



E&E Legal Launches “Sierra Club Unearthed”



**SIERRA CLUB
UNEARTHED**
FOUNDED 1892. CORRUPTED 2000.

by Craig Richardson, Executive Director

In early April, E&E Legal launched *Sierra Club Unearthed*, a special project of the watchdog group. The goal of Sierra Club Unearthed is two-fold: 1) Use investigatory research and other information to document 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; and 2) Provide a confidential portal for local Sierra Club members to share their “horror stories” about the national Sierra Club’s activities with the goal of returning the Sierra Club to the original mission of its founder John Muir.

The Sierra Club Unearthed website documents several areas in which the national Sierra Club has sold out, including their “War on Coal,” which directly financially benefits 8 of the Sierra Club Foundation’s 18 Board of Directors due to their ownership and/or management of renewable energy companies – a segment of the

market that would certainly benefit if coal’s share were diminished. Its “War on Coal” also coincided with natural gas producer Chesapeake Energy’s \$26 million donation to the Sierra Club for the express purpose of forcing coal-fired electricity companies to switch to natural gas.

Other areas exposed through the site include the fact that the Sierra Club is engaged in direct commercial sales – creating unrelated business taxable income (UBTI) – on which they have never paid taxes. For example, the Sierra Club has an exclusive deal with Sungevity, a global solar company, that provides the Sierra Club with a \$750 kickback on each product sold but there is no indication that they are reporting this as income. The group also hawks hats, and vacation packages – for profit ventures – again with no evidence they are paying taxes on this income.

Another area the Sierra Club – a non-profit organization – may have violated tax laws is the group’s extensive foray into local, state, and national politics. During the 2014 national elections, the Sierra Club, along with other green groups, spent heavily in political races, using their
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Shortly after launching *Sierra Club Unearthed*, E&E Legal released another investigatory report, this one focusing on the enormous amount of campaign spending the Sierra Club and other green groups spent in the 2014 election.

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E&E Legal's David Schnare Debates Sierra Club's VA Executive Director on "Climate Change"

by Chaim Mandelbaum, FME Law Counsel



On April 30th 2015, the Thomas Jefferson Institute for Public Policy and WCVE PBS Rich-

mond hosted a debate on climate change and the future. The debate was titled "Living with Climate Change" and it featured the Glen Besa, Executive Director of the Virginia Sierra Club debating with Dr. David Schnare, General Counsel of the Energy and Environment Legal Institute. The debate was moderated by Bob Holsworth, the Founding Director of the Center for Public Policy and the L. Douglas Wilder School of Government and Public Affairs at Virginia Commonwealth University.

The debate proved to be a frank and spirited exchange, while still remaining civil and decorous. Dr. Schnare opened the debate by pointing out the vast uncertainty that exists with regard to the issue of climate change. He explained how difficult it is to predict what, if any, future global temperature changes may occur. He explained how, despite the many dire predictions, there has been little change in global temperatures over the last decade,

and that sea levels have not risen at a rate beyond the historical levels of change. Dr. Schnare pointed out the necessity of taking steps now that make sense and are reasonable, regardless of whether the worst or best case scenarios unfold in the future. This was in contrast to Mr. Besa, who harped on the concerns that we would only see the worst case scenarios.

Dr. Schnare pointed out many common-sense solutions to problems, like those faced by Virginia in Hampton Roads. He suggested increased support for wetlands development along the coast, to absorb sea level fluctuations. He urged support for nuclear power to help deal with concerns about carbon dioxide, and he stressed the need to support projects that will have minimal impacts on Virginia's environment, while still supporting its growth and development, such as pipelines to bring natural gas to market.

Dr. Schnare also raised concerns about the EPA's proposals regarding new regulations for power plants. While Mr. Besa was strongly supportive of these new regulations, Dr. Schnare pointed out studies which showed the substantial negative economic effects of these regulations. This was also a major concern

of the audience, which asked about how much the EPA regulations would cost the citizens of Virginia. Dr. Schnare pointed to work by the Virginia State Corporation Commission which found that it would cost citizens of the Commonwealth billions in increased electricity rates and more in lost economic growth and lost jobs if the EPA plans went into effect. He also pointed to studies done by the federal government which show that as electricity rates rise people will be forced to forgo being able to cool their homes in blisteringly hot summers or heat their homes during cold winters. Many may be forced to choose between that and paying for other necessities.

In many areas Dr. Schnare and Mr. Besa agreed, such as the need to make Virginia more energy efficient. However it was Dr. Schnare who came to the debate with proposals that would both help solve problems and also support the economic growth of Virginia. In the end both parties agreed that debates like this are necessary, as states and the federal government decide how to regulate, and how to spend billions on future power generation facilities, and future distributions grids.

The debate will air on May 14 at 9 pm on WCVE PBS Richmond / WHTJ PBS Charlottesville. □



The PBS taping of a debate, "Living with Climate Change," featured E&E Legal's General Counsel David Schnare (middle), and Virginia Sierra Club Executive Director Glen Besa (left). Bob Holsworth (right) of VCU moderated the debate.

Rebranding the EPA's clean air agenda: It's no longer about saving the polar caps

by Chris Horner, Senior Legal Fellow
Washington Times, April 13, 2015



On Thursday, the U.S. Court of Appeals for the District of Columbia will hear an important case, *Murray Energy v. EPA*, regarding what used to be the Environmental Protection Agency's global warming agenda. At issue are sweeping rules that amount to rewriting the Clean Air Act, an effort made necessary when Congress, via the proper democratic process, rejected turning that act into a global warming law for rationing our most abundant sources of energy.

The reason behind Congress rejecting the scheme also explains President Obama's effort this past week to sway the court, indicating in an interview widely promoted by the White House that global warming possibly caused his daughter Malia's asthma.

This may seem a stretch given that since Malia was born in 1998, the earth has experienced no increase in mean temperature. Such a link is at best highly tenuous, particularly given that one of Malia's parents (Mr. Obama) was a smoker.

Neither the public nor Congress has bought into the global warming alarmism, so Mr. Obama has decided it is instead about asthma. Not that anything the EPA proposes would detectably impact the climate (it wouldn't, as the agency itself admits). Hence, the breathtaking transformation of these air quality rules into, of all things, a crusade against asthma.

Documents I recently obtained under the Freedom of Information Act lay out just how we went from forestalling the end of the world — which, administration officials also acknowledge, didn't poll well — to something with which the rules at issue have little to nothing to do. Instead, at root these rules are about Mr. Obama's vows to cause "electricity rates [to] necessarily skyrocket," efforts to

"bankrupt" coal, and finally make renewable energy "the profitable kind of energy."

Mr. Obama is succeeding on two of those three counts even though the new EPA rules have not taken effect yet. With plants closing, the reliability of our electricity generation and delivery system threatened, and communities being crushed, you might wonder whether those are proper objectives for the government's police power.

That is a legitimate legal question not presently before the court but one that Mr. Obama's zealous agenda certainly begs. Regardless, by statute Clean Air Act cases go straight to the D.C. Circuit and, over the EPA's objections, it was owing to the damage is already being done that the court accepted *Murray Energy's* "extraordinary writ" to hear the case now.

The issue is whether the EPA exceeded its authority. In 2009, when the House passed a bill to allow the EPA's adventurism, the public blowback was so severe that the Harry Reid-controlled Senate let the matter die. That same year, EPA senior communications adviser Allyn Brooks-Lasure sent a memo to then-EPA Administrator Lisa Jackson explaining the need to "shift from making [the global warming agenda] about the polar caps [to] about our neighbor with respiratory illness."

In essence, he wrote, "Americans are worried about the air they're breathing. We hear them. And this is why we're doing [this]. This is part of EPA's proactive mission to protect Americans."

He continued: "[W]e must begin to create a causal link between the worries of Americans and the proactive mission we're pursuing," and using "effective communications and a proactive agenda, we can directly address concerns that haunt the majority of Americans." EPA's public relations adviser called the switch "a tremendous opportunity for this agency."

I obtained this memo under FOIA early this year. Then, late last month, I received further documentation of this craven campaign. In a late January 2011 email, the Natural Resources Defense Council provided EPA officials with "confidential" messaging data to help advance their ideologically aligned agenda.

NRDC claimed that the Environmental Defense Fund had already presented the information to Obama adviser David "Axelrod and a couple other [White House] staff (at their request)." NRDC attached a "topline memo" detailing what messages to use — in short, recast global warming policy as a solution to air pollution. It similarly noted the American Lung Association polled as the most trusted organization to lead a campaign.

When the EPA rolled out these rules last June, it did so via a call with the president hosted by the American Lung Association.

The reason the Obama administration's global warming agenda, which few claim would have an impact on global warming under any scenario, is now a strategy for fighting asthma is simple: Americans struggling to breathe polls better than a theory that has suffered greatly from scientific scandals and, of course, real-world observations proving that the computer models on which the agenda was premised are wrong.

Officials believe if they yell "clean air" and "children" loud enough, they and their environmentalist partners will have their way. Health certainly polls better than candid admissions about desiring to bankrupt an industry that keeps the lights on and makes us richer, freer and safer but is now politically disfavored by the ideological left for reasons that surely include its abundance.

Bear this in mind when you hear the media and White House defend these air quality rules that poll well with green pressure group but reveal a troubling disconnect from good governance. □

Sierra Club Unearthed Report: 2014 Green Election Spending



by Craig Richardson, Executive Director

On April 14, 2015 E&E Legal released an investigatory report analyzing the money green groups spent on the 2014 elections. The report was released through E&E Legal's recently launched special project, Sierra Club Unearthed, which is 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.

The report details how green groups, including the Sierra Club, League of Conservation Voters, and the Environmental Defense Action Fund – to name a few – spent an unprecedented amount of money during the 2014 election cycle targeting leftwing candidates for the U.S. Senate, U.S. House, and state, and locations candidates with virtually nothing to show for it once all the ballots were cast. As the report notes, “The largest and most visible groups, counting only money directly spent on electioneering, bragged about spending upwards of \$85 million dollars for the midterms,” which is probably a significant underestimation when you consider other types of non-direct campaign spending such as phone banks, and get-out-the-vote efforts. \$40 million of this money was a failed attempt at maintaining the Democrats majority in the U.S. Senate. Change.

“The bottom line is that at least in 2014, green groups spending on elections was a colossal failure if you examine the results of the races where they played,” said E&E Legal Executive Director Craig Richardson. “Sadly, however, this isn’t just about whether or not this unprecedented

election spending was a good investment. It represents a real departure from what these green groups were founded to accomplish, and local Sierra Club members have intimated to us that they believe they could do a lot more for the environment with a million dollars than blowing it on a 30-second attack ad like the national did.”

The Sierra Club, while not putting up the same amount of hard dollar cash donations that groups like the League of Conservation Voters committed, dedicated other resources to the cause such as foot soldiers. The report cites a 2012 Sierra Club political document that shows how the group’s “national leadership applied top-down mandates on their local clubs – mandates that were directly coordinated with ‘Obama campaign staff.’ The Sierra Club recruited more than 12,000 of its members to join Environmentalists for Obama, to participate in Get Out the Vote shifts on Election Day, and to plug into the Obama campaign’s dashboard, making over 30,000 phone calls in the final two weeks before the election.” It is clear the group provided similar resources for the 2014 cycle.

In terms of actual cash, the Sierra Club spent nearly \$1 million on a television ad buy in Iowa last September trashing now Republican Senator Joni Ernst. [E&E Legal filed a complaint with the FEC Chair Lee Goodman at the time](#) asking his agency to examine how the Sierra Club Independent Action could have spent such a large amount when it had less than \$50,000 cash-on-hand just a few weeks earlier.

“There is no question that the Sierra Club is playing a shell game with its various entities, moving high-dollar donor money from its 501 (c) (4), and possibly its 501 (c) (3), that makes its way into the form of negative television ads just weeks before an election,” said David W. Schnare, E&E Legal’s general counsel. “This not only violates the spirit and mis-

sion of Founder John Muir, it also violates IRS non-profits laws, which is why we advised the agency of the Sierra Club’s practices.”

The report also points out that what began as an organic movement to protect the country’s most valuable resources has morphed into a corporate animal. “Sierra Club, and its many allied organizations, is now a big business that primarily employs people in San Francisco, Washington D.C. and other big cities.”

Sadly, even John Muir’s mission and vision for an environmental movement is now being called into question by this new generation of zealots. As the report states, “Muir’s ideas of preserving tracts of untouched land for future enjoyment and recreation, something most Americans enthusiastically support, is increasingly seen by modern ‘greens’ as being out of touch with what they see as more important priorities. Instead, many modern ‘greens,’ such as said Jon Christensen, a historian with the University of California, Los Angeles’ Institute of Environment and Sustainability, claim that, ‘Muir’s legacy has to go...It’s just not useful anymore,’ as Muir was unconcerned with issues such as population growth, urban sprawl, demographic shifts, smaller parks in cities, and climate change.”

From conversations with local Sierra Club members, it is clear they have a different view of what their cherished club should become, and seeing “Muir’s legacy go,” is clearly not among them.

As the report concludes, “Every dollar misspent on a political campaign, every hour of a dedicated environmentalist’s time, is a dollar and an hour not spent on the core purposes of environmental organizations...John Muir would not approve, and those of us deeply committed to sensible management of our land, air and water are saddened by the loss of these volunteers and resources that had for so long been an important part of our conservation culture.” □

Murray Energy v U.S. Environmental Protection Agency

by Matthew Hardin, FME Law Counsel



The DC Circuit will soon decide whether the EPA's Clean

Power Plan - which West Virginia's Solicitor General says would "reorder the way we use energy, from plant to plug" - is constitutional. Regardless of whether EPA is allowed to go forward with this reordering, however, the Plan has already reordered traditional legal and political alliances.

The DC Circuit Court heard oral arguments on the constitutionality of EPA's plan on April 16. The Obama Administration's EPA believes it has the power to command states to draft plans to restructure their electricity sectors, potentially resulting in the shutdown of hundreds of coal plants. While the EPA was represented in court by some of the government's ablest attorneys, the president's own legal mentor has gone public with his concerns the agency is overstepping its authority. Laurence Tribe, one of President Obama's professors at Har-

vard, has made clear his thoughts that the EPA plan is unconstitutionally coercive, because it infringes on the authority of the states. Professor Tribe testified before Congress earlier last month, saying "I taught the first environmental course in this country, and I've won major victories for environmental causes. But I'm committed to doing it within the law." He later added "The fact that greenhouse gases is a terrible problem doesn't give a blank check to any agency to rewrite the law."

While the immediate concern that the appeals court grappled with last month during oral arguments was whether the court had the power to overturn the EPA rule before the agency promulgated it in final form, attorneys for West Virginia and Murray Energy argued that the rule was harming the economy and America's energy security even in draft form. The EPA's aggressive regulatory schedule means that energy companies and the states are being forced to make plans now for actions they expect the EPA to take, and high-rank-

ing EPA officials, including the EPA's Administrator, are on record saying the final regulation will look much like the current proposal. The litigants argued that they shouldn't have to spend millions of dollars and waste precious time developing plans to comply with a regulation that may not be constitutional. E&E's own Dr. Schnare has argued in favor of this position in the past, asking legislators in Mississippi and elsewhere not to submit detailed implementation plans to EPA until the Courts have ruled on whether EPA's plans are legal.

E&E Legal, as always, will closely monitor developments in the DC Circuit Court of Appeals and monitor EPA's actions for compliance with legal and constitutional norms. Regardless of how the appeals court rules, it seems likely this case will resurface, either before the Supreme Court or in a few months when EPA finalizes its Clean Power Plan regulations. E&E will continue its efforts to shed light on EPA's activities, and stick up for consumers who rely on the affordable, abundant electricity the regulators so despise. □

Sierra Club Unearthed (Cont.)

various affiliated entities to launder money, and to make huge political campaign purchases like the \$1 million ad buy in Iowa in September. One of the Sierra Club's biggest contributions to the green movement's political force is engaging at the grassroots level. Since the Sierra Club local organizations, like labor unions, are free to electioneer, the national leadership applied top-down mandates on their local clubs - mandates that were directly coordinated in 2012 with "Obama campaign staff," according to a Sierra Club document.

And of course, there is the now infamous "greenwashing" deal where Clorox, a leading bleach manufacturer, paid the Sierra Club huge sums of money in exchange for essentially Sierra Club's endorsement of their product.

"It's truly sad what the Sierra Club has morphed into over the past

twenty-five years," said Craig Richardson, executive director of E&E Legal. "This once prestigious organization, founded by John Muir in 1892 as a means of conserving this country's natural resources, has clearly lost its way, become mired in politics, and have aligned themselves with corporate interests so they can line their own pockets."

Another aspect of *Sierra Club Unearthed* is to provide a portal for local Sierra Club members to report malfeasance regarding the national organization. "Whistleblowers" have already expressed concern for the direction of the national Sierra Club, and just want to have their organization back so they continue working on local environmental issues.

"I have personally spoken to local Sierra Club members from New York, and Pennsylvania," said David W. Schnare, E&E Legal general counsel. "These are sincere and concerned

individuals who are alarmed at the amount of money the national group is siphoning away from local efforts, and in their hearts they know that the group has abandoned its roots, and they want it back."

Schnare added that one of the missions of the project is to provide a confidential place these individuals can tell their story, and he also noted that E&E Legal will provide and/or secure legal representation for any local Sierra Club member who believe such services are required.

E&E Legal produced two investigatory reports on the Sierra Club last fall, and in late April it released [its first report](#) under the *Sierra Club Unearthed* brand, which covered the Sierra Club's and other green groups' excess spending in the 2014 elections. E&E Legal also plans on regularly posting news items to the *Sierra Club Unearthed* site related to the project. □

E&E Legal's David Schnare Testifies at U.S. House Hearing on EPA'S Compliance with FOIA, Federal Records Act



by Craig Richardson, Executive Director

On March 26, 2015, Dr. David W. Schnare, a 33 year veteran of the U.S. Environmental Protection Agency (EPA) and E&E Legal's current general counsel, testified before the U.S. House of Representative's Committee on Science, Space, and Technology hearing, "EPA's Compliance with the Federal Records Act and the Freedom of Information Act." Schnare's, whose experience with state and federal FOIA extends back four decades including his tenure at EPA, outlined serious problems that exist within the Agency when it comes to their compliance with the Freedom of Information Act (FOIA) and the Federal Records Act (FRA).

"The problem at EPA is not about the technology, the public records policy or the law, it is about the employees, the culture and the failure of senior managers, including political appointees, to follow the law," Schnare said before the Committee. "The current culture is to keep secret that which should be available to the public."

In his current capacity as General Counsel for E&E Legal, and for other affiliations, Schnare has filed numerous FOIA requests with the EPA, and other Federal and state agencies, so he is familiar with the responsiveness regarding transparency requests. He sees an alarming trend with the current Administration's leadership at EPA when it comes to open records requests.

"Efforts to avoid the duty to comply with FOIA and records retention requirements starts at the top of

the Agency," Schnare said. "Perhaps the most troublesome is where staff working directly in the Office of the Administrator simply refuse to comply with FOIA."

Schnare pointed out that Congressional oversight of EPA's transparency requirements is not sufficient enough by itself to bring about necessary changes in the Agency's "culture of failing to meet its duty under the Freedom of Information Act and the Federal Records Act." He also noted that while the laws include sanctions, these are too cumbersome, and have never been used.

Regarding the issue of preserving text messages, Schnare pointed out that the EPA has difficulty complying with their own rules. He testified, "EPA acknowledged before the U.S. District Court for the District of Columbia that it has destroyed all copies of text message correspondence sent to or from current Administrator Gina McCarthy's EPA-assigned account when Ms. McCarthy was Assistant Administrator for Air and Radiation. EPA explained that this was because all 5,932 text messages on Ms. McCarthy's EPA phone identified in response to that request were 'personal.' But, they weren't. The FOIA requester was able to obtain EPA telephony metadata records for seven months, in response to a different FOIA request. These showed Ms. McCarthy corresponding, by her EPA-provided text message account, with eleven EPA co-workers' EPA-provided accounts, including those of Ms. McCarthy's senior policy aides."

Schnare continued: "Anyone with a child older than 12 and younger than 30 knows that text messages are the modern equivalent of a phone call. This is especially true for government officials. But, unlike telephone calls, they are public records subject to preservation under federal law, unless they are transitory...There

should be no confusion on the duty to preserve text messages, also known as instant messages."

He concluded, "Thomas Jefferson instructs us that 'Whenever people are well-informed they can be trusted with their own government' and, 'when a man assumes a public trust, he should consider himself as public property.' That is the essence of FOIA and the purpose of the FRA. Until EPA hews to this standard, it fails the nation and deserves sanctions sufficient to bring it back within the confines of the law and public trust."

Schnare retired from the EPA's Office of Enforcement as a senior attorney and scientist. He has served on the staff of the Senate Appropriates Committee, as the nation's Senior Regulatory Economist with the U.S. Office of Advocacy for Small Business and as a trial attorney with the U.S. Department of Justice and the Office of the Virginia Attorney General. He published his first peer-reviewed scientific contribution in 1970 and has edited or published chapters in ten books addressing scientific issues and 36 peer-reviewed research contributions, all while in full-time government service. He has published over a dozen peer-reviewed policy reports for non-profit organizations. He is lead counsel on several cases involving both state and federal freedom of information acts and Constitutional questions. □

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