HOT TOPICS

No ‘Right to Wilderness’
A U.S. District Court judge in Oregon rejected a lawsuit filed by environmental groups against the federal government claiming policies allowing fossil fuel use violate plaintiffs’ constitutional “rights to wilderness.”  

Keystone Nebraska Win
The Nebraska Supreme Court approved a revised path for the Keystone XL pipeline through the state, ending the final legal challenge to the pipeline in Nebraska.

EPA Deregulation Success
The U.S. Environmental Protection Agency’s Inspector General released a report stating the agency greatly exceeded President Donald Trump’s goal of cutting two regulations for every new one enacted, having rescinded 26 regulations while developing four new ones, saving taxpayers more than $96 million.

Inslee Drops Out
Washington Gov. Jay Inslee received 0 percent support in the Democratic presidential primaries while making climate change the central issue of his campaign.

Federal Court, Trump Administration End Obama-Era WOTUS Rule

By Bonner R. Cohen

One of the most far-reaching regulatory initiatives ever undertaken by the U.S. Environmental Protection Agency (EPA) has been struck down by a federal court in Georgia and withdrawn by the Trump administration.

Expanding Authority
The 1972 Clean Water Act (CWA) prohibits the discharge of pollutants into “navigable waters” without a permit. Under the CWA, the EPA shares regulatory jurisdiction over “waters of the United States” with the U.S. Army Corps of Engineers.

Over time, the federal government expanded the definition of the types of waters protected by CWA to include

Trump Administration Reforms ESA to Emphasize Species Most at Risk

By Bonner R. Cohen

The U.S. Department of the Interior (DOI) unveiled new regulations guiding how the 46-year-old Endangered Species Act (ESA) will be carried out nationwide.

DOI says the reforms are aimed at reducing costs and focusing scarce agency resources on recovering species most at risk of disappearing in the near future.

Enacted in 1973, ESA is jointly administered by DOI’s Fish and Wildlife Service (FWS) and the Commerce

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The very fabric of America is under attack—our freedoms, our republic, and our constitutional rights have become contested terrain. The Epoch Times, a media committed to truthful and responsible journalism, is a rare bastion of hope and stability in these testing times.
Federal Judge Tosses ‘Right to Wilderness’ Lawsuit

By H. Sterling Burnett

A U.S. District Court rejected a lawsuit filed by environmental groups against the federal government claiming its policies allowing fossil fuel development and use violate the plaintiffs’ constitutional rights to wilderness unaffected by human activity.

The Animal Legal Defense Fund, Seeding Sovereignty, and six individuals sued the U.S. Department of Agriculture, Department of Interior, and other federal agencies for violating a right they claimed was guaranteed under the First, Fifth, and Ninth amendments to the U.S. Constitution, by supporting the fossil fuel industry, whose actions are causing the climate to change in ways that damage the health, beauty, and accessibility of wilderness areas.

Recognizing their lawsuit was stretching the boundaries of the law, the plaintiffs’ brief asked U.S. District Court Judge Michael McShane of the District Court of Oregon to engage in “nothing short of revolutionary thinking” by recognizing a “right to wilderness.”

In his July 31 ruling, McShane, nominated to the Oregon District Court in 2012 by then-president Barack Obama, declined the plaintiffs’ request to expand the law through judicial decree.

Says Plaintiffs Lacked Standing

The U.S. Department of Justice (DOJ) asked McShane to dismiss the lawsuit on the grounds the plaintiffs lacked legal standing to sue the federal government because they could not show they were personally and specifically affected by climate change.

A European court used this reasoning when dismissing a lawsuit against the European Union filed by families and a youth group from eight countries alleging their rights are being violated by inadequate action against climate change.

A court in the United States held in 2007 that “there is no constitutional right to a particular type of environment or environmental conditions” and thus there could be no constitutionally protected “right to wilderness.”

McShane’s order dismissing the case cited more than a dozen previous rulings establishing “there is no fundamental right to a particular type of environment or environmental conditions” and implied such a right “would necessarily be a right held in common by all citizens, and the effects of climate change would be an abstract injury that all citizens share,” McShane said.

No ‘Right to Wilderness’

DOJ noted no federal court has ever recognized a fundamental right to wilderness and, contrary to the plaintiffs’ assertions, there is no First Amendment right to be “free from human influence in wilderness.”

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‘A Series of Legal Stunts’

Climate change is an amorphous concept, and whatever it is, it is not destroying the wilderness, says John Charles, president and CEO of Oregon’s Cascade Policy Institute.

“I’ve hiked many Oregon wilderness areas, and I can assure the plaintiffs that solitude is easily available to anyone willing to walk at least one mile from a trailhead,” Charles said.

“But this lawsuit was never about individual freedom,” Charles said. “It was just the latest in a series of legal stunts aimed at holding the federal government accountable for something called ‘climate change,’ a concept that doesn’t even have any physical meaning.”

John Charles
PRESIDENT AND CEO
CASCADE POLICY INSTITUTE

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H. Sterling Burnett, Ph.D. (hsburnett@heartland.org) is a research fellow at The Heartland Institute.
Climate Catastrophe Theory Is ‘Hoax,’ Award-Winning Scientist Says

By H. Sterling Burnett

Burnett: You were instrumental in getting the U.S. Environmental Protection Agency (EPA) established, yet for more than a decade now you’ve tried to have it dismantled or replaced. How and why have your views of the EPA changed over the years?

Lehr: In the first 10 years of EPA’s existence, seven useful pieces of legislation were passed to create a safety net for our environment. The laws and EPA’s efforts were successful.

Beginning in 1980, with the very poorly thought-out Comprehensive Environmental Regulation and Compensation Act legislation, better known as Superfund, environmental zealots took over EPA, and not another useful piece of legislation has passed since. Instead, EPA has constantly pushed for ever-larger budgets and expanded its authority beyond what the law allows. Environmental laws and regulations since 1980 have only served to inhibit the economy and wreck peoples’ lives and livelihoods, with no corresponding benefit to the environment or human health.

Burnett: You have repeatedly called the theory of human-caused global warming “the greatest scientific hoax in the history of civilization.” Those are strong words. What do you mean by that?

Lehr: There is absolutely no physical evidence to support the theory humans are causing a dangerous global warming. The whole theory is built on absurd mathematical equations said to simulate the way the Earth responds to the 100 or more variables that affect the Earth’s thermostat. Yet we do not currently understand obvious variable impacts such as how and why energy moves between sea and land and between the land and the atmosphere, the regulation of ice on the planet, the role of clouds, the movement of tectonic plates beneath the ocean, the differential movement between the Earth’s liquid core and its crust, and many, many more variables that affect the climate.

The climate models are a joke, but the public does not understand this, and the modelers are unethical scientists reaping massive amounts of government funding.

Burnett: Proponents of the theory humans are causing a climate catastrophe are pushing policies to end the use of fossil fuels and replace them with renewables. Having edited an academic encyclopedia on energy, what are your thoughts on such policy proposals?

Lehr: A policy requiring Americans to end their use of fossil fuels would end life as we know it, sending us back to the nineteenth century but with a government controlling every aspect of our lives.

It can never happen, but along the way, in the attempt, many of the accomplishments and much of the wealth, capital stock, and innovations the nation has built up through the use of fossil fuels will be destroyed, leaving America and the world worse off.

H. Sterling Burnett, Ph.D. (hsburnett@heartland.org) is a research fellow at The Heartland Institute.
Twenty-Two States, Seven Cities Sue Trump Administration Over Power Plant Rule

By Bonner R. Cohen

A coalition of 22 states and seven cities, most of which are led by Democrats, has filed a federal lawsuit alleging the Trump administration violated the 1970 Clean Air Act (CAA) when it replaced Obama-era coal-fueled power plant rules with new regulations to curb carbon-dioxide emissions.

The lawsuit, filed on August 13 in the U.S. Court of Appeals for the District of Columbia, targets the Trump administration’s Affordable Clean Energy (ACE) plan, which the administration finalized in June.

“Besides ignoring the science of climate change—the text of the ACE rule barely mentions climate change, much less recognize[s] the dire threat it poses to people’s health, the economy, and the environment—the rule disregards requirements of the federal Clean Air Act, which requires regulators to use the ‘best system of emission reduction,’” New York Attorney General Letitia James (D) said in a press release.

Response to Obama Restrictions

The ACE was the Trump administration’s response to the 2015 Clean Power Plan (CPP) of President Barack Obama, which itself was challenged in lawsuits filed by 27 states.

The CPP never went into effect. In a highly unusual move, the U.S. Supreme Court stayed the rule in February 2016, indicating it believed the legal challenge brought by the states was likely to be successful and the justices did not want to allow a regulation that would have a profoundly deleterious effect on the economy to go forward before all legal proceedings were completed.

In October 2017, the Trump administration announced it would rescind the CPP, and in June 2019 it replaced it with the ACE.

Supreme Court Showdown Likely

The lawsuit challenging the ACE rule is misguided and will fail, said West Virginia Attorney General Patrick Morrisey (R) in a press release announcing his state would fight on behalf of ACE.

“My colleagues on the other side of the aisle are dead wrong in their interpretation of the Clean Air Act,” Morrisey said. “The CAA was not written to compel one type of energy producer to cross-subsidize another.

“Neither it nor the Constitution allow the EPA to serve as a central energy planning authority,” Morrisey said. “West Virginia will fight this 22-state big government ‘power grab’ lawsuit and advance some of the same arguments that helped our 27-state coalition obtain a stay of the so-called Clean Power Plan at the U.S. Supreme Court in 2016. Those filing the lawsuit will ultimately fail at the Supreme Court.”

The states party to the lawsuit are California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin.

Supreme Court stayed the rule in February 2016. Those filing the suit are likely to cross-subsidize another.

A Magnificent Improvement

The ACE rule is superior to the CPP because it is not a top-down, government-designed effort to pick winners and losers in the energy system, says Jay Lehr, a senior policy analyst with the International Climate Science Coalition.

“ACE is nothing short of a magnificent improvement over the CPP regulations, which were designed to wipe out the coal industry, an inexpensive source of power for the American people. The lawsuit filed by the states and cities is a disgrace to our nation, reflecting the fact that Democrat-controlled states are working hard to destroy the system of capitalism established by our Founding Fathers. We should all hope the lawsuit goes down in flames.”

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Bonner R. Cohen, Ph.D. (bcohen@nationalcenter.org) is a senior fellow at the National Center for Public Policy Research and a senior policy analyst with the Committee for a Constructive Tomorrow.
Department’s National Marine Fisheries Service (NMFS), with occasional input from other agencies.

Differentiating Between Species
The Trump administration is implementing the changes to improve species protection while respecting private property and promoting economic growth.

One change stipulates the criteria used in determining whether a species should be removed (delisted) from the endangered species list or reclassified from endangered to threatened or vice versa are the same as those for adding a species to the list. The goal is to prevent officials at FWS and NMFS from arbitrarily adding criteria to keep species on the ESA list after they have recovered.

FWS has also reversed a longstanding policy known as the “blanket rule,” under which the service treated threatened and endangered species identically.

Under the law as written, less stringent rules are supposed to apply to threatened species than to endangered ones. The NMFS never adopted the FWS’s blanket rule, noting it was contrary to the original intent of the ESA, which clearly differentiated between threatened and endangered species. The Trump administration has now aligned the two agencies’ policies by establishing threatened and endangered species are different and that conservation efforts should treat them as such.

Improving Transparency, Effectiveness
The Trump administration’s regulatory reforms also improve transparency regarding the costs of species’ protection efforts.

ESA specifies FWS and NMFS must use only science to determine whether to list a species as endangered or threatened, without considering the estimated costs of protecting a species. However, nothing in the law prevents the agencies from estimating the costs of species’ protection efforts. Other environmental laws require agencies to enact environmental and public health protections based solely on scientific analysis of risk, but they also mandate responsible agencies calculate the benefits and costs of proposed regulations. The Trump administration is now applying the same standard to ESA protections.

Listing decisions must still be made without considering costs, but the government is now required to identify and communicate the effects of these decisions.

Critical Habitat, Foreseeable Risks
Another reform revises how critical habitat for species recovery is designated, reinstating a requirement that officials review currently occupied areas before considering uninhabited ones. The Barack Obama administration had changed the critical habitat rule to impose equally stringent restrictions on privately owned potential habitats lacking any endangered species as those on occupied habitats.

“The Secretary will designate as critical habitat, at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species only upon a determination that such areas are essential for the conservation of the species ... [and] there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species,” the rule states.

The second provision clarifies, in accordance with a Supreme Court ruling, any area declared critical habitat be a truly viable location for the species.

As to potential risks to endangered species from climate change, the administration is limiting consideration to situations that could result in a decline in species’ numbers or health in what the new rules refer to as “the foreseeable future.” This reform was implemented in response to complaints it is impossible to project realistically what environmental changes might occur 100 or even 50 years in the future, or how such changes might affect currently endangered species.

‘On-the-Ground Conservation’
Under the previous rules, the federal government squandered scarce resources that could have been better allocated elsewhere, said DOI Secretary David Bernhardt in a press release describing the reasons for the regulatory changes.

“The best way to uphold the Endangered Species Act is to do everything we can to ensure it remains effective in achieving its ultimate goal—recovery of our rarest species,” Bernhardt said. “An effectively administered Act ensures more resources will go where they will do the most good: on-the-ground conservation.”

FWS’s rule changes should improve species recovery efforts, says Becky Humphries, CEO of the National Wild Turkey Federation.

“We applaud the Department of Interior for clarifying the rules and streamlining the consultation process, paving the way for important forest restoration work that benefits and protects threatened and endangered species before disaster strikes and the habitat is destroyed,” Humphries said in a statement.

Incentives to Cooperate
To improve protection of endangered species, the federal government must change the incentives ESA creates for landowners to make their property unattractive to species at risk of extinction, says Daren Bakst, a senior analyst at The Heritage Foundation.

“If the federal government is to better conserve species, it needs to stop creating disincentives for private property owners to help in these efforts,” said Bakst. “When the same stringent restrictions on private property use are imposed on landowners regardless of whether a species is threatened or endangered, property owners don’t have much incentive to help out.

“If the stringent prohibitions didn’t apply to threatened species, landowners would have an incentive to protect these species from becoming endangered in order to avoid the added restriction on the use of their property,” Bakst said. “The new ESA rules, including the change to the ‘blanket rule,’ recognize the harm of diverting resources away from species needing the help.”

Bonner R. Cohen, Ph.D. (bcohen@nationalcenter.org) is a senior fellow at the National Center for Public Policy Research and a senior policy analyst with the Committee for a Constructive Tomorrow.
Keystone XL Pipeline Overcomes Last Legal Hurdle in Nebraska

By Duggan Flanakin

A dozen years after it was initially proposed, the Keystone XL Pipeline cleared a major hurdle to its completion as the Nebraska Supreme Court approved its revised path through the state, ending the final Nebraska-based legal challenge to the pipeline.

Upon completion, the $8 billion Keystone XL pipeline is expected to have the capacity to transport more than 800,000 barrels of oil per day from oil fields in northeastern Alberta through eastern Nebraska and on through already completed or previously existing pipelines to refineries on the U.S. Gulf Coast.

Since it was first proposed, environmental groups, some private landowners and Native American groups, and the administration of former President Barack Obama have fought the completion of the pipeline at both the state and federal level. Opponents have fought to deny permits for its construction, refused to sign easements for the pipeline to cross property, engaged in public protests, and brought federal and state lawsuits challenging the project’s environmental assessments, permits granted, and the route chosen.

On August 23, the Nebraska Supreme Court ended another such challenge by ruling the Nebraska Public Service Commission (NPSC) is the agency responsible for determining which pipeline route is in the public interest and the commission did so appropriately after months of careful consideration.

Governor Approved

In 2014, Lancaster County District Judge Stephanie Stacy ruled a state statute allowing then-governor Dave Heineman to approve the pipeline’s path through Nebraska was unconstitutional on the grounds the law had wrongly bypassed the five-member Public Service Commission.

In a back-and-forth in which TC Energy (formerly TransCanada Keystone Pipeline, LP) proposed multiple routes in response to public comments, permitting requirements, and multiple rounds of state reviews of alternative routes, acting under requirements established in the 2011 Major Oil Pipeline Siting Act (MOPSA), NPSC designated the “Mainline Alternative Route” (MAR) as the new approved route through the state in November 2017. The MAR includes a 36-inch-circumference major oil pipeline and related facilities to be constructed through Nebraska, from the South Dakota border in Keya Paha County, Nebraska to Steele City, Nebraska.

Upon de novo review of NPSC’s decision, a review in which the court examined the facts presented to NPSC and ignored all previous legal proceedings and court rulings, the Nebraska Supreme Court found the issues being challenged in the lawsuit should be resolved based on the determination of four overarching questions: Whether the NPSC had jurisdiction to consider TransCanada’s application; whether TransCanada met its burden of proof; whether the NPSC properly considered the MAR; and whether the intervenors were afforded due process.

‘In the Public Interest’

In its ruling, after describing the procedures enacted by the legislature to effectuate proceedings under MOPSA and discussing the administrative history in detail, Nebraska’s Supreme Court ruled NPSC had done its job properly and TransCanada had carried its burden of proving the MAR is in the public interest. As a result, claims raised by the plaintiffs against the route and the procedural steps taken to approve it lacked merit, the court ruled.

Accordingly, we affirm the NPSC’s determination that approval of the MAR is in the public interest,” the court ruled.

State Governments ‘Biggest Hurdle’

The Nebraska Supreme Court’s ruling is critical to getting the pipeline completed, says Russ Girling, TC Energy’s president and CEO.

“The Supreme Court decision is another important step as we advance towards building this vital energy infrastructure project. We thank the thousands of government leaders, landowners, labor unions, and other community partners for their continued support through this extensive review process. It has been their unwavering support that has advanced this project to where it is today.”

RUSS GIRLING, PRESIDENT AND CEO, TC ENERGY

Detailed Plans

Under the plan approved by NPSC and the state Supreme Court, the top of the pipeline will sit a minimum of four feet below the surface of land and at least 25 feet below the surface of any water stream.

Pump stations will be placed an average of 55 miles apart and utilize approximately eight to 10 acres of land but could use up to 17 acres. Shutoff valves will be placed at intervals along the pipeline, based on hydraulics and other factors, and located within 50-by-50-foot fenced enclosures.

Duggan Flanakin (dflanakin@gmail.com) writes from Austin, Texas.
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Idaho Phosphate Mine Approved by Bureau of Land Management

By Duggan Flanakin

The Idaho Falls District Office of the U.S. Bureau of Land Management (BLM) approved the Caldwell Canyon Mine Project, an open pit phosphate mine in Caribou County in southeastern Idaho.

The plan includes two open pits covering about 1,200 acres. Most of the mine site will be on private land. The pits will extend onto approximately 140 acres of BLM land, and 200 acres are on Idaho endowment land. State officials have already approved the lease on the state’s portion of the proposed site.

Saving Jobs, Preventing Pollution

The BLM’s approval of the project saves the jobs of 185 miners who otherwise would soon be out of work when the nearby Blackfoot Bridge Mine runs out of phosphate ore. P4 says its new mine will also preserve 585 jobs at its phosphate processing plant in nearby Soda Springs for the 40-year life of the mine.

P4 estimates the mine will generate more than $47 million annually in payroll, taxes, royalties, and purchases, in addition to supporting other jobs in the surrounding communities.

The approved plan requires P4 Production, a subsidiary of Bayer, which requested the permits to develop three phosphate leases, to place specific types of cover beneath and over the mine site to prevent water pollution.

Selenium, a byproduct of phosphate mining, is toxic in high doses. In 1997, sheep and horses eating selenium-laden plants growing near phosphate mine waste dumps died. To avoid such outcomes from this project, the BLM is requiring P4 to line its pits with geomembrane, backfill them, and cap the site upon completion of mining.

Useful Commodity

Phosphate is a key ingredient in many fertilizers, and more than 90 percent of the phosphate mined is used in fertilizer manufacture. Other uses of phosphate include animal feed and detergents.

China and Morocco lead the world in phosphate production. The United States is the world’s third-largest producer, mining 27.5 million metric tons of marketable phosphate rock, valued at $2.2 billion, in 2015. Idaho is the nation’s third-leading domestic producer of phosphate, trailing only Florida and North Carolina.

From the 1960s through the 1990s, the United States exported phosphate, but since 1996 America has been a net importer. Imports accounted for about 12 percent of domestic use in 2015.
**Trump Admin. Rescinds California’s Fuel Economy Waiver**

By H. Sterling Burnett

The administration of President Donald Trump has announced regulations withdrawing a waiver that allowed California to set separate standards for greenhouse gases, under which the state set higher fuel economy requirements for cars sold within its borders.

The revocation of California’s emissions waiver has national significance because 13 other states, accounting for approximately one-third of the national market for automobiles and light trucks, have adopted California’s tighter standards.

**Waiver Recission Expected**

The U.S. Environmental Protection Agency’s (EPA) decision to rescind California’s waiver had been widely expected since the agency announced it was reversing the Barack Obama administration’s sharp increase in Corporate Average Fuel Economy (CAFE) standards and freezing automobile fuel mileage mandates at 2020 levels through 2026, on August 2, 2018.

At that time, EPA announced there could be only a single, national fuel economy standard.

The governors of 23 U.S. states, led by California, had submitted a letter in July demanding the Trump administration reverse its proposal to withdraw California’s 1970 Clean Air Act waiver for automobile emissions.

Also in July, California announced it had developed an agreement with automakers BMW, Ford, Honda, and Volkswagen to sidestep EPA’s action by agreeing to stricter gas mileage and carbon-dioxide emission standards. The U.S. Justice Department has opened an investigation into the agreement to determine whether it violates federal antitrust law.

EPA developed the nationwide fuel economy standard in conjunction with the U.S. Department of Transportation (DOT).

**National Standard Mandated**

No state must be allowed to set fuel economy standards for the nation as a whole, which is solely within the authority of the federal government, said EPA Administrator Andrew Wheeler in a September 17 speech before the National Automobile Dealers Association, previewing EPA’s September 19 action.

“We embrace federalism and the role of the states, but federalism does not mean that one state can dictate standards for the nation,” Wheeler said.

“The one national program that we are announcing today will ensure that there is one, and only one, set of national fuel economy standards, as Congress mandated and intended,” said DOT Secretary Elaine Chao at the press event announcing the administration was rescinding California’s fuel economy waiver. “No state has the authority to opt out of the nation’s rules, and no state has the right to impose its policies on everybody else in our whole country. To do otherwise, harms consumers.”

**Reinstating Rule of Law**

Neither California nor any other state is legally entitled to override federal standards, says Tim Benson, a policy analyst with The Heartland Institute, which publishes *Environment & Climate News*.


“The Trump administration is following the law as written, not as radical environmentalists thought it should have been written.

“This move by the administration just ensures climate zealots in California’s legislature don’t get to dictate policy to the rest of the country,” Benson said.

H. Sterling Burnett, Ph.D. (hsburnett@heartland.org) is a research fellow at The Heartland Institute.

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Wind Industry Poised for Decline, Report States

By Kenneth Artz

A new report says impending government decisions could soon result in a sharp decline in expansion of wind power.

The news comes as the industry is expected to experience record growth in 2019 and 2020 and seven states are about to double their wind capacity in the near term.

“Electric power systems are able to get away with wind power’s inherent intermittency when it provides a small percentage of power to the system, but when it gets into bigger numbers like 20 percent or more, it dangerously reduces the safety margin, meaning as more wind is forced onto the power grid, we can expect increasing numbers of power failures.”

JOHN DROZ, FOUNDER, ALLIANCE FOR WISE ENERGY DECISIONS

Tariffs Could Block Wind

A report by the energy consulting firm Wood Mackenzie predicts wind capacity in the United States will experience its largest growth ever in 2019 and 2020, with installed capacity predicted to expand to 121 gigawatts (gw) from 97 gw.

Despite such already planned increases, the industry’s long-term growth prospects are cloudy, says Wood Mackenzie’s report.

U.S. wind turbine manufacturers have brought a case before the International Trade Commission (ITC) saying several countries are dumping turbines at a loss on the U.S. market, damaging domestic turbine manufacturers. In response, ITC is considering a tariff on wind turbines and parts sold by Canada, Indonesia, Korea, and Vietnam, who manufacture 84 percent of the parts used in wind turbines erected in the United States. These tariffs would be placed on top of existing tariffs on towers and other wind-related equipment from China. The tariffs would make wind power projects more expensive.

In addition, the federal production tax credit for wind is scheduled to be phased out at the end of 2019, reducing a subsidy for the industry.

If tariffs hit and the PTC is not renewed, prices will rise substantially and the buildout of wind projects could slow dramatically, says Wood Mackenzie.

Government-Corporate Cronyism

The wind industry is entirely dependent on government favoritism, says Rob Bradley Jr., Ph.D., CEO of the Institute for Energy Research.

“Cronies live and die by the government sword,” Bradley said. “Each and every wind project depends on large tax subsidies as well as preferential federal regulations to be built.

“It is ironic—and rare—the wind industry finds itself on the losing end of government policy, but tariffs on imported parts are just that,” Bradley said.

“How about eliminating all the subsidies, along with the tariffs, and let the market, not government, decide what electrical generation is best?” Bradley said.

Wind power is not ready for prime time, says Jay Lehr, Ph.D., a senior policy analyst for the International Climate Science Coalition, a longtime critic of energy subsidies.

“What could be better than tariffs on imported wind turbines to stifle an industry that only exists on the backs of the American taxpayer, often to the tune of subsidies amounting to 50 percent of their costs?” said Lehr. “Wind turbines on the free market can never offer significant energy or compete with inexpensive fossil fuel power plants, none of which can be replaced by wind power, because they all must stand ready to go to work when the wind is not blowing at the required speeds or at all.”

Reliability ‘Reckoning’ Coming

Wind power steals from the safety margin built into the grid by power regulators to prevent brownouts and blackouts when rare failures of sources and unexpected spikes in peak demand occur,” said Droz. “Most grids have a safety margin of 15 percent capacity above expected baseline demand, which means wind operators should be penalized for underutilizing the safety of the grid, since there have in fact been some blackouts when wind power failed and there was not sufficient backup.

“Electric power systems are able to get away with wind power’s inherent intermittency when it provides a small percentage of power to the system, but when it gets into bigger numbers like 20 percent or more, it dangerously reduces the safety margin, meaning as more wind is forced onto the power grid, we can expect increasing numbers of power failures,” said Droz.

Forced Into Wind

Most of the industry’s support comes from state programs, says John Droz, founder of the Alliance for Wise Energy Decisions.

“Approximately 30 states have a variety of incentives promoting wind power, the most problematic being mandates requiring a certain amount of the electricity provided by utilities must be generated from wind energy,” said Droz. “Why would it ever make sense for a utility to be mandated to use an increasing percentage of any product?

“This is completely contrary to any free-market idea, yet it is how these people have rigged this whole business,” Droz said. “Every part of it is corrupt.”

Grid Costs Not Covered

Another failing of the wind industry is it doesn’t pay its full share of the costs for maintaining grid reliability, says Droz.

“Everyone needs to understand there is no such thing as wind energy by itself on the grid,” said Droz. “One hundred percent of wind energy has to be paired with another source of electric power generation, most commonly natural gas, all of the time.

“When wind goes to zero on the energy grid, which it does frequently, gas is providing 100 percent of the electricity, and when wind goes to 100 percent, gas is providing nothing, but it still has to run in order to be able to provide on-demand power at a moment’s notice when the wind falters,” Droz said. “So, part of wind energy’s cost that is not fairly accounted for is natural gas costs for providing alternative power when the wind is not blowing or to regulate the amount of energy flowing to the grid when it is.”

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.
Federal Court, Trump Administration End Obama-Era WOTUS Rule

Continued from page 1

ephemeral waters and wetlands, including land that is only seasonally wet and physically distant from and not directly feeding into navigable waterways. This brought non-transportation bodies of water such as isolated ponds and abandoned gravel pits under the federal government’s regulatory authority.

In two separate cases, the U.S. Supreme Court struck down such expansive definitions of navigable waters. In doing so, the Court refused to provide a strict definition of the limits to the government’s CWA authority.

In 2015, the EPA under President Barack Obama created the Waters of the United States (WOTUS) rule, removing the limiting word “navigable” from the federal government’s CWA definition. States, property owners, and farm and business groups challenged WOTUS in court, and 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.

States, Industries Challenged WOTUS

After the Supreme Court threw WOTUS back into the district courts, eight states, led by Georgia, filed a lawsuit in the U.S. District Court for the Southern District of Georgia to have WOTUS overturned. Joining Georgia were Alabama, Florida, Kansas, Kentucky, South Carolina, Utah, and West Virginia. Several business groups joined the lawsuit as well.

The plaintiffs argued the Obama administration’s definition of “waters of the United States” was overly broad and “unconstitutionally vague.”

Having published notice in the Federal Register on February 14, 2019 it was replacing WOTUS with a different rule, the Trump administration chose not to defend the rule in court.

‘Must Comply with the Law’

Judge Lisa Godbey Wood, who heard the case for the U.S. District Court in Georgia, agreed with the plaintiffs, ruling WOTUS went beyond the EPA’s legal authority to regulate ephemeral bodies of water.

“The court’s decision is a setback for the administrative regulatory state. Political appointees to the Obama administration arrogated to themselves powers the court now says they never had to begin with.”

CRAIG RUCKER
PRESIDENT
COMMITTEE FOR A CONSTRUCTIVE TOMORROW

a reversal of executive overreach, says Craig Rucker, president of the Committee for a Constructive Tomorrow (CFACT).

“The court’s decision is a setback for the administrative regulatory state,” said Rucker. “Political appointees to the Obama administration arrogated to themselves powers the court now says they never had to begin with.”

‘Greater Regulatory Certainty’

In the aftermath of the district court rulings blocking WOTUS enforcement, the Trump administration completed its plans to scrap the Obama administration’s rule, announcing on September 12 it was returning to standards put in place in 1986 until it could develop alternative water regulations more in line with Supreme Court rulings on the subject.

“Today, EPA and the Department of the Army finalized a rule to repeal the previous administration’s overreach in the federal regulation of U.S. waters and recodify the longstanding and familiar regulatory text that previously existed,” EPA Administrator Andrew Wheeler said in a press release. “Today’s Step 1 action fulfills a key promise of President Trump and sets the stage for Step 2: a new WOTUS definition that will provide greater regulatory certainty for farmers, landowners, home builders, and developers nationwide.”

Joining the states as co-plaintiffs in the District Court lawsuit were business groups and trade associations whose members would be directly affected by the rule, including the American Farm Bureau Federation, American Forest & Paper Association, American Petroleum Institute, American Road and Transportation Builders Association, National Alliance of Forest Owners, National Association of Home Builders, National Association of Manufacturers, National Cattlemen’s Beef Association, National Mining Association, National Pork Producers Council, National Stone, Sand, and Gravel Association, and the Public Lands Council.

“The court’s decision is a setback for the administrative regulatory state. Political appointees to the Obama administration arrogated to themselves powers the court now says they never had to begin with.”

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transportation construction industry, which is fighting the regulation because it could subject roadside ditches to federal regulations, causing delays and driving up project costs,” the group, a co-plaintiff in the suit, stated in a press release.

In developing WOTUS, the Obama administration followed previous presidential administrations’ bad examples in failing to follow the law, says Daren Bakst, a senior research fellow at The Heritage Foundation.

“For decades, EPA and the Corps have struggled to come up with a definition for WOTUS because they have ignored the law,” Bakst said. “So, what did the Obama administration do? They ignored the law.

‘Ignored the Law’

The American Road and Transportation Builders Association welcomed the court’s decision.

“The decision is a win for the nation’s transportation construction industry, which is fighting the regulation because it could subject roadside ditches to federal regulations, causing delays and driving up project costs,” the group, a co-plaintiff in the suit, stated in a press release.

In developing WOTUS, the Obama administration followed previous presidential administrations’ bad examples in failing to follow the law, says Daren Bakst, a senior research fellow at The Heritage Foundation.

“For decades, EPA and the Corps have struggled to come up with a definition for WOTUS because they have ignored the law,” Bakst said. “So, what did the Obama administration do? They ignored the law.

‘Instead of learning lessons from past errors, the Obama administration compounded those errors, creating a grossly overbroad and vague rule,” said Bakst. “The district court’s opinion thoughtfully addresses one issue that isn’t getting enough attention: that the rule violated the law even under Justice [Anthony] Kennedy’s ‘significant nexus’ test, which itself would cover far too many waters, making this decision a really important victory against the Obama rule.”

Overreach Blocked

The district court’s decision represents
Colorado Legislature Overrides Voters’ Oil and Gas Decision

By H. Sterling Burnett

Burnett: In 2018, Colorado voters overwhelmingly rejected a ballot initiative that would have prevented new oil and gas development on approximately 85 percent of the nonfederal land in the state. Then, less than a year after the election, the legislature, with Democrats now in control, placed new restrictions on oil and gas development that are in some ways even more stringent than those rejected by the voters. What are your thoughts on the new law?

Cooke: This horrible, partisan law will devastated the oil and gas industry in Colorado. Colorado is the sixth-largest oil and gas producer in the nation. In November 2018, Colorado voters soundly rejected Proposition 112, a ballot measure funded by anti-energy activists, that would have placed 2,500-foot setbacks from every well drilled in the state—a de facto ban on new development. The Democrats lost on policy but won at the ballot box and now control the Senate, House, and governor’s office.

This new law, Senate Bill 19-181, allows cities and counties to ban energy development under the guise of local control. Currently, nine communities have placed bans on fracking within their jurisdictions.

The county I’m from, Weld County, is the largest oil and gas producer in the state, with over 25,000 wells, more than all the other counties combined. Because of the revenues from energy development, Weld County has no debt—everything is paid for in cash, and there is no bonding for infrastructure—no county sales tax, and very low property taxes. The county commissioners realized what a devastating effect S.B. 19-181 would have on our economy, so they are fostering and encouraging oil and gas exploration through local control instead of going through the Colorado Oil and Gas Conservation Commission.

Burnett: What effect does the new law have on local control of decisions over whether to allow oil and gas extraction?

Cooke: As those of us who opposed S.B. 19-181 predicted, Weld County’s type of control isn’t allowed. Only Boulder-type local control is acceptable under our current governor and Democrat attorney general.

The AG, Phil Weiser, went so far as to send a letter to Weld County’s commissioners telling them Weld County isn’t permitted to exercise its own local control, which would bypass the state in granting the industry permits to drill new wells. According to the AG, local control only applies if a jurisdiction wants to make the rules and regulations more stringent than the state’s.

If Weld County complies with the Democrats, it will be economic suicide. I see this heading to court. Weld County will fight every way we can.

Burnett: If NPV becomes the law in Colorado, local organizers and volunteers obtained more signatures for this initiative than any other in Colorado history. They got over 225,000 signatures to put NPV on the ballot and override the legislature. Why should voters outside of Colorado get to decide whom Coloradans support for president?

Cooke: They shouldn’t! Our Founding Fathers were very wise and distrusted simple majority rule for the federal government, and they feared larger states would dominate smaller states. So they established the Electoral College. The United States is 50 independent states. To become president, a candidate must win a majority of votes in a large number of states.

If NPV becomes the law in Colorado, we will hand over our delegates to California, Florida, Illinois, New York, and Texas. Colorado will be a flyover state, no presidential candidates will campaign here. They will concentrate all their time and effort on those top-population states.

However, there is hope. Coloradans of all political stripes got angry over the Democrats passing NPV and turned their anger into action. They got over 225,000 signatures to put NPV on the ballot and override the legislature.

Local organizers and volunteers obtained more signatures for this initiative than any other in Colorado history. NPV will hang like a millstone around the necks of Democrat candidates in 2020.

H. Sterling Burnett, Ph.D. (hsburnett@heartland.org) is a research fellow at The Heartland Institute.

Official Connections:

State Sen. John Cooke (R-Greeley):
https://leg.colorado.gov/legislators/john-cooke; john.cooke.senate@state.co.us
EPA Allows Environmental Review of Alaska Pebble Mine

By Kenneth Artz

The U.S. Environmental Protection Agency (EPA) rescinded its Obama-era 2014 decision preventing consideration of the Pebble Mine project near Bristol Bay, Alaska.

The ruling does not permit the mine to be built but allows the environmental review process to begin.

History of Government Roadblocks

Northern Dynasty purchased the Pebble property in 2001 and began site assessments of its mineral potential. The company’s current resource estimate is the mine site contains 57 billion pounds of copper, 71 million ounces of gold, 3.4 billion pounds of molybdenum, 345 million ounces of silver, and currently undetermined amounts of palladium and rhenium.

In 2012, under then-president Barack Obama, EPA issued an assessment of the expected effects of a hypothetical mine near Iliamna, Alaska on salmon populations in Bristol Bay, more than 200 miles away. This was the first time in history EPA issued an assessment before receiving any actual mining proposal.

Northern Dynasty objected to EPA’s assessment, pointing out the assumptions in its hypothetical mining project did not reflect actual technologies the company would deploy at the Pebble site to conduct mining or the steps it would take to guarantee environmental protections.

Subsequently, in 2014, EPA imposed restrictions on the Pebble Mine’s use of certain areas to dispose of waste from the proposed mine and issued a decision blocking the U.S. Army Corps of Engineers from allowing Northern Dynasty to begin the formal permitting process.

Lawsuit, Reversal

Northern Dynasty sued in federal court, arguing the EPA actions did not follow proper procedures. In May 2017, now operating under the Trump administration, the agency settled the lawsuit with the company, allowing it to begin the permitting process. EPA’s latest move in the matter formally rescinds its 2014 determination entirely, allowing Northern Dynasty to begin undertaking an environmental review for consideration by the Army Corps and the EPA.

The EPA is finally following the law, said EPA General Counsel Matthew Z. Leopold in a press release announcing the agency’s decision.

“The decision restores the proper process for 404(c) [Clean Water Act] determinations, eliminating a preemptive veto of a hypothetical mine and focusing EPA’s environmental review on an actual project before the Agency,” Leopold said.

‘Assumed the Worst’

EPA’s decision under Obama to prevent the review process from even beginning was unprecedented, says Larry Barsukoff, director of operations for the Alaska Policy Forum.

“Obama’s EPA basically said they were not going allow Northern Dynasty to go through the normal permitting process,” Barsukoff said. “They simply assumed the worst-case scenario about the project and said they would not even look at it.

“Under the Trump administration, we now we have an EPA that says it is going to treat this like any other project,” Barsukoff said. “The standard permitting process companies go through is, if the company is able to successfully show it meets the concerns laid out in the public comment period or any concerns the EPA has, then they have the option of pursuing their project.”

‘A Major Economic Boost’

Mining is one of best-paying industries in Alaska, second only to the oil industry, says Barsukoff.

“The average salary in the oil industry is about $138,000 a year, and the average salary in the mining industry is about $117,000 a year,” Barsukoff said. “So you’re talking about a major economic boost in areas that have never had any real economic activity before.

“The real kicker on this project is the Pebble Mine project is located in an area specifically identified as a mining district,” Barsukoff said. “This area was set aside specifically for resource development, so companies behind the Pebble Mine invested the money to go out and find exactly what was where.”

The project is not located near Bristol Bay and poses no danger to salmon, says Barsukoff.

“The mine site is 250 river miles away from Bristol Bay and 150 air miles away, so you’re talking about a pretty sizable distance,” Barsukoff said.

Unwelcome Outside Influences

Most of the opposition to the Pebble Mine has come from people and groups not based in Alaska, says Jonathan Dehn, Ph.D., a geophysicist and former faculty president at the University of Alaska, Fairbanks.

“The Anti-Pebble Mine groups are very often not based in Alaska,” Dehn said. “They are commonly activists with agendas beyond Alaska who see blocking the Pebble Mine as a means to an end, exploiting Alaska’s challenges for their own purposes.

“For example, the Pride of Bristol Bay gives a phone number in Scranton, Pennsylvania, and the Wild Salmon Center is based in Portland, Oregon,” Dehn said. “It is estimated the Pebble Mine could provide upwards of 1,000 long-term jobs, plus local infrastructure to support the mine, such as a port on Iniskin Bay, which would also benefit the commercial and sport fishing industry, and roads to and from the area. This added infrastructure would help people in an area desperately in need of economic support.”

Not Just Extras

Alaskans are real people with their own aspirations for a better life, not extras in an eco-drama, says Barsukoff.

“I get the impression all these outside eco-extremists and environmentalists, if given the chance, would turn the whole state into a giant eco theme park,” Barsukoff said. “But Alaskans don’t want to be turned into characters living and working in some nature theme park where they are supposed to live on local subsistence, eating food, working, and living in ways dictated by outside interests, looking like we’re just extras in a Patagonia photo shoot.”

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.

INTERNET INFO

Environmental Protection Agency Denies California’s Labeling Requirements for Popular Weed Killer

By Kenneth Artz

The U.S. Environmental Protection Agency (EPA) announced it no longer approves labeling the herbicide as “probable carcinogenic to humans.” The agency no longer would “constitute a false and misleading statement.” The agency no longer approves labels using the warning.

“We will not allow California’s flawed program to dictate federal policy,” said EPA Administrator Andrew Wheeler in a statement announcing the agency’s decision.

Thousands of Lawsuits

EPA’s August announcement is a win for Monsanto and its parent company, Bayer AG, which had suffered losses in three lawsuits in which plaintiffs’ attorneys convinced juries their clients’ cases of non-Hodgkin lymphoma, a blood cancer, were caused by their use of the pesticide, even though the judges in those cases questioned the science linking Roundup to cancer.

Juries have awarded plaintiffs billions of dollars in actual and punitive damages in these cases. The trial judges overseeing the lawsuits subsequently pared back those awards to hundreds of millions of dollars in total.

There are currently more than 13,000 similar cases pending in U.S. courts.

‘Safe and Noncarcinogenic’

EPA’s action is a positive development, especially after several “kangaroo court juries” awarded billions of dollars to plaintiffs who claimed they got cancer solely because of their exposure to Roundup, says Paul Driessen, a senior policy advisor with the Committee for a Constructive Tomorrow.

“It appears the EPA is taking the refreshing, if almost unprecedented, step of insisting policies and warning labels must be based on solid science, rather than on corrupt, highly suspect studies in which the authors had major conflicts of interest, combined with carefully orchestrated media outrage and lawsuits staged by mass tort law firms, anti-chemical activist groups, and social media campaigners,” Driessen said. “Few chemicals have been studied as much as glyphosate, the active ingredient in Roundup.

“In fact, more than 3,000 studies have been conducted by respected government agencies and research organizations worldwide, including Australia’s Pesticides and Veterinary Medicines Authority, the European Chemicals Agency, the European Food Safety Authority, Germany’s Institute for Risk Assessment, Health Canada, the U.S. EPA, and the U.S. National Cancer Institute, and each has found glyphosate is safe and noncarcinogenic,” said Driessen. “Hopefully, EPA’s labeling action will serve as a wakeup call, advising trial judges and appellate courts it’s time to take a much closer look at these cancer lawsuits and start reining in these slick, fraudulent legal practices.”

Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.
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EPA to Rescind East Texas Air-Quality Nonattainment Designation

By Bonner R. Cohen

The U.S. Environmental Protection Agency (EPA) proposes to reverse the agency’s 2016 designation of parts of five east Texas counties near a large coal-fueled power plant as being in nonattainment for sulfur dioxide (SO2) levels under the 1970 Clean Air Act (CAA).

EPA determined the nonattainment designation made by the agency under President Barack Obama relied too heavily on air modeling conducted by the environmental activist Sierra Club, instead of real-world measurements.

Back to Normal Practice

In a proposed rule submitted to the Federal Register on August 22, EPA says it should have given “greater weight” to ambient air monitors in and around Anderson, Freestone, Panola, Rusk, and Titus Counties when determining whether SO2 emitted from the 2,250-megawatt coal-fueled Martin Lake Power Plant, located in Rusk County, Texas, put the counties into nonattainment.

It is usual practice for EPA and states, like Texas, which operate federal air quality programs within their borders, to give more weight to ambient air quality data measured by air monitors than to computer models when determining pollution levels. EPA’s decision, at the end of Barack Obama’s term as president, to give less weight to air monitor data than to Sierra Club’s computer model projections when determining the Texas counties were in nonattainment represented a break from normal protocol.

Big Consequences

Under the CAA’s National Ambient Air Quality Standards (NAAQS), areas with persistent air quality problems are often designated by EPA as in nonattainment. Nonattainment areas are declared for specific pollutants. Nonattainment areas for different pollutants may overlap each other or share common boundaries.

State and local officials face significant incentives to avoid nonattainment status or to remove the stigma as soon as possible.

Areas considered to be in nonattainment can have operating restrictions placed on existing industries and be precluded from siting new industries that provide job opportunities and local government tax revenues. It can also lead to the loss of federal highway funding.

Transitioning from nonattainment to attainment is usually a long and expensive process involving the development of a comprehensive plan to improve an area’s air quality and getting local governments and businesses to comply with the plan.

Power Plants OK

The EPA’s decision to reverse its nonattainment determination came in response to petitions filed by Luminant Generation, which operates the Martin Lake Power Plant, and the Texas Commission on Environmental Quality (TCEQ) requesting it do so.

The Martin Lake Power Plant, which opened in 1977 and was retrofitted with selective catalytic reduction in 2008 to reduce nitrogen oxide emissions, uses fuel from nearby lignite mines and coal from the Powder River Basin in Wyoming.

EPA now proposes to designate the area as “unclassifiable,” which, for regulatory purposes, is the same as being classified as in attainment.

EPA’s proposed rule would also rescind nonattainment designations for two other areas in Texas which were, at the time of being designated as in nonattainment, home to Luminant power plants that closed after 2016.

Legal Action Threatened

The Sierra Club is threatening to sue the Trump administration to overturn its reversal of the nonattainment classification.

A press release from the organization says the agency considered arguments from Luminant and TCEQ that data from air monitors was superior to its modelling at the time it classified the counties as being in nonattainment.

“SO2 pollution from Martin Lake has more than doubled since 2016, and the plant is now the single largest emitter of dangerous sulfur dioxide in the country,” claimed Chrissy Mann, a senior representative of Sierra Club’s Beyond Coal campaign, in the press release.

The Federal Register notice refers to the EPA’s action as “correcting an error” the agency made during the Obama administration in designating the Texas counties as being in nonattainment.

“SO2 pollution from Martin Lake has more than doubled since 2016, and the plant is now the single largest emitter of dangerous sulfur dioxide in the country,” claimed Chrissy Mann, a senior representative of Sierra Club’s Beyond Coal campaign, in the press release.

“Under our Clean Air Act (CAA or Act) authority to correct errors, the EPA is proposing that we erred in not giving greater weight to Texas’ preference to characterize air quality through monitoring, and steps undertaken by Texas to begin monitoring in these three areas, when considering all available information; in relying on available air quality analyses in making the initial designations that the EPA recognizes included certain limitations; or a combination of these two issues,” wrote EPA in its proposed rule.

‘War on Affordable Energy’

EPA is right to decide to rely on air monitoring data instead of pollution projections from models, says Dan Kish, a distinguished senior fellow at the Institute for Energy Research.

“It’s good to see the Trump administration use actual data from air monitoring, rather than relying on Sierra Club modeling, which the Obama EPA was happy to do. Collecting data is much more reasonable than projecting from models. The Obama administration’s last-minute decision in 2016, shortly before leaving office, was consistent with their pattern of waging war on affordable energy.”

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Two Kansas Counties Stop Major Wind, Solar Industrial Developments

By Duggan Flanakin

Two central Kansas counties are applying the brakes to the expansion of industrial wind facilities within their borders.

Reno and Sedgwick Counties turned away efforts by Florida-based NextEra, the world’s largest utility company, to build an 80-turbine project within the counties’ borders.

A decade ago, Kansas was fast becoming one of the top five states in wind energy capacity, as developers built at least 34 industrial facilities across the state. The Kansas Department of Commerce dubbed the state second in the nation in wind energy potential.

At 36 percent, more of Kansas’ electric power capacity, as a percentage of the state’s electric power supply deliverable to the grid, comes from wind than that of any other state.

Public Raised Concerns

In the past decade, the public has raised concerns about the health effects, such as epileptic seizures, and noise from wind turbines, bird and bat deaths caused by commercial wind and solar facilities, and, importantly for the peoples of Reno and Sedgwick County, interference with air traffic.

In a presentation to Sedgwick County Commissioners when NextEra’s proposal for the construction of new wind facilities was discussed, Dave Yearout, principal planner for Wichita and Sedgwick counties, cited research showing wind facilities can cause dangerous atmospheric conditions more than five miles from where large wind turbines are located, which he said could affect small aircraft using small airports and private landing strips across the counties and training exercises at McConnell Air Force Base.

Subsequently, the Sedgwick County Commissioners banned commercial wind facilities from the county and enacted new permitting requirements for commercial solar energy industrial facilities, to protect aviation and small airports in the area. Under the county commission’s new regulations, passed in mid-August, large-scale solar facilities will have to receive FAA approval if they are to be sited within a mile of airport facilities.

The rule exempts installations of small rooftop solar energy systems on homes or businesses, and privately owned windmills 45 feet tall or less.

Residents Petitioned for Vote

Before the Sedgwick County Commissioners enacted the ban, several local landowners owning land near the border of Reno County had leased their properties to NextEra for wind development.

In response, Reno County commissioners approved a petition by county residents to require a unanimous vote by the county commissioners to authorize any wind farm project in the county. The petition may have proven critical. In late June, only one commissioner sided with residents in opposing the NextEra plans, and that single vote was enough to block approval.

NextEra has developed wind and solar facilities in 35 states, including six in western Kansas. The August decision was the first time a major wind farm had been rejected in Kansas in a decade.

At the state level, legislators filed Kansas House Bill 2273 in February, which would have established a state law keeping wind turbines away from homes, parks, public buildings, wildlife refuges, and public hunting areas. Turbines would have had to be at least 1.5 miles from any residential property or public building and three miles from any airport, public hunting area, public park, or local, state, or federal wildlife refuge. The bill never received a vote in the committee.

Serious Aviation, Wildlife Effects

The negative effects of wind turbines and large-scale solar facilities on aviation and birds weigh heavily against them, says Susan Erlenwein, director of Sedgwick County Environmental Resources.

“Sedgwick County has over 30 aircraft runways and is the home to an Air Force base, a national airport, and small aircraft manufacturers, including Learjet, Textron Beechcraft, and Textron Cessna. In addition, Audubon says wind turbines kill an estimated 140,000 to 328,000 birds each year in North America ...”

SUSAN ERLENWEIN
DIRECTOR, SEDGWICK COUNTY ENVIRONMENTAL RESOURCES


WA Governor Inslee Ends Climate-Based Presidential Campaign

By Vivian E. Jones

Gov. Jay Inslee of Washington has dropped out of the Democrat presidential primary race after making climate change the central issue of his campaign.

“Climate change is not a singular issue; it is all the issues that we Democrats care about,” Inslee said during the second Democrat debate. “It is health. It is national security. It is our economy.”

“It’s become clear I’m not going to be carrying the ball,” Inslee told MSNBC host Rachel Maddow when he announced his withdrawal from the race during a segment on her show. “I’m not going to be president, so I’m withdrawing tonight from the race.”

Inslee, who suspended his campaign on August 21, was the third Democrat to end his presidential campaign this year, after former Colorado governor John Hickenlooper and Rep. Eric Swalwell (D-CA).

Failures at Home

As governor of Washington, Inslee has repeatedly failed in his attempts to enact strict policies and laws limiting greenhouse gas emissions in the state. Voters twice rejected referendums Inslee endorsed to tax carbon-dioxide emissions; his efforts to cajole his fellow Democrats, who control Washington’s legislature, to enact laws limiting carbon-dioxide emissions have failed; and in a case currently on appeal before the state’s Supreme Court, regulations his administration enacted to restrict greenhouse gas emissions were struck down by a county superior court as being beyond the governor’s power.

Despite these setbacks in his home state, Inslee presented himself as a single-issue presidential candidate staking everything on fighting climate change.

“We started [out] saying that climate change had to be the number one job of the United States,” Inslee said on MSNBC.

Undistinguished Climate Campaign

Climate was already on Democrat voters’ minds before Inslee joined the race. An April 2019 CNN poll indicated 96 percent of Democrat voters considered it at least “very important” a presidential candidate support “taking aggressive action to slow the effects of climate change.”

With every candidate for the Democrat presidential nomination having outlined his or her own climate change plan, Inslee failed to set himself apart from the large primary field, says Todd Myers, director of the Center for the Environment at the Washington Policy Center.

“He ended up with 0.0 percent in the national poll,” Myers said. “I think that gives you a sense of how influential he was in the discussion.

“Climate change is probably one of the top issues among Democrat voters, and Jay Inslee still had 0.0 percent,” Myers said.

Having withdrawn from the presidential nomination battle, Inslee says he will now focus his efforts on winning a third term as governor.

‘Symbolic’ Climate Battle

Inslee’s suspension announcement came just days after his campaign released the fifth part of its comprehensive climate policy agenda, titled “Community Climate Justice,” outlining a plan for what Inslee called “environmental and economic justice in an inclusive clean energy economy.”

Inslee’s plan included a $3 trillion federal spending package and the promise to create eight million green energy jobs. Inslee also proposed reshaping U.S. foreign policy around climate change, mandating 100 percent clean energy production in the United States, banning sales of new cars not powered by electricity, and eliminating fossil fuel production in the United States.

Democrats have taken up climate change as a major campaign issue more for reasons of virtue-signaling than seriousness about enacting realistic energy policies, says Myers.

“I think climate change is a symbol for Democrats, more than a policy,” Myers said. “The policies that have been proposed on climate change are totally destructive and unworkable, but that doesn’t appear to be a barrier for the Democrats—effective and workable policies are not a prerequisite.”

Symbols Over Substance

The remaining candidates should take heed of Inslee’s inability to gain traction among Democrat voters based on his single-minded focus on climate, says Myers.

“I think Inslee should be rather a lesson to Democrats, a warning to serious people about how climate change as a symbol has overtaken climate change as a rational policy,” Myers said. “I don’t think anyone ever actually looked at Inslee’s record in Washington State, which was miserable.

“Virtually none of his climate policies were ever adopted, and they were rejected by Democrats,” Myers said. “I don’t think he was ever taken seriously enough that people actually scrutinized his record.”

Vivian E. Jones (vivianejones@aol.com) writes from Murfreesboro, Tennessee.
D.C. Circuit Court Upholds EPA Ozone Standards

By Duggan Flanakin

A three-judge panel of the District of Columbia Court of Appeals unanimously rejected challenges filed by industry, some states, and environmental groups to Environmental Protection Agency regulations issued in 2015 tightening the nationwide ambient air quality standard for ground-level ozone from 75 to 70 parts per billion (ppb).

The D.C. District Court rejected claims from energy companies, including coal company Murray Energy, the U.S. Chamber of Commerce, the American Petroleum Institute, and some states that the National Ambient Air Quality Standards for ozone would be prohibitively expensive to achieve, particularly in areas affected by sources of pollution outside their control.

Environmental groups, who challenged the 70 ppb standard as too lenient, being the least restrictive level in the range of standards EPA considered, were also disappointed by the ruling.

Not ‘Arbitrary, Capricious’
The court found EPA's standard could not be overturned unless the agency acted unlawfully or unreasonably in issuing it.

“Agency action may be reversed if it is arbitrary, capricious, an abuse of discretion, not in accordance with law, or in excess of statutory authority,” the court stated in its decision. “We cannot look at EPA's decision as would a scientist, but instead must exercise our 'narrowly defined duty of holding agencies to certain minimal standards of rationality.' We repeat: it is not our job to referee battles among experts; ours is only to evaluate the rationality of EPA's decision.”

The court ruled EPA's decision to set the standard at 70 ppb was not irrational and was within the agency's discretion.

In a partial victory for environmental groups, the court directed EPA to revisit secondary ozone standards established by the Obama administration meant to protect animals and vegetation and scrapped a grandfathering provision allowing some sources in the middle of a permitting process to continue operating under an earlier, less stringent ozone threshold.

‘Middle of the Road’ Decision
The court’s ruling was disappointing but not surprising, says Steve Goreham, executive director of the Climate Science Coalition of America and a policy advisor to The Heartland Institute, which publishes Environment & Climate News.

“I doubt the Supreme Court will take up the case should it be appealed, as the D.C Circuit Court has taken what it believes is a 'middle of the road' approach to regulations grounded in previous court rulings, as industry and states wanted no change in the national ozone standard and environmental groups wanted even tougher regulations,” Goreham said. “EPA's 2015 decision to lower the ozone standard from 75 ppb to 70 ppb, although arguably unnecessary from a public health perspective, was well-researched and received 430,000 public comments.

“The current leadership at EPA may not want to implement this tighter standard, but to avoid doing so they would need to undertake a new rulemaking process and directly challenge the science used to support the standard,” said Goreham. "Such a challenge would be difficult because the court ruled, according to the 1970 Clean Air Act, naturally high background ambient ozone levels should be handled during enforcement, not when setting standards, and it determined industrial cost considerations could not be used when setting appropriate national standards.”

Duggan Flanakin (dflanakin@gmail.com) writes from Austin, Texas.

EPA Exceeds President’s Goals for Reducing Regulations

By Kenneth Artz

Within days of being inaugurated in January 2017, President Donald Trump issued two executive orders to fulfill campaign promises he had made to reduce environmental regulations he said were unnecessarily reducing economic growth.

Executive Order 13771 required agencies to cut two regulations for every new regulation they introduced. It was soon followed by Executive Order 13777 mandating each agency establish a task force and designate an officer to implement the first executive order.

Two years after those executive orders were issued, an internal watchdog report shows the U.S. Environmental Protection Agency (EPA) has exceeded the president’s regulatory reduction goals, removing more regulations per regulation issued in fiscal year 2017 than any other federal agency.

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STEVE GOREHAM, EXECUTIVE DIRECTOR, CLIMATE SCIENCE COALITION OF AMERICA

"The EPA has successfully and fully implemented the requirements of the Executive Order," said Henry Darwin, then EPA's acting deputy administrator, in a memo commenting on the report.

Well Beyond the Call
EPA’s Office of the Inspector General (OIG) released a report in August evaluating the agency’s response to Trump’s executive orders.

The OIG found in 2017 and 2018 EPA issued just four new regulations and cut 26 regulations, far exceeding the two-to-one ratio Trump had mandated. OIG also determined EPA’s deregulatory efforts have saved taxpayers more than $96 million, roughly $40 million more than the regulatory savings goal the Office of Management and Budget had set for the agency.


Kenneth Artz (kennethcharlesartz@gmx.com) writes from Dallas, Texas.
New Trump Admin. Rules Promote Species Conservation

By Daren Bakst

The U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) released final regulations aimed at improving implementation of the 1973 Endangered Species Act (ESA) to protect threatened and endangered species while strengthening private property rights.

As implemented so far, the law has been a failure. Over the ESA’s more than 45 years, only about 3 percent of the species listed as threatened or endangered have been removed from the list because of recovery.

Sen. John Barrasso (R-WY) summed up these results by explaining, “As a doctor, if I admit 100 patients to the hospital and only three recover enough under my treatment to be discharged, I would deserve to lose my medical license.”

Many of the problems with the law have resulted from how the federal government has implemented it. The FWS and NMFS acted to fix the problems by releasing the new rules on August 12.

**Blurred Distinctions**
The most significant protections under the ESA apply to species classified as “endangered,” including stringent prohibitions against activities that would harm those species or their habitats. This often includes sharply restricting how property owners can use their land.

Under the law as written, different, less stringent rules are supposed to apply to threatened species than to endangered ones.

For decades, however, the FWS has applied the same prohibitions to threatened and endangered species alike.

This policy hurt conservation efforts by diverting time and resources from where they were most needed. It also removed important incentives for private property owners to foster species recovery. If the stringent prohibitions didn’t apply to threatened species, private property owners would have an incentive to protect these species from becoming endangered, in order to avoid restrictions on the use of their property.

The FWS’s new regulation properly follows the law, treating endangered and threatened species differently from each other. This is consistent with Congress’ stated intentions and follows what the NMFS has been doing successfully for years.

The change applies only to species to be listed as threatened in the future, not those currently designated as threatened.

**Promoting Transparency**
The FWS and NMFS are also improving the transparency of their actions.

The ESA requires science alone be used to determine whether to list a species as endangered or threatened, without taking into account the estimated costs of protecting a species. The federal government, however, has used this science-only requirement as an excuse to prohibit identifying the benefits and costs of listing a species.

The final regulations still require listing decisions be made without considering costs, but they require the federal government to identify and communicate the effects of these listing decisions.

**Transparency, Not Neglect**
Critics argue this change will require the government to consider economic considerations when listing species. The regulations do no such thing.

There is nothing novel about informing the public about the costs of actions when an agency isn’t considering them in making decisions. This is exactly what the Environmental Protection Agency does when designating the National Ambient Air Quality Standards.

When legislators and the public know what the actual costs and benefits are for conserving species, they can better understand how the ESA might be changed to improve protection of species.

Society has decided to conserve species under the ESA, but private property owners bear much of the cost. Society, not private property owners, should bear these costs. Although more should be done to protect private property owners, this regulatory change will shed light on the hidden costs property owners often incur, such as severe declines in property values.

**Improving Habitat Designations**
Under the ESA, the federal government designates critical habitat for listed species, which may include areas the animals do not currently occupy. These unoccupied areas must be essential to the conservation of the species, the law states.

The new regulations should help ensure any unoccupied areas designated as critical habitat are viable and truly essential to a species’ conservation, thus avoiding extreme situations like what happened in Louisiana when FWS designated 1,544 acres as “critical habitat” for an endangered species known as the dusky gopher frog even though the frog has not been seen in Louisiana in more than 50 years and couldn’t survive on the land designated as critical habitat in its current condition.

**‘Wasting Time and Money’**
A major problem with ESA implementation is the agencies responsible for it have misallocated resources that could be better spent elsewhere. Wasting time and money restricting property rights on land endangered species cannot reside on, as in the case of the dusky gopher frog, is a prime example of this problem.

The administration’s new regulations are designed to focus habitat protection efforts on lands actually capable of sustaining species. As U.S. Secretary of the Interior David Bernhardt stated, “An effectively administered Act ensures more resources can go where they will do the most good: on-the-ground conservation.”

These changes may pose a problem for those who are more interested in blocking land development than in promoting the welfare of threatened and endangered species. For those who want to improve recovery efforts and protect private property rights, these regulations are an important step forward.

*Daren Bakst* (Daren.Bakst@heritage.org) is a senior research fellow at The Heritage Foundation.
El Paso Shooter’s Extreme Environmentalism Deserves Condemnation

By Gregory Wrightstone

The manifesto the El Paso shooter (who will remain nameless here) posted before his deadly rampage reveals that, along with hatred toward immigrants, he held a radicalized view of humankind’s relationship with nature. The manifesto was titled “The Inconvenient Truth About Me,” an evident homage to the many false narratives presented in Al Gore’s climate documentary An Inconvenient Truth.

Unmitigated Hate

The first two sentences pretty much sum up the four-page screed: “In general, I support the Christchurch shooter and his manifesto. This attack is a response to the Hispanic invasion of Texas.”

The Christchurch reference embraces the manifesto of the killer of 51 Muslims in New Zealand, who called himself an “eco-fascist” three times in his 74-page declaration.

The El Paso shooter’s manifesto is dominated by diatribes against immigrants, including invective against “race mixing” and a “Hispanic invasion of Texas.” He advocates creating an American confederacy of territories each designated for a race.

Throughout the document, race hatred is interspersed with vitriol against corporate greed and technological change and an embrace of radical environmentalism. The mass murderer certainly was no right-wing, Trump-loving nut case as he has been portrayed in the media. In his now-suspended Twitter account, he had posted tweets in support of Antifa and socialism, along with anti-ICE rants.

Green Misanthropy

The killer’s own words reveal how thoroughly he was indoctrinated with the belief human actions are destroying the planet and extreme measures are required to save us from ourselves and the world from us. It is plausible to see the document as indicating his perverse environmentalism forms the basis for his racism and anti-immigration views.

“The American lifestyle affords our citizens an incredible quality of life,” the killer wrote. “However, our lifestyle is destroying the environment of our country. The decimation of the environment is creating a massive burden for future generations.”

“Y’all are just too stubborn to change your lifestyle,” the killer wrote. “So the next logical step is to decrease the number of people in America using resources. If we can get rid of enough people, then our way of life can become more sustainable.”

Common Environmental Radicalism

Fortunately, the number of white supremacists with radical, racist, and anti-immigrant views like those of this deluded young man is incredibly small. I have never met one (as far as I know), and I suspect few reading this commentary have, either. Unfortunately, the number of persons around the globe who subscribe to the El Paso shooter’s extreme environmental beliefs is vastly larger and very visible. Many believe, as did the shooter, the Earth would be a better place with fewer people or no humans at all.

Some of the most notorious recent mass killers also subscribed to a radicalized view of the environment. The aforementioned Christchurch mosque shooter wrote in his manifesto, “there is no nationalism without environmentalism’ before killing dozens of people. The Unabomber was radicalized by activist groups such as Earth First! and targeted persons on an environmental ‘hit list’ put out by a group of environmental nihilists.”

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Vile and Hateful Rhetoric

Vile and hateful rhetoric inciting violence against climate skeptics is commonplace. Robert Kennedy, at the 2014 People’s Climate March, said skeptics like me “are contemptible human beings.” A long list of well-known characters—including David Suzuki, James Hansen, and Bill Nye—say climate skeptics should be jailed, or worse.

Former Clinton administration official Joe Romm of Climate Progress predicted mass murder of climate skeptics, writing, “An entire generation will soon be ready to strangle you and your kind while you sleep in your beds.”

Threats, Intimidation, Confrontations

Those of us who write and talk about climate change and dare to confront the so-called consensus opinion on it, pointing out climate has always changed and the recent changes are not unusual, are subjected to threats, intimidation and, at times, physical confrontations by people radicalized by heated environmental rhetoric. I have personally received such threats and was physically confronted by Antifa protestors while speaking in St. Louis last year. In 2017, on Earth Day, seven shots were fired into the office of well-known climatologist and skeptic John Christy at the University of Alabama at Huntsville.

The El Paso shooter apparently succumbed to this relentless barrage of predictions of climate alarm and acted on admonitions to “save the planet” through violence.

There is widespread agreement people should denounce those who promote fear and hatred on the basis of race. A similar condemnation is in order for those who propose harming people in response to irrational and unfounded fears of a climate that has been changing for billions of years.

Climate realists, such as myself and others who have carefully studied the issue, offer a vision of humans wisely using natural resources to flourish on Earth in a way that embraces people—distinctly contrary to the hatred of others and of self that apparently was a source of the El Paso tragedy.

Gregory Wrightstone (gwrightstone@gwrightstone.com) is a geologist and author of Inconvenient Facts: The Science That Al Gore Doesn’t Want You to Know.
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 nsstc.uah.edu/climate. All past data were revised when the methodology was updated in April 2015.

### GLOBAL AVERAGE

The global average temperature was 0.38°C above average.

### SOUTHERN HEMISPHERE

The Southern Hemisphere’s temperature was 0.44°C above average.

### NORTHERN HEMISPHERE

The Northern Hemisphere’s temperature was 0.33°C above average.

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