.

By H. Sterling Burnett

Burnett: The owners of the Navajo Generating Station electricity plant, located on Navajo Nation land in Arizona, are planning to close it down prematurely. Do think that this would be good for the people of Arizona?

Finchem: It is a bad idea because there is currently no replacement for the baseload power [the minimum level of electrical supply for an electrical grid to function reliably and provide on-demand power over a span of time] provided by NGS, which cannot be efficiently replaced with cyclical power from wind, solar, and gas. When baseload power is taken off the western grid, the entire system becomes more unstable, which means brownouts and blackouts, similar to those events California often experiences.

Congress, through the Colorado River Basin Project Act of 1968, authorized the federal government’s participation in NGS, in conjunction with the creation of the Central Arizona Project, to move water from the northern part of Arizona to the central and southern regions of the state. The commissioning law set a decommissioning date, December 31, 2044—26 years from now—and the only way to shutter this plant before the congressionally mandated decommissioning date is to pass an amendment to the Colorado River Basin Project Act of 1968 that would permit early decommissioning of the station.

The point of commissioning NGS to supply dependable baseload power to CAP is to minimize the risk to the power supply related to feedstock distribution systems. Gas lines can deteriorate, leak, and even from time to time suffer catastrophic interruptions, such as the San Bruno pipeline explosion in California in 2010. Wind does not offer a 100 percent on-line guarantee, nor does solar. The most critical resource Arizona’s population and agricultural sector rely on is water, and without baseload power, that resource is at risk because pumps won’t run without it, and the pumps can’t run intermittently; they are always on to create the immense pressure needed to move nearly two trillion gallons of water downstate annually.

Another benefit of NGS is the positive impact it has on reducing energy poverty. Energy poverty is internationally defined, in the simplest of terms, as a condition where a household spends 10 percent or more of its gross household income on energy to heat, cool, and cook. Energy poverty is widespread in Arizona, and the decommissioning of a dependable, low-cost, low-emissions-footprint generating station like NGS would impose greater harm than good on poor- and middle-class households.

Burnett: Even if the Navajo generating station is saved for now, its days may be numbered if California billionaire Tom Steyer’s ballot initiative to force Arizona utilities to provide 50 percent of the electricity they deliver from renewable sources by 2030 is successful. What are your thoughts on the practicality and legality of the initiative?

Finchem: While the initiative may survive a legal challenge to get on the ballot [It did—Ed.], I do not think it is likely to survive a vote of the people or even the inevitable legal challenge under the Supremacy Clause and Commerce Clause of the U.S. Constitution, as the state constitutional amendment would conflict with a congressional enactment, namely [the Colorado River Basin Project Act of 1968].

There are many defects in the initiative, but the most glaring issue is an out-of-state billionaire comes to Arizona, after making his billions on coal and energy trading, and uses the law to cement a special-interest protection into the Arizona Constitution. The move does nothing more than create a special protection for the so-called “green energy mafia” to control energy pricing. This has nothing to do with efficiency, the environment, or even grid stability. All we need to do is take the time to follow the money, and we will see who really benefits from the monopoly protection amendment.

What many Arizona residents don’t know is NGS was a compromise with the Sierra Club to end plans for more hydroelectric dams on the Colorado River. Now that the Sierra Club is a lobbyist for the natural gas industry and a fundraising machine for the “green energy mafia,” the organization does not seem to care about their previous commitments and support for NGS.

Another fact Arizona residents do not know is what baseload power is or what it does. So, we have a defective initiative that will be voted on by constituents who do not know what baseload power is and do not know the impact of eliminating baseload power from the grid on their electric or water bills. This could be a catastrophe in the making. Mr. Steyer has wreaked havoc on the California grid component by overbuilding solar power, with California having to pay other states to take solar-generated electric power off their hands at peak generation times. Now, Steyer expects to do the same thing in Arizona.

Does it make any sense to add more supply of solar to a system already in a state of oversupply? It does if there is a profit motive behind the scheme: #dontbefooled.

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Minn. Utility Proposes Biogas Pilot Program

By Mitchell Rolling

CenterPoint Energy of Minnesota (CenterPoint) filed a request with the Minnesota Public Utility Commission for a new pilot program in which its natural gas customers could purchase renewable natural gas, also known as biogas, as fuel for home heating and cooking.

If approved, the pilot program CenterPoint requested on August 23 could begin as early as spring 2019 and would make the utility one of the first in the country to offer its customers the option of purchasing renewable natural gas for a higher rate, or a “green tariff,” than traditional natural gas.

Renewable natural gas (RNG) is made from methane produced from organic waste, such as corn stalks, garbage from landfills, manure, and other such materials decomposed in machines called digesters. The methane is then processed into gas that can be used for fueling car engines, producing electricity, and generating heat.

Instead of producing biogas itself, CenterPoint would purchase the fuel in bulk from various biogas plants around the country and process it, stripping it of various contaminants before it is used by the utility’s customers. CenterPoint would contract to purchase enough biogas to meet the demand specified in its customers’ contracts. The costs of treating and shipping the biogas mean consumers would pay more for it.

Requesting Higher-Cost Fuel?

Although the program would help the utility meet Minnesota’s renewable energy mandate, the company’s decision to incorporate RNG into its energy mix was not driven by the mandate, but rather in response to customer demand, particularly requests from Millennials, says Rebecca Virden, manager of public relations for CenterPoint in Minnesota.

“We’ve been listening to our customers,” said Virden. “Our younger generation certainly [expresses] concern for and want us to take responsibility for our energy future.

“We’ve been doing polling, and in a poll of just over 1,500 CenterPoint customers, around half of them responded by saying they wouldn’t mind paying $5 to $25 more per month for renewable natural gas,” Virden said.

Everyone Would Pay More

CenterPoint estimates its cost per 100,000 British thermal units (btu) of RNG would be “slightly less than $4,” $3 more expensive than traditional natural gas. Every customer enrolling in the program will pay a minimum of $1 per month more than the cost of using traditional natural gas, and the upcharge could be considerably more, based on how much renewable gas the customer contracts for each month.

The price hikes will also hit customers who don’t enroll in the program. CenterPoint estimates customers not enrolled in the program will experience an annual rise in their natural gas bills of about 70 cents, a cross-subsidy the company says is necessary to get the program started.

‘Incredibly Expensive’

Isaac Orr, a policy fellow at the Minnesota-based Center of the American Experiment, isn’t convinced the cost of using biogas is worth the alleged benefits.

“The biogas produced from this project would be incredibly expensive, 627 percent more per [100,000 btu] than traditional gas,” Orr said. ‘I’m skeptical this will catch on.

“Even though I won’t be enrolling in the program personally, as a resident of Minnesota, I’ll still be on the hook for some of the costs, which erodes the argument these are ‘voluntary’ fees,” Orr said.

Mitchell Rolling (marolling20@gmail.com) is a research assistant at the Center of the American Experiment.


Activists ‘Hijack’ Clean Water Act to Block Energy Projects

By Joe Barnett

Environmental activists who say the production and use of fossil fuels is causing climate change are encouraging states to use their water quality review authority to delay or block new energy infrastructure projects.

Among the activists’ targets are natural gas pipelines, export terminals for liquefied natural gas (LNG), and coal export terminals.

Convoluted Permitting Process

Infrastructure projects that cross federal lands or federally regulated waterways must obtain a variety of permits and licenses.

Section 401 of the 1972 Clean Water Act (CWA) requires builders to obtain a discharge permit to dispose of waste materials. CWA grants state environmental agencies the authority to review projects’ disposal applications to determine whether the proposed project complies with state water quality standards. Once the state agency determines the project complies with state requirements, the agency certifies compliance to a federal agency, which then issues the water quality permit, often the final step before construction begins.

Historically, state environmental agencies have granted water quality certificates (WQC) fairly quickly, because these projects receive preliminary approval from multiple agencies before being considered by state environmental agencies.

Led by Daniel Estrin, general counsel and advocacy director for the Waterkeeper Alliance, anti-fossil-fuel activists are increasingly urging state officials not to certify fossil-fuel-related projects, delaying action by the Federal Energy Regulatory Commission (FERC) to authorize construction.

In an interview with National Public Radio’s All Things Considered, Estrin said he was looking for a new way to stop a pipeline in New York, which he said he found in Section 401 of the Clean Water Act.

“It essentially gives states veto power over federal decisions,” Estrin said.

States Denying Water Permits

Activists have successfully used the tactic in northeastern and West Coast states.

For example, in 2017, the New York Department of Environmental Conservation denied a WQC for National Fuel Gas Company’s Northern Access project, which would expand the Empire and National Fuel Supply systems to move gas from northwestern Pennsylvania to markets in New York, Canada, the Northeast, and Midwest.

In mid-August 2017, FERC determined New York had waived its authority to issue a WQC for the pipeline by failing to act within the one-year time-frame required by CWA, giving National Fuel the hope the project can soon move forward.

New Jersey’s environmental regulators have yet to issue a WQC for the proposed 115-mile PennEast Pipeline, which is intended to move natural gas from the Marcellus Shale deposits in Pennsylvania to New Jersey, despite FERC having approved the pipeline in January 2018.

In Oregon, anti-fossil-fuel activists formed the No LNG Exports campaign to lobby the state to halt the Jordan Cove project, which includes a planned pipeline to transport natural gas across the Cascades mountain range to the Oregon coast, where it would be turned into LNG for export. The No LNG Exports campaign submitted more than 25,000 comments to Gov. Kate Brown and the Oregon Department of Environmental Quality to halt the project, many calling for the state to deny a WQC for the pipeline.

Sees a Double Standard

Anti-fossil-fuel activists have a double standard when it comes to approving energy projects, proving their goals are not really about protecting the environment, says James Taylor, a senior fellow with The Heartland Institute, which publishes Environment & Climate News.

“It is ironic and revealing the same environmental-left activists who conjure up any possible justification to block conventional energy projects look the other way and demand fast-track approval when wind and solar projects are proposed that do equal or worse damage to the environment,” Taylor said. “Ultimately, these objections have nothing to do with protecting and providing good stewardship to the environment, but are instead convenient means of waging their larger war on all energy sources that are not wind and solar power.”

U.S. Senate Proposes Fix

On August 16, 2018, the U.S. Senate Committee on Environment and Public Works conducted a legislative hearing on S. 3303, the Water Quality Certification Improvement Act of 2018. Sen. John Barrasso (R–WY), the committee chairman and bill sponsor, said S. 3303 is necessary because some states are misusing CWA provisions to obstruct projects.

Barrasso’s bill would clarify state WQC reviews are limited to water-quality impacts only. Concerns about climate change or other potential environmental problems arising from a project would not be an acceptable reason to delay or deny a WQC. Barrasso’s bill would also require states to inform applicants within 90 days if the government needs more information before issuing a permit.

“Recently, a few states have hijacked the water quality certification process in order to delay important projects,” said Barrasso at the hearing, citing Washington State’s refusal to grant a water quality certificate for the Millennium Bulk Terminal project, which would enable coal from the western United States to be exported to Asia.

“The State of Washington has abused their authority to block the export of coal mined in Wyoming, Utah, Colorado, and Montana,” Barrasso said.

Activists Hampering Environment

Barrasso says the obstruction of the project is bad for the environment.

“Washington State’s refusal to issue the permit is not just bad for our economy, it’s also bad for the environment,” said Barrasso. “Wyoming produces the cleanest-burning coal in the United States in a sustainable and safe manner.

“By refusing to allow Wyoming to export its coal, the State of Washington is pushing these Asian markets to use coal from non-American sources, sources that are not as clean or safe,” Barrasso said.

Joe Barnett (joepaulbarnett@att.net) writes from Arlington, Texas.
Judge Okays Startup Tests of NY Natural Gas Power Plant

By Bonner R. Cohen

Against the wishes of New York Gov. Andrew Cuomo and the Department of Environmental Conservation (DEC) he controls, a county Supreme Court justice has ruled Competitive Power Ventures (CPV) can resume startup tests at its new, state-of-the-art natural gas power plant in Wawayanda, New York, which is located 53 miles north of New York City.

Albany County Acting Supreme Court Justice Roger McDonough’s August 15 decision came two weeks after New York's DEC informed CPV the plant’s original state-issued air permit had expired July 31, requiring the facility, known as the Valley Energy Center, to obtain a Clean Air Act Title V permit from the U.S. Environmental Protection Agency (EPA) in order to operate. DEC threatened to impose an initial fine of $18,000 plus as much as $15,000 per day if the plant were to commence operations without the permit.

Obtaining a Title V permit from EPA would cause a considerable delay in the project, because the agency’s application process is complicated and includes a mandatory 45-day review by EPA air officials.

Maryland-based CPV sued DEC on August 14, arguing the department had engaged in delaying tactics that caused the plant to miss the deadline to begin operating under the state permit. CPV sought and quickly won an injunction from McDonough, allowing it to operate the plant while awaiting the resolution of the permit dispute.

Governor’s Fracking Ban

The Valley Energy Center, a $956 million, 630-megawatt power plant, will use natural gas from Millennium Pipeline’s 7.8-mile Valley Lateral Pipeline, which carries natural gas from the Marcellus Shale in neighboring Pennsylvania.

The energy-rich Marcellus Shale extends into New York’s Southern Tier, the counties west of the Catskill Mountains along the northern border of Pennsylvania. A fracking ban Cuomo imposed in December 2014 prevents property owners in New York State from developing shale gas reserves on their land.

As a result, despite the presence of abundant natural gas in the Southern Tier, the gas supplying the Valley Energy Center’s New York customers with electricity will come from out of state.

Competing Views of Outcome

DEC issued a public statement expressing confidence the department would ultimately be vindicated.

“While DEC is disappointed, the order’s expedited briefing process will provide us an opportunity to vigorously litigate this issue and get a ruling on the merits as to whether CPV can continue to operate without a Title V permit,” DEC said in a statement responding to the court’s ruling. “DEC is confident we will prevail in this matter and that CPV will need to apply for and obtain a Title V permit to continue to operate.”

Tom Rumsey, CPV’s vice president of external affairs, says he is also confident his side will win.

“We are gratified by the court’s decision and look forward to restarting the commissioning process as soon as possible,” Rumsey said in a statement. “We look forward to working with [the New York State Department of Environmental Conservation] in a productive manner as we work through remaining steps to become fully operational.”

CPV doesn’t deny it will need a Title V permit, but it argued in court it believed it had an understanding with DEC it had up to a year after beginning full-scale operation of the plant to apply for the permit.

The plant’s originally scheduled plans to begin commercial operation in February 2018 had to be put on hold when DEC was late in approving the Valley Lateral Pipeline. Further delays arose because the Federal Energy Regulatory Commission took more than three years to approve CPV’s pipeline application.

NY Betting on Renewables

In an effort to boost renewable energy at the expense of fossil fuels, the Cuomo administration set a goal of 50 percent renewable energy by 2030 and loosened state environmental standards to achieve that objective.

As part of that effort, the New York State Energy Research and Development Authority recently issued guidance for municipalities developing solar projects on landfills and brownfields that follows a June DEC rulemaking determining contractors are not required to make formal environmental impact assessments for solar projects on brownfields.

‘Misguided Energy Policies’

New York’s bias against fossil fuels is costing the state’s residents and businesses plenty, says James Taylor, a senior fellow at The Heartland Institute, which publishes Environment & Climate News.

“New York is missing out on an outstanding opportunity to benefit consumers and the state’s economy,” Taylor said. “A power plant using low-cost natural gas produced in New York State would provide multiple layers of economic benefits. However, even if the natural gas were to come from Pennsylvania, with Pennsylvanians benefitting from the production of that gas, New York consumers would still receive low-cost electricity from the new power plant.”

JAMES TAYLOR
SENIOR FELLOW
THE HEARTLAND INSTITUTE

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A federal district judge halted the U.S. Environmental Protection Agency's (EPA) two-year delay of the agency’s restrictive Waters of the United States (WOTUS) rule.

President Donald Trump signed an executive order in February 2017 directing EPA to withdraw and rewrite WOTUS. EPA responded by suspending the rule for two years while the agency worked on a replacement.

Judge David Norton of the U.S. District Court in South Carolina ruled EPA had not followed the proper procedures to delay the rule, because it had not allowed a public comment period. Norton enjoined the delay as part of his ruling.

Norton’s decision makes WOTUS enforceable in the 26 states where district courts have not halted the regulation. It is not applicable in the 24 states where district courts have already stayed the rule.

Expanding Authority

The 1972 Clean Water Act (CWA) prohibits the discharge of pollutants into “navigable waters” without a permit. Over time, the federal government expanded the definition of the types of waters protected by CWA to include ephemeral waterways and wetlands, including land that is only seasonally wet and physically distant from and not directly feeding into navigable waterways. This brought even privately owned, isolated ponds and abandoned gravel pits under the federal government’s regulatory authority.

In two separate cases, the U.S. Supreme Court struck down expansive definitions of “navigable waters,” limiting EPA’s authority to regulate isolated bodies of water. However, the Court refused to provide a strict definition of the limits to the government’s CWA authority.

In 2015, under President Barack Obama, EPA removed the limiting word “navigable” from the federal government’s CWA authority, greatly expanding the number and kinds of waters and amount of private property to be federally regulated. States, property owners, and farm and business groups challenged WOTUS in court, and two federal district courts placed stays on the rule covering the states under their jurisdictions.

In August 2015, the Sixth Circuit Court of Appeals in Cincinnati issued a nationwide stay on WOTUS, only to have its decision overturned by the U.S. Supreme Court in January 2018, with the Court ruling the matter properly belongs before district courts.

Sees Setback as Temporary

The current legal arrangement won’t last, says Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute.

“The EPA tried to skip a few steps in repealing WOTUS, and the Court wouldn’t go for it,” Shapiro said. “This is a procedural ruling and shouldn’t affect long-term efforts to reform this regulation.”

Desire to Simplify

The Trump administration entered the legal fray with a goal of simplifying and clarifying WOTUS, says Anthony Francois, a senior attorney with the Pacific Legal Foundation.

“The Trump administration, through an executive order, said we’re not going with this overly broad definition of what navigable waters are,” Francois said. “We want to go with something that is more reasonable, more compatible with the statute, and supportive of economic growth. With the delay, EPA tried to prevent anybody from needing to comply with the 2015 regulations, while giving itself time to develop a new, narrower definition of navigable waters.”

Trump and his team have prioritized putting the brakes on overly broad, economically harmful regulations the Obama administration put in place, says Francois.

“The Trump administration’s regulatory reform efforts are targeting these very aggressive, largely illegal regulations adopted in the final couple of years of the Obama administration, things like the Clean Power Plan and WOTUS,” Francois said. “The challenge to the WOTUS delay is part of the Left’s larger efforts to stymie the Trump administration’s deregulation and reform efforts.”

Proper Definition Needed

EPA has long needed a proper definition of navigable waters, says Francois.

“Under the Clean Water Act, if you own a facility on a river, lake, or on the coast and you discharge pollution, you need a permit,” Francois said. “But not having a legal, working definition of ‘navigable waters’ has expanded the government’s clean water authority beyond rivers and lakes, meaning if you’re a farmer who has a low spot on your property 50 miles from the nearest navigable river, you may be surprised to find the U.S. Army Corps of Engineers or EPA expects you to get their permit to work your own land.

“The essence of the problem drawing all this litigation is the overbroad, vague definition of ‘navigable waters,’” Francois said.

By Kenneth Artz

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.
Colorado ‘Setback’ Ballot Initiative Threatens Oil and Gas Development

By Bonner R. Cohen

Colorado’s days as a rapidly growing producer of oil and natural gas will be numbered if voters in November approve a ballot initiative severely restricting extraction on nonfederal land in the state.

Initiative 97, promoted by the environmental group Colorado Rising, would establish a minimum setback for new oil and gas wells of 2,500 feet. The current setback requirement is 500 feet from homes or other occupied dwellings and 1,000 feet from schools.

The proposed rule would effectively place four out of every five acres of nonfederal land in Colorado off-limits to new oil and gas drilling. The setback limit would not apply to existing wells or to leases on federal land.

The Colorado Office of the Secretary of State on August 29 confirmed Initiative 97 had gathered enough valid signatures, 123,195, to be placed on the November ballot.

Booming Oil and Gas Fields

The Colorado Oil and Gas Conservation Commission (COGCC), the state agency charged with regulating the industry, reports oil production in Colorado increased from an average of 10.4 million barrels per month in 2016 to 13.2 million barrels per month in the first quarter of 2018. Colorado is now the seventh-largest oil-producing state in the country.

In July, COGCC reported Initiative 97 would eliminate drilling on 94 percent of all nonfederal land in Colorado’s top five oil-producing counties. In Weld County, the state’s leading oil- and gas-producing county, Initiative 97 would bar new oil and gas development on 85 percent of nonfederal land, COGCC’s analysis found.

Urban Appeal

Colorado’s most productive oil and gas fields are north and northeast of Denver’s rapidly expanding suburbs. This has brought the wells and the various extraction activities surrounding them in closer proximity to new neighborhoods springing up along the Front Range of the Rocky Mountains.

Rising Colorado successfully targeted these neighborhoods, as well as urban areas far removed from the oil and gas fields, to gather signatures and support for Initiative 97.

Big Fiscal Impact

Voter approval of Initiative 97 would reduce state and local tax revenues by $201 million and result in a loss of 33,500 to 43,000 jobs in the first year alone, an analysis by the consulting company REMI Partnership reports.

According to the Colorado Oil and Gas Association (COGA), Initiative 97 would result in 149,800 lost jobs in Colorado by 2030. In addition, if the 2,500 ft setback becomes law, Colorado will forego $218 billion in state gross domestic product and lose $147.6 billion in personal income and $9 billion in state and local tax revenue from 2019 to 2030, COGA estimates.

Initiative 97 will violate property rights, cost jobs, and hurt the state’s economy, says Dan Haley, COGA’s president and CEO, in a statement the organization released when the initiative was certified for the ballot.

“Coloradans need to know exactly what is at stake: private property rights, more than 100,000 good-paying jobs, more than $1 billion in taxes for schools, parks and libraries, and our nation’s energy security,” Haley’s statement said. “A half-mile setback is a blatant attempt by activists to ban oil and natural gas in Colorado and put working families on the unemployment line.”

United in Opposition

With those implications for jobs and government revenues, Initiative 97 has garnered rare bipartisan opposition in the 2018 election campaign, with both candidates for governor—Republican Walker Stapleton and Democrat Jared Polis—opposing the initiative.

If the measure passes, it almost certainly would face a challenge in court, including lawsuits by property owners forbidden from developing oil and gas projects. Those with existing wells receive substantial revenue from oil and gas production on their lands.

Property rights activists were successful in getting another initiative on the November ballot, Amendment 74, which would allow property owners to make claims for just compensation for any reduction in property values resulting from new regulations. The proposal would protect water and mineral rights in addition to physical property, and, if both propositions succeed, Amendment 74 could be used to recoup losses stemming from Initiative 97.

The Colorado Farm Bureau and numerous grassroots organizations are backing Amendment 74, which garnered a little more than 208,000 signatures, approximately 85,000 more than were gathered for Initiative 97.

Brownouts, Funding Cuts

Jay Lehr, Ph.D., science director at The Heartland Institute, which publishes Environment & Climate News, says passing Initiative 97 would make the state more dependent on renewable energy, with potentially devastating consequences for Colorado’s energy security.

“Brownouts and blackouts would be the order of the day if Initiative 97 becomes law,” Lehr said. “Wind and solar energy exist only because of taxpayer subsidies, and they are completely unreliable sources of power requiring 100 percent backup from fossil fuels when the Sun doesn’t shine and the wind doesn’t blow.”

Many communities will suffer if voters approve Initiative 97, says Tracee Bentley, executive director of the Colorado Petroleum Institute.

“If passed, Initiative 97 would devastate the livelihood of hundreds of thousands of Coloradans and their families,” said Bentley. “Entire communities would unwillingly find themselves closed for business.”

“Tax revenues would plummet, crippling essential funding for education and health care across the state,” Bentley said. “I believe Colorado voters will recognize this for the reckless and dangerous effort it is and vote it down.”

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Bank of the West’s Anti-Fossil-Fuel Policies Provoke Backlash

By Bonner R. Cohen

The decision by San Francisco-based Bank of the West to divest itself from all businesses involved in the production, exploration, and distribution of coal, oil, and natural gas has angered elected officials in Colorado and Wyoming, where the bank has a longstanding presence and the fossil-fuel industry provides tens of thousands of jobs to local residents.

Wyoming State Treasurer Mark Gordon wasted little time in blasting Bank of the West’s early August decision, taking swift action to penalize the financial institution for its anti-fossil-fuel policy.

Gordon noted Bank of the West has received $63 million in state government deposits over the years through Wyoming’s Time Deposit Open Account program, which circulates the state’s cash reserves to approved banks to use in providing loans to bank customers. Those days are over, announced Gordon, who has discretion over which banks participate in the system.

“The Bank of the West has said they will no longer fund coal, oil, and natural gas projects—key components to the Wyoming economy and Wyoming way of life,” Gordon said in an August 9 statement. “Well, under my watch, Wyoming investment dollars will not be placed with the Bank of the West.”

Denying Bank of the West the use of state Open Account funds could hamper the bank’s ability to offer loans to business owners in Wyoming, resulting in them going to other banks for loans.

‘Misguided and Politically Expedient’

Fossil fuels account for approximately one-quarter of Wyoming’s gross domestic product and roughly 70 percent of the state’s tax revenues.

Sen. John Barrasso (R-WY) sent a letter to Bank of the West CEO Nadita Bakhshi denouncing the bank’s “misguided and politically expedient” policy directed against fossil-fuel companies and their employees.

“When it may be fashionable today in San Francisco to exclude states like Wyoming from your lending plan, it will do little to discourage us from pursuing our best future on our own terms,” Barrasso wrote in the August 8 letter.

Bank of the West, a subsidiary of French banking giant BNP Paribas, has about 600 branches in the West and Midwest, including 23 in Wyoming. The bank had previously adopted policies against financing Arctic drilling and investing in fracking, oil sands development in Alberta, Canada, and in utilities that generate more than 30 percent of their electricity from coal-fired power plants.

Counties Consider Following Suit

Officials in Wyoming’s Laramie and Sweetwater Counties and in Moffat County, Colorado say they are considering following Gordon’s lead and ending official business with Bank of the West.

Moffat County, Colorado has had its fill of Bank of the West, says County Commissioner Ray Beck.

“The Moffat County commissioners will not support organizations that don’t support our way of life,” said Beck. “The county’s 10 top taxpayers are all energy-related, and a big chunk of our revenues comes from coal, oil, and gas exploration and production.

“If a company is going to adopt a policy against fossil fuels or the funding of fossil fuels, they should at the same time be converting their business to an alternative source of heat and electricity,” Beck said. “At the end of the day, like it or not, coal keeps the lights on.”

‘Bank Against the West’

The bank’s new lending policies are an affront to the people of the affected states, says Craig Rucker, executive director of the Committee for a Constructive Tomorrow.

“For the sake of candor, Bank of the West should rename itself ‘Bank Against the West.’ For more than 125 years, people whose livelihoods depended on the natural resources industry have been loyal customers of Bank of the West.”

CRAIG RUCKER
EXECUTIVE DIRECTOR
COMMITTEE FOR A CONSTRUCTIVE TOMORROW
EPA Broadens Enforcement Scrutiny Beyond Agriculture, Gas, and Oil

By Michael McGrady

The U.S. Environmental Protection Agency (EPA) announced it is phasing out its special focus on pollution enforcement against the oil and gas industry and livestock producers.

In place of the agency’s heightened scrutiny on these two industries enacted under former President Barack Obama, EPA will broaden its anti-pollution enforcement efforts to a wider array of industrial and commercial entities, says Susan Bodine, assistant administrator of EPA’s Office of Enforcement and Compliance Assurance.

Equal Scrutiny, Punishments
Under the new policy, the oil and gas industry will get no more or less scrutiny than other major industrial and commercial sectors of the economy, and punishments for violations will be no more or less severe than those for other industries.

“This initiative [heightened scrutiny, strict enforcement] historically focused on one industrial sector, implying that the EPA considers all problems in this sector—large or small—to be a priority,” Bodine wrote in an August 23 letter to EPA’s regional administrators.

Bodine’s memo says the same standard will apply to enforcement actions against agricultural operators who produce animal waste.

“Under this approach, an animal feeding operation that contributes to water quality impairment or an oil and gas facility that contributes to non-attainment with air quality standards or that creates exposures to air toxics would be a priority because of those impacts, not because of the industry sector,” wrote Bodine.

Bodine’s memo makes it clear EPA will continue heightened scrutiny of and strict enforcement action against violations by “industrial and chemical facilities” and “hazardous waste facilities.”

Avoiding ‘Gotcha Violations’
EPA’s actions should improve environmental outcomes, says attorney Steve Milloy, a senior policy fellow for the Energy & Environment Legal Institute and a policy advisor to The Heartland Institute, which publishes Environment & Climate News.

“The shift here is that enforcement actions will go against facilities and activities causing actual harm to the environment, versus those that merely technically violate their permits or regulations, no longer focusing EPA’s efforts on ‘gotcha violations’ in the oil and gas industry, as opposed to serious breaches in any regulated industry,” Milloy said. “No harm, no foul is the basic principle.”

Michael McGrady (mmcgrady@mcgradypolicyresearch.org) writes from Colorado Springs, Colorado.

Power Outage Causes Spillage of Wastewater into Lake Michigan

By Mitchell Rolling

More three million gallons of untreated wastewater spilled into Lake Michigan from the Jones Island Water Reclamation Facility, a sewage treatment plant in Milwaukee, during a power outage.

The cause of the power outage has yet to be determined.

The Milwaukee Metropolitan Sewerage District (MMSD), which operates the Jones Island plant, has established a goal of operating on 80 percent renewable energy by 2035, eventually using 100 percent net-renewable energy. 80 percent of which the organization expects to generate onsite. Wind and solar energy are intermittent and typically require the presence of other power sources to serve as a backup.

Offline for Hours
Power to the Jones Island facility, the largest in Wisconsin, was out for nearly three hours from 1:47 p.m. to 4:30 p.m., on August 18. When the outage occurred, backup gas generators normally used for emergencies were offline for maintenance. The combination of events resulted in wastewater flooding part of the plant and spilling into the lake.

MMSD is powered by renewable energy sources producing electricity onsite and from electricity from utilities. MMSD uses solar energy and biogas produced from biosolids or waste treated at the facility and from municipal solid waste at nearby landfills. MMSD announced at the Central States Water Association’s 85th annual meeting in 2012 it expected to expand its renewable portfolio to include electricity generated from wind turbines.

In recent years, despite MMSD’s stated goal of utilizing renewable energy to power a larger percentage of its operations, its use of renewable energy has fallen, due in part to the repeated failure of its onsite biogas-powered generating system.

Harbinger of Future Problems
As MMSD relies increasingly more on renewable energy sources to power its water treatment facilities, such spills may become more common in the future, says Isaac Orr, a policy fellow at the Center of the American Experiment.

“Because renewable energy sources are intermittent, and there are no good, large-scale, cost-effective power storage systems for them, relying on renewable sources for 100 or even 80 percent of the power needed to carry out the vital function of treating solid waste and municipal water treatment is likely to be a recipe for disaster,” Orr said. “Twenty-four/seven electric power is a necessity to avoid wastewater spills, and renewable energy sources just can’t be counted on to supply that.”

‘It’s Embarrassing’
Orr, a native of Wisconsin, says Milwaukee should reallocate money to priorities such as energy infrastructure, to prevent such incidents, instead of spending it on unnecessary transportation projects.

“As someone who grew up in Wisconsin, it’s embarrassing Milwaukee can’t seem to handle basic water sanitation services,” said Orr. “The Milwaukee Common Council approved a proposal for a $128 million streetcar running through downtown Milwaukee in 2015, and construction began in 2017. Rather than spending the $128 million on the streetcar lines, they should have devoted the money to improved energy reliability and better sanitation services.”

Mitchell Rolling (marolling20@gmail.com) is a research assistant at the Center of the American Experiment.
Save the date! The Heartland Institute’s premier event for elected officials, policy analysts, and government affairs professionals will return in Winter 2018! The Emerging Issues Forum (EIF) will look to the future and explore innovative solutions in the top policy areas affecting your state.

Mid-December Phoenix will be perfectly cool and dry, especially for our friends in the snowy, icy North. Even better, admission and meals are free for elected officials, their spouses, and their staff. Heartland is also offering complimentary hotel accommodations and a limited number of $350 travel scholarships for members of the Legislative Forum.

To RSVP for EIF or to join the Legislative Forum, contact Government Relations Coordinator Arianna Wilkerson at 312/377-4000 or by email at awilkerson@heartland.org.
Each month, Environment & Climate News 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/msu/v6.0beta/tlt/uahncdc_lt_6.0beta5.txt. All past data were revised when the methodology was updated in April 2015.

AUGUST 2018

The global average temperature was 0.19°C above average.

The Northern Hemisphere’s temperature was 0.21°C above average.

The Southern Hemisphere’s temperature was 0.16°C above average.

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