



Letters

Summer 2015

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In early August, EPA released its long awaited 'Clean Power Plan,' and E&E Legal, along with numerous others, is formulating a plan to bring suit.

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E&E Legal's Four Reports Expose 'Climate Change' Advocates



2015 has been a productive year for E&E Legal's investigatory practice. Since April, E&E Legal has released four groundbreaking transparency reports that expose the hidden truth behind the 'green movement' and its allies in business, federal and state agencies, and non-profit organizations like the Sierra Club. This follows on two reports in the fourth quarter of 2014. The report in April covered green spending on the 2014 election, and what the greens were attempting to buy, which was covered in the [Spring 2015 E&E Legal Letters](#).

Report Exposing Coordination between Select Governors, the White House, and Tom Steyer's Network of Advocacy Groups

On August 25, E&E Legal released its [fourth transparency report](#) in as many months, *Private Interests & Public Office: Coordination*

Between Governors, the Obama White House and the Tom Steyer-"Founded and Funded" Network of Advocacy Groups to Advance the "Climate" Agenda. The report reveals a vast, coordinated, three-track effort by public officials and private interests to promote EPA's expansive, over-reaching and economically devastating greenhouse gas rules, specifically the section 111(d) regulation to shut the nation's fleet of existing coal-fired power plants, as well as the December Paris climate treaty President Obama is expected to sign to replace the Kyoto Protocol.

"Our report pulls the curtain back on a carefully planned and heavily funded 'orchestration' by individuals who have placed their personal interests ahead of the public interest," said Chris Horner, E&E Legal's Senior Legal Fellow and the report's author.

The report is the product of open records requests over the course of a year at the federal level and nearly 30 offices in over a dozen states. The exposé contains appendices with over a hundred pages of source emails and attachments. It details a campaign to use public

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Horner's Report from Belgium

by Chris Horner

E&E Legal Senior Legal Fellow



I met with some old friends and colleagues in Brussels in June, discussing the sorry state of “global warming” politics here and at home. “Climate” is

an obsession in Europe, a continent whose leaders insist on hobbling the rest of the world with policies they’ve inflicted upon their own people and who are in too deep to walk the economically draining disaster back (which as E&E Legal has pointed out, carries terrible social costs).

One friend, Roger Helmer MEP, is hosting an event in the Parliament this November to illuminate the economic harms. Around the same time, the political harms from the upcoming December conference in Paris to agree to the successor to the Kyoto Protocol will be come into sharper focus in the U.S.

Events, as they now stand, appear likely to play out so regrettably that American policymakers need to begin planning in earnest their steps to neuter the scheme.

U.S. problems with Kyoto II/Paris are almost exclusively a domestic squabble right now, if not without international intrigue. French Foreign Minister Laurent Fabius instructed the world to accept President Obama's ruse of insisting the Paris agreement is not a treaty; otherwise, as Fabius explained, it will go before the Senate and the dream of finally roping us into a global energy rationing scheme will die.

This shows that both have learned the lessons of Kyoto: claim it isn't a treaty, beforehand; afterward, declare we've made promises to the world. This shows arrogant disregard for congressional concerns and facts such as that the treaty is largely aimed at Americans, and that our

system does not allow us to breezily make promises without legal consequence.

Now, whether Obama (or the French) call Kyoto II a treaty is not the final word on that score — the Senate can say oh, yes it is. That is a conceivable outcome in the wake of Obama's disastrous freelancing on Iran, even if unlikely for several reasons (none of which are substantive).

Nonetheless, we must now force the discussion about the cynical, inescapable intention behind this collaboration between Obama and our negotiating partners other countries to try and ensure our voters' elected representatives do not play their constitutional role in a pact that, we all seem agreed, is doomed if brought before the Senate.

Other paths include presenting terms acceptable to the Senate, or agreeing to disagree. Instead, they are deliberately engineering a replay of the unpleasantness that followed the U.S. announcement that it would not in fact join the 1997 Kyoto Protocol.

Millennials will not recall the world as it was then, but from April 2001 until the September 11 attacks (and then again, after the shock wore off), a nastiness permeated every event requiring any international cooperation. Join to combat the terrorist threat? Well, first play our global warming game, and we will talk.

This began with then-advisor Condoleezza Rice asserting to European representatives that the Bush administration had no interest in Kyoto (rather than the more elegant: the new administration would continue the Clinton-Gore approach of not seeking ratification). The Europeans and their media allies and partners on the American Left flipped their collectiv(ist) lids.

Anti-Americanism was so bad that Canadian flag-pins sprouted among lapels of Americans traveling abroad. Many just found the day-to-day nastiness more than they wished to tolerate. More substantively, trying to find cooperation at the United

Nations or elsewhere, President George W. Bush plainly was handcuffed by the issue and repercussions.

That this is being again scripted, knowingly, with Obama openly seeking to make things difficult for his successor, and his country, is shocking.

Yet this embodies the chicanery that is the “politically binding pact” of Paris, essentially invented for this purpose (a la “consensus” science), after it was clear that the U.S. treaty process meant any Kyoto-style agreement is a dead letter under our system. The plan became to avoid the Senate then, essentially, confront the next administration with the threat that it sure would be a shame if what happened to Bush happened to you...now, be a good boy and put the pen down and step away from that paper undoing this executive action by further executive action.

The question now is how to prevent a president from compromising U.S. interests as such. If Obama has no qualms about setting his country up as something of a pariah once he's gone, for purely ideological objectives, others might still question the propriety of being part of orchestrating a replay of the post-Kyoto strife.

Mon amis, did you really like this century's first decade? And, American Left: Didn't Obama run promising to improve our standing in the world? (putting aside for the moment how that has worked out)

Obama's move — insisting that an obvious Paris treaty isn't a treaty, so as to avoid the Senate — aims to tie his own country's hands after his term ends regarding something it has rejected at every turn.

The more people know about this unseemliness, the more we talk about it in advance, the less impact the “oh dear, but we promised the Europeans!” card will be, and the easier it will be for a successor to undo by executive act what was cynically put in place as a parting shot as an executive action. ■

Pope Francis Fails to Consider 'Energy Poverty' in his 'Climate Change' Encyclical

by Craig Richardson, Executive Director



(E&E Legal has produced and released a two-minute video that discusses the Pope's encyclical and "Energy Poverty" in Europe)

The 1965 Second Vatican Council document, *Gaudium et Spes* (Joy and Hope) says "the [Catholic] Church...serves as a leaven and as a kind of soul for human society." In the last 40 years, examples of this include Pope John Paul II's relentless condemnation of communism, which was integral to its ultimate collapse, a continuous call for defending human life, and providing a lone voice for the poorest, most marginalized, and forgotten among us.

Pope Francis presents his encyclical, *Laudato Si*, in this same Catholic social teachings tradition. Of course he confronts a world dominated by sound-bites and rapidly moving social media, and enters into a highly charged political debate about energy and the environment.

Those most delighted by the Pope's encyclical are a Leftist secular movement, which includes members of the United Nations, billionaires who have invested heavily in renewable energy sources, politicians, and often extreme environmental and population control organizations. These same groups and individuals dismiss the Catholic Church's voice and claim religion has no place in the Town Square when she defends human life and traditional marriage.

A Washington Post headline declared, "Pope Francis is actually bringing America's environmentalism movement to its religious and moral roots." The Sierra Club said, "This Encyclical underscores the need for climate action not just to protect our environment, but to protect humankind and the most vulnerable communities among us." And socialist

U.S. Senator Bernie Sanders (D-VT), now a candidates for President, stated, "Pope Francis' powerful message on climate change should change the debate around the world and become a catalyst for the bold actions needed to reverse global warming."

Those who typically promote a worldview opposing the Catholic Church's now claim a powerful ally in Pope Francis, asserting the moral high ground in the political debate on energy and environment governmental policies. They're seizing this to push radical policies already tried in Europe. The Pope himself outlines these policies in his encyclical, "There is an urgent need to develop policies so that, in the next few years, the emission of carbon dioxide and other highly polluting gases can be drastically reduced, for example, substituting for fossil fuels and developing sources of renewable energy."

Pushing for renewable energy, and "phasing out" coal-fired power plants has been an unmitigated disaster in Europe, particularly for the elderly and most vulnerable who have literally died prematurely by the tens of thousands as a result. A new term has emerged to describe this phenomenon: Energy poverty, which occurs when a household spends ten percent or more of its disposable income on the rising cost of energy, increasingly unable to meet basic needs to heat, cook, light, or power basic appliances.

And what is the underlying cause of skyrocketing European energy poverty, which according to the EU's Eurostat office affected nearly ¼ or 122.6 million of EU citizens in 2013? It is EU-mandated lower carbon emissions targets – the very same "climate change" policies pushed by the Left and now echoed by the Pope – which has resulted in skyrocketing energy prices. "Legally binding targets to lower carbon emissions by 2020 mean that energy markets need to become cleaner, but the

utilities say they cannot afford to finance the costs, so these will increasingly find their way onto customers' bills," reported Reuters in 2013.

Naturally, those least able to afford skyrocketing energy costs are the hardest hit. And these policies are killing people. The Guardian reported that in the winter of 2012-13, 31,000 extra deaths occurred in England and Wales, a 29% increase over the previous year, with 30-50% being linked to the cold indoors. "And not being able to heat your home also takes a huge toll on health in general: those in fuel poverty have higher incidences of asthma, bronchitis, heart and lung disease, kidney disease and mental health problems," the newspaper reported.

An Independent's headline, reporting on the impact of energy poverty in the UK, declared: "Long, cold winter for 3 million who can't pay their energy bills; Fears that 200 people a day could die as temperatures fall and prices rise." BBC News said according to one study, one-third of the elderly and nearly 60% of the study's disabled respondents in Northern Ireland were forced to choose between eating and heating. And in 2013 the Telegraph reported that in England, electric bills may exceed mortgage costs within 5 years.

Der Spiegel headline said, "Germany's Energy Poverty: How Electricity Became a Luxury Good." The article explains that in 2013, "German consumers will be forced to pay €20 billion (\$26 billion) for electricity from solar, wind and biogas plants – electricity with a market price of just over €3 billion." Die Welt reported that 800,000 Germans are unable to pay their electric bills, and another German newspaper called rising energy prices a "second rent."

The cruelest fact of all is that Europe's "climate change" policies are "Worse than useless," as an Economist headline describes them. Economist Bjorn Lomborg wrote in a

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Virginia leaders should reject the Californication of their power grid

by Tom Tanton, E&E Legal's Director
Of Science and Technology Assessment



The idea of Virginia doing things “the California way” doesn’t make

much sense. Unfortunately, Virginians may not have a choice if the Obama administration has its way. The U.S. Environmental Protection Agency will soon finalize the Clean Power Plan, requiring states to reduce carbon dioxide emissions by 30 percent by 2030. To meet these drastic reductions, which will have no impact on global temperatures, every state, including Virginia, will have to impose California-style taxes, manipulate markets and enforce short-sighted mandates — the same policies that have contributed to the Golden State’s sky-high energy prices and persistently high unemployment. Take it from a native Californian and former official with the California Energy Commission: You don’t want our energy policies.

In 2006, California passed its landmark energy mandate requiring citizens and industry to reduce greenhouse gas emissions to 1990 levels by 2020. Center to the law is California’s cap-and-trade system, a costly carbon-trading scheme that is the stuff of Enron’s dreams. Another piece is California’s renewable electricity mandate, which requires utilities to purchase 33 percent of their

electricity from unreliable sources like wind and solar by 2020.

This regulatory system is tortuous. California’s Database of State Incentives for Renewable Energy counts 200 different state programs that mandate or subsidize renewable energy production. That’s on top of the 28 federal programs that further inflate California’s renewables industry and raise consumer prices. These programs were supposed to “drive long-term investment” in wind and solar. Instead, California’s green energy dream has turned into a nightmare. Residential electricity prices are 40 percent higher than the national average and eighth highest in the nation. Expensive energy also contributes to California’s stubbornly high unemployment rate, which at 6.3 percent sits a full percentage point higher than the national average. Additionally, California suffers from an increasingly unreliable electric grid. California’s grid operator has warned that, with less generation from conventional sources and more from unreliable renewable sources, “the system becomes increasingly exposed to blackouts when generation or transmission outages occur.” Despite these ill effects on the economy and the power grid, EPA and national environmental groups think policymakers in Sacramento got it right. They say California has a head start on EPA’s grid of the future. However, these observers fail to realize that California’s foolish policies make even less sense for the rest of

the country.

First, California is blessed with mild temperatures, so heating and cooling expenses take less of a toll there than most other places in the U.S. Second, California currently imports much of the reliable power it needs. If Virginia and every other state in the country imposed California’s regulatory scheme, we would run out of places to produce reliable electricity. Third, California’s economy does not support energy-intensive manufacturing. Part of the reason the manufacturing industry — and the jobs it supports — left California in the first place is its higher energy costs.

But despite California’s failures, Washington hasn’t learned a thing. The Clean Power Plan calls on states to craft their own compliance plans, and EPA pretends it’s offering them flexibility. But the rule is so strict that, in reality, EPA is forcing states to impose some mix of California-style capping, taxing and mandating.

The EPA hails California as a model for the nation, but it’s more like a cautionary tale. States that choose to comply will become accomplices in EPA’s plan to export California’s failed energy policies nationwide, and with predictable results — higher costs, less reliability and lower standards of living. States that aren’t interested in this outcome should reject the EPA’s demands to submit compliance plans. If policymakers in Richmond come up with the same answers as those in Sacramento, they’re asking the wrong questions. □

Energy Poverty (Cont.)

Telegraph article, “For twenty years, the refrain has been promises to cut CO₂, like the Kyoto Protocol. For twenty years these policies have failed.” It’s time to balance the cost of climate alarmism against the fact that the proposed policies have been recognized as likely to have no demon-

strable effect on the actual climate.

Pope Francis had a tremendous opportunity to address one of the most serious moral issues of our time. Instead, he has given credence and momentum to a movement that has already implemented energy policies that have devastated Europe’s most vulnerable. And now, with a Papal blessing, the push is on

to impose the same in the United States and elsewhere in the world. □
(Editor’s Note: In addition to serving as the Executive Director of the Energy & Environment Legal Institute, Craig Richardson holds a Master’s Degree in Catholic Moral Theology. E&E Legal plans to highlight ‘Energy Poverty’ as a central issue of the poor during the September. Papal Visit to Washington.)

E&E Legal's Receipt of IM Messages as Part of EPA FOIA Request Groundbreaking

by Matthew Hardin, FME Law Counsel

E&E Legal recently obtained its first batch of Instant Messaging (IM) records from EPA. While E&E has been trying to obtain IM records from various agencies since 2013, we were never successful until now. Agencies claimed that the records didn't exist, that the relevant software did not "capture" the messages, or that the IM conversations were not truly "records" within the meaning of federal law. Email correspondence obtained by E&E Legal and others had alluded to IM conversations which would have been responsive to our requests, but the IM conversations were never produced.

Obtaining records other than emails has been a major push for E&E Legal and its attorneys in recent months, because changes in technology have led to increasing amounts of government business being conducted through new types of software. Government employees who in years past would have corresponded via inter-office memos saved in an office filing cabinet are now chatting online or using videoconferencing software. While the law is clear that all records generated on any technology are subject to the Freedom of Information Act, it can be much tougher on a practical level to figure out what technologies bureaucrats are using and how to search them for records that will shine light on their activities.

When Chris Horner caught Lisa Jackson using an alias email address two years ago, our friends at the Competitive Enterprise Institute noted that the earliest emails from Lisa Jackson using her "Richard Windsor" email address referenced a chat technology called "Samtime" which officials at EPA had used to discuss creating the alias email account. This led to subsequent requests and eventually lawsuits from various groups seeking copies

of any Instant Messaging records held by EPA. While agency employees referenced chat technologies in email records E&E and others obtained, we were never successful in obtaining records indicating what the bureaucrats were discussing using technology they believed to be more private than emails or other types of correspondence. Followup requests and litigation showed that EPA employees were using practically every option to avoid generating records they believed would be subject to FOIA, from arranging meetings at private coffee shops, to using text messaging to conduct official business. These excuses, while never convincing, now appear to be over. EPA recently changed its website to acknowledge that IM conversations "may" be public records subject to the federal Freedom of Information Act.

From EPA's Website: *Are instant messages (IM) records?*

Yes, in certain circumstances. They are similar to e-mail messages; that is, if the messages are needed to substantiate your work, you must treat them the same way you would any e-mail record. You need to capture the text of the message, as well as who the message is to/from and

the date and time. Also, due to the informal and sometimes cryptic nature of IM, it may be necessary to transcribe or capture the message in another format much as you would for a telephone conversation or other verbal communication if it is needed to document your activities. And finally, it is important to be careful if you use a non-EPA IM product to communicate with external users because it could result in unauthorized disclosure of information.

Records obtained last month by E&E Legal are significant in that they show EPA employees discussing various energy and work-related matters through EPA's instant messaging software, rather than online. E&E remains hopeful that EPA's newfound faith in its own ability to preserve and produce IM records will lead to further insight about how EPA and other federal agencies conduct their day-to-day business. Just as emails changed the way government conducted its day to day operations, instant messaging software has changed how employees at EPA interact with each other and formulate policies.

While software has changed and always will, federal open records laws and E&E Legal's commitment to transparency in government remain as strong as ever. □

FOIA EPA-HQ-2015-005176 0025

Klasen, Matthew

From: Passmore, Margaret
Sent: Monday, April 15, 2013 8:29 AM
To: Passmore, Margaret; Forren, John
Subject: Conversation with Margaret Passmore

Forren, John [7:47 AM]:

Mags -- would you mind sharing the email you received from Greg about instructing you to undertake certain tasks? It would remain in the strictest of confidence.

Margaret Passmore [7:48 AM]:

it was in the chain regarding the comments to Cranyon. you saw it last week. I don't want to make a big deal out of this particular instance. It's more about how work assignments are distributed on the team in general.

Forren, John [7:49 AM]:

Ok -- I'll take a look. I didn't look down through the email string.

I want to be sensitive to the distribution of work assignments. I'd like to chat with you sometime today about it if you don't mind.

Margaret Passmore [8:22 AM]:

today will be tough. how about early tomorrow am

Forren, John [8:28 AM]:

Okay.

Sample IM E&E Legal obtained as part of its EPA FOIA request and production.

Transparency Reports (Cont.)

offices, in very close collaboration with wealthy benefactors, to advance and defend President Obama's climate change regulatory and treaty agenda. This quasi-governmental campaign involves more than a dozen governors' offices, with a parallel advocacy network and political operation funded and staffed by activists paid through ideologically, economically and politically motivated donors.

The report is timely given President Obama's ongoing tour to promote the same EPA rules that these governors and "major environmental donors" scheme to promote in the correspondence released today. This includes a stop today at Harry Reid's "clean energy economy" conference, curiously also sponsored by the same donors as those playing a leading role in today's report.

Indeed these emails E&E Legal uncovered also show this campaign was developed with the early, active support and participation of the White House, which went beyond enthusiastically embracing the plan and follow up meetings and calls, to even directing the governors to what one green trade-press outlet calls a "shadowy group" affiliated with then-Chief of Staff John Podesta. The White House's followup actions, as one governor's aide praised them, were "moving dials". Podesta also convinced the governors' offices that their plan should be broken into separate, complementary pillars. The latest email obtained, from May of this year, shows the governors' campaign arranging to coordinate with the State Department.

The scheme took shape at a meeting in the White House in December 2013, after which the Obama administration launched coordinated with the "core group" of activist Democrat governors to design one of what we see are three tracks to promote the climate agenda. One was run by the Steyer network and left-wing foundations. Another is

run by governors with green groups, which are "useful" but whose "standard NGO shaming strategy might not deliver". A third, run by the White House includes, in the words of a senior aide, "a few other tracks with private sector and unusual allies".

Nearly every aspect of this effort, from the key early players to the funders and even the director the governors' campaign hired — housed by some state's taxpayers in the Hall of States in Washington, DC, overhead paid for by as-yet unknown means — has direct ties to a scandal involving "clean energy" donors and conflicts of interest, one which felled Oregon's sitting governor earlier this year.

In what is possibly the most intriguing element, seemingly out of an episode of "House of Cards", Democratic governors' aides repeatedly reference a plan of "creative engagement" to "compel" certain electric utilities — those subject to their jurisdiction whose businesses cross lines into states led by Republicans — to bring "red state" governors around to support the EPA rules: "[B]ecause there are key utilities whose service territories cross red and blue states Governors in these states could quietly engineer a breakthrough strategy that compels utilities in key red states to lead the charge to win over a key Governor, rather than rely on a standard NGO-shaming strategy that might not deliver."

The "core group" of governors also coordinated with Democratic mega-donor Tom Steyer and his managing partner, Ted White, who directed them to "affiliated groups that we founded and fund (such as NextGen Climate Action, or Next Generation, or AEE [Advanced Energy Economy])". Those groups in turn underwrote consultants and activists to hand-hold governors through implementing the Obama EPA's rules, keeping them from the clutches of the "just say no" states.

This core group soon expanded to more than a dozen states, coast-to-coast, embracing a

four-point plan which they soon called the Governor's Climate Compact or GCC, which was ultimately rebranded as the Governors' Climate Accord or GCA and now goes by the name of the Governors Clean Energy Initiative (none of which have any internet footprint whatsoever, and begging the question who is indeed paying for its director and other overhead). The emails do reflect an awareness that the agenda's lack of popularity in the "flyover states" necessitated a flexible timeline and keeping some offices' involvement quiet, specifically citing elections as a concern.

Report on collusion between the EPA and green pressure groups in writing Green House Gas Rules

As the EPA dropped its new Green House Gas, E&E Legal released a devastating report detailing how the EPA relied extensively and secretly with green advocacy groups in developing the rules. On July 30, E&E Legal released: [Back to Square One: Unlawful Collusion with Green Pressure Groups Should Doom U.S. EPA's Greenhouse Gas Regulation](#). In addition, E&E Legal also released a [short video](#) that accompanied the report.

The report, which is based on e-mails and other documents obtained under numerous Freedom of Information (FOIA) requests and litigation, details illegal activities by EPA staff, colluding with certain environmental lobbyists to draft EPA's greenhouse gas (GHG) rules behind the scenes, outside of public view, and to the exclusion of other parties. More importantly, it clearly shows that EPA must start anew if it wishes to regulate GHGs.

With EPA's GHG rules going final any day, it is critical to inform the public of the emails detailed in this report for what they show about how EPA has developed these costly public policies with select, ideologically aligned outside interests, and its continuing efforts to obscure and

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Transparency Reports (Cont.)

even hide the content of discussions with those same lobbyists.

“E&E Legal has obtained proof that EPA’s GHG rules are the product of unlawful collusion and are themselves therefore unlawful,” said E&E Legal Senior Legal Fellow Chris Horner and author the report. “Congress or the courts — or EPA, in a moment of rationality — should stop these rules from taking effect before the (intended) anticipatory harms of a sham rulemaking are imposed upon millions of Americans, without years of delay and devastation before the ultimately illegal agency rulemaking is overturned.”

EPA is a regulatory agency tasked with protecting the environment. EPA can regulate greenhouse gases thanks to the Supreme Court’s *Massachusetts v. EPA* decision. It is not compelled to do so, and it remains prohibited under the law from regulating with an “unalterably closed mind”, for the purposes of completing a “naked transfer of wealth”, or to do the bidding of ideologically aligned pressure groups.

“This pattern of conducting official business in secret and outside of the legal parameters is unfortunately a hallmark of this Administration,” said E&E Legal Executive Director Craig Richardson. “In the case of the EPA, green groups led by the Sierra Club and NRDC set up shop at the EPA, even before Obama took office, with a plan to eliminate the U.S.’s most abundant source of electricity, coal-fired power plants. Part of this was to shift the public’s wealth to renewable energy, where the large benefactors of these same green groups are now poised to make significant money.”

The report comes as President Obama prepares to announce these rules next week, and follows an E&E Legal interim report released last September which also showed that EPA was working with outside green lobby groups on a common regulatory agenda, often with deliberate

secretiveness and unlawfully. Since the 2014 report, E&E Legal has pried many hundreds of relevant emails out of EPA in several requests and lawsuits. The record is not complete, of course, but reflects only those records responsive to E&E Legal’s search terms and that EPA, or its now-departed activist-staffers, decided to produce. EPA continues to improperly withhold certain obviously important information with no conceivable legal justification.

Report on Sierra Club’s Billionaire Donors

As the old adage goes, “follow the money.” In its July 9th report, *Big Donors...Big Conflicts: How Wealthy Donors Use the Sierra Club to Push Their Agenda*, that’s exactly what E&E Legal did.

Big Donors...Big Conflicts was a follow-on report to one *E&E Legal produced last fall on the Sierra Club Foundation*, which showed how eight of the Foundation’s 18 directors own or operate organizations that directly benefit from its Beyond Coal campaign, the Sierra Club Foundation’s single most expensive program. This type of “self-dealing” is a violation of IRS; a clear case of a private individual receiving “goods and services” from the Sierra Club to their direct and personal benefit. In response, E&E Legal filed a referral with the IRS pointing this out. In this report, E&E Legal documents similar benefits accruing to some of Sierra Club’s largest donors and, specifically, how they appear to use the Sierra Club for market manipulation. Such self-dealing by donors is prohibited by the IRS.

“What is apparent from this latest report is that very wealthy individuals and family foundations use the Sierra Club as hired guns to beat up the coal industry, and to push renewable energy while these same individuals stand to gain significantly from this market manipulation,” said E&E Legal General Counsel David Schnare. “This is a blatant violation of the IRS tax laws,

and we will be filing a referral with the tax agency reporting several of the Sierra Club’s largest donors as we did last fall regarding the eight Sierra Club Foundation directors who engaged in similar activities.”

What is clear from examining the large contributors to the Sierra Club is that these donors seek to use the Sierra Club to manipulate government policies in order to irrevocably alter the world’s energy portfolio in a manner that benefits the donors and their businesses. This strategy appears to have been put in place in the late 1980s and early 1990s. The Energy Foundation, for example, was launched in 1991 by three extremely wealthy family foundations, including the Rockefeller Foundation.

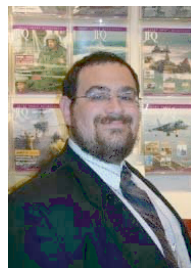
“Looking back to the late 1980s, what emerges is that these influential elites, or ‘one-percenters,’ dedicated themselves to sounding alarms about ‘global warming,’ which morphed into ‘climate change’ as conditions demanded,” said Craig Richardson, E&E Legal Executive Director and author of the report. “Huge money followed from some of this country’s largest and most influential foundations, much of which ended up in the hands of groups like the Sierra Club.”

Other billionaires, all large contributors to the Sierra Club and including Michael Bloomberg, Nathaniel Simons, and Roger Sant, jumped into the fray. Their strategy is simple. Phase I targeted coal as the threat that must be arrested, claiming anthropogenic CO2 emissions are the root cause of ‘climate change’ and threaten a catastrophic future, thus opening the door to non-coal technologies in which they have invested; and to create movement in the markets that these men can manipulate to their own hedge fund benefit. The group’s unprecedented contributions allowed them to engage in one of the most intense and thorough public relations, political, and grassroots assaults ever waged.

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Legal Battle over EPA Carbon Regulations begins anew with Rules Release

by Chaim Mandelbaum, FME Law Counsel



In June 2015, the D.C. Circuit decided *In RE: Murray Energy*, that challenges to the EPA planned carbon regulation would have to wait until EPA released the final rules to bring legal objections to these harsh regulations. On August 3rd, EPA released the final version of its Clean Power Plan, which proved to be even more divisive than the original proposal.

From the outset the Clean Power Plan required individual states to meet carbon emissions reductions standards based on energy production and consumption profiles for two sub-categories of existing fossil fuel-fired electric generating units (“EGUs”): coal- and oil-fired units and natural gas-fired combined cycle generating units. EPA would impose an emissions reduction goal for each state based on that state’s power generation structure, but allow each state to pro-

pose a plan on how to achieve the goal. The states must develop implementation plans describing the means by which they will meet their goals but the states are allowed to use emissions trading schemes to meet their goals. The federal plan, which serves as a backstop for state plans, contains enforceable emission limits for individual affected power plants. States must begin to cut emissions by 2022 at the latest and must continue cutting emissions through 2030.

The final rules EPA rules proved to be even harsher than the original proposal. Although they delayed initial implementation for two years, to 2022 from 2020, they still require states to submit initial plans by 2016 and final plans by 2018, or else the EPA will impose its own plan on the state. Moreover the EPA increased the target goal for carbon reductions to 32% below 2005 levels by 2030, up from the originally planned 30% in reductions. Despite numerous issues raised, including in comments submitted by The Energy

and Environmental Legal Institute, regarding the technical and legal viability of mandating the use of Carbon Capture and Sequestration (CCS) technology, EPA decided to retain the requirement that new coal-fired generation units install CCS, though the plan does mandate a lower level of CO₂ capture than did the proposed rule.

The legal battle over the new rule has already begun, although it has not yet even been formally published in the Federal Register. Sixteen states already appealed to EPA for an administrative stay of the final rule, which would delay implementation until a Court could review legal challenges to the regulation. After failing to hear from EPA on the request for the stay, fifteen states sought an emergency stay with the D.C. Circuit in order to delay the implementation of the regulation’s deadlines coming into effect until the Court can review the rule. Once the rule is formally published in the Federal Register, there will be 60 days in which parties can petition the D.C. Circuit to review the rule, and many groups, including E&E Legal, plan to do so. ▢

Transparency Reports (Cont.)

Phase II of their campaign was a heavy push on government policies promoting renewable energy – primarily wind and solar. These intermittent energy sources are not an alternative to what is known as “dispatchable” energy sources such as coal and natural gas-based electricity and thus cannot replace the older, cheaper coal and gas generation. In 2009, this second phase accelerated in earnest with the Obama Administration’s policies to prop up renewable interests, benefiting these donors, while disabling coal through regulatory policy. Similarly, states pushed renewable energy rules requiring a percentage of a state’s consumption be composed of wind and solar.

In addition to serving the obvious financial and generally ideological interests of Sierra’s donors,

the Sierra Club’s policies also serve donors who succor population control. This includes the family foundation of William Hewlett, a Sierra Club supporter, which is dedicated to population control and view environmental issues as a means to curb and ultimately reduce human involvement in the world as well. This, of course, is nothing short of a war on the poor, the antithesis of a war on poverty.

“This report helps answer the mystery of why the Sierra Club abandoned the mission of its founder John Muir, which was to protect this country’s most sacred nature resources,” noted Richardson. “When you see the hundreds of millions of dollars pumped through the Sierra Club for its war on coal – an effort that clearly benefits the very same people who are donating the money – it’s clear the Sierra Club is now just a mercenary force beholden to the highest bidder.”

Big Donors...Big Conflict was released through E&E Legal’s special project, *Sierra Club Unearthed*, an investigatory portal aimed at revealing the extent to which a small group of national hacks have hijacked the Sierra Club and have used it for their own financial and political purposes. ▢

E&E Legal Letter is a quarterly publication of the Energy and Environment Legal Institute (E&E Legal). The publication is widely disseminated to our key stakeholders, such as our members, website inquiries, energy, environment, and legal industry representatives, the media, congressional, legislative, and regulatory contacts, the judiciary, and donors.

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