



# Letters

Spring 2017

## Nixing the Paris climate pact

by Chris Horner, E&E Legal Senior Fellow  
As Appearing in the *Washington Times*



Recent media reports suggest a conflict within the Trump White House over whether to keep the president's campaign promise "to cancel the Paris Climate Agreement," the successor to the rejected Kyoto Protocol. President Trump also promised to roll Barack Obama's controversial and harmful climate agenda back, yet the Paris agreement, signed in September 2016 just before the presidential election, is the capstone of that agenda, committing us to keep the agenda in place, and forever tighten it. Rescinding the policies but promising to continue them are irreconcilable. Such baby-splitting would create not just a glaring policy conflict in the

Trump White House, but would have lasting repercussions.

The pro-Paris camp seems unaware that the agreement promised much more than the Obama climate rules that Mr. Trump is rescinding. Its signature, cynical hook was also a promise to make such American laws ever more stringent, every five years, in perpetuity.

Clearly, the Paris agreement is a treaty not just by custom and practice but by its own terms. It thereby requires Senate ratification, which Mr. Trump can seek — and should — if he does not simply renounce the purported commitment.

For the same reason the Paris treaty is the sort of long-term commitment requiring Senate approval, the principal threat against Mr. Trump if he follows through on his promise — diplomatic blowback — makes absolutely no sense. With its escalator clause requiring promises of more stringent cuts every five years the Paris treaty deliberately engineered a recurring threat of diplomatic repercussions unless we adopt devastating policies. If we do not abandon the Paris treaty now

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#### Milloy Tells ExxonMobil not to Cave to Activists



E&E Legal Senior Policy Fellow Steve Milloy appeared at the ExxonMobil Annual Meeting in May armed with a shareholder proposal urging management not to cave to climate activists. Leading up to the meeting, he penned an op-ed for *Investor Business Daily*.

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## Oil And Climate Alarmism Don't Mix for Shareholders

by Steve Milloy, Senior Policy Fellow  
As Appearing in Investor's Business Daily



Which is the greater threat to oil and gas industry shareholders — anti-fossil fuel activists dressed in shareholders' clothing or oil and gas industry corporate management? It's a question that Exxon Mobil shareholders now have the opportunity to ponder before the oil giant's May 31 annual shareholder meeting.

Shareholders will vote on the proposal I submitted titled, "Nuisance Shareholders," which might more descriptively be called the "shareholder proposal to end all political activist shareholder proposals."

As described in George Washington University professor Jarol B. Manheim's 2004 book "Biz-War and the Out-of-Power Elite: The Progressive Attack on the Corporation," left-wing political activists met and decided after the election of Ronald Reagan in 1980 that one way back to political power was to become activist shareholders in publicly owned corporations.

That is, they would exercise the rights and status of shareholders to pressure, if not, capture corporate managements so as to use corporate resources and influence to help achieve their political agenda.

It has been an enormously successful strategy for the activists, especially when it comes to the

controversy over climate change. Not only do many of the largest and best-known publicly-owned corporations now openly advocate for climate policies, even oil and gas companies have been pressured into pursuing policies that militate against their own products.

After years of its annual meeting being turned into a circus by fossil fuel-opposing climate activist shareholders and other activist pressure, Exxon Mobil is perhaps foremost among U.S. oil and gas companies that now advocate for government action on climate, and against its own products and the best interests of its own shareholders.

Despite the November 2016 election of a presidential candidate who promised to withdraw the U.S. from the Paris climate treaty, called climate change hysteria a "hoax" and who promised to unleash the U.S. energy industry after eight years of anti-fossil fuel policies, Exxon Mobil management not only openly supports the Paris climate treaty but also supports a "carbon tax." Both policies are intended to dramatically reduce if not eliminate fossil fuel use.

Some may imagine that Exxon Mobil's announced climate policy is mere "greenwashing" — i.e., insincere posturing as eco-friendly for public relations purposes. But I take Exxon Mobil management at its word as expressed in deed and to me in negotiations over my proposal. Management believes that the climate is at risk from greenhouse gas emissions and that something needs to be done about it. While that is a perfectly reasonable position to take if you are a climate activist — it is not so reasonable for oil company

management.

As Milton Friedman famously wrote in 1970: "There is one and only one social responsibility of business — to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."

So businesses serve as society's wealth generators. They are not governments, charities, or activist groups. When it comes to climate, Exxon Mobil's job is to create wealth via production and sale of oil and gas — not to participate in the dubious pursuit of returning the atmosphere to pre-Industrial Revolution conditions.

The consequences to investors of oil and gas corporate management's failing to seriously and effectively fight climate activists is best demonstrated by the recent experience of the coal industry in which I worked for years.

Although climate activists frequently demonize Republican politicians and climate skeptics as being in the pockets of the coal industry, the reality is somewhat different. The coal industry was never a major financial supporter of climate skeptics and generally refused to openly challenge climate science or counterattack climate activists.

The effect of coal industry political contributions was essentially nullified after the 2009-2010 failure of cap-and-trade legislation and President Obama's subsequent resort to his regulatory agencies. Political contributions produced little in the way of return as Congress could only pass ill-fated bills that

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## 'Au Revoir' Paris Climate Change Treaty!

by Katie Grimes, Senior Media Fellow  
As Appearing in *Flash Report*



With President Donald Trump pulling the United States out of the Paris climate accord, heads must be exploding in California's Democratic supermajority State Capitol. However, Trump's decision fulfills a very important campaign promise he made to "cancel" the accord.

California Gov. Jerry Brown issued an Executive Order in 2015 for a drastic new target for greenhouse gas emissions cuts, coinciding with the international Paris Climate Change Treaty. Brown said it was critical to address what he called "an ever-growing threat" posed by global warming to California's economy and well-being. Brown's order went even further than then-President Obama's radical proposals, but aligned with the European Union and United Nations proposals.

Brown the lover-of-all-things-enviro, issued the stricter greenhouse gas reduction target for the state of 40 percent below 1990 levels by 2030. Because apparently already achieving 1990 levels of greenhouse gas levels by 2020 (AB 32) was just too easy, thanks to automotive technology and an abundance of clean natural gas.

Nearly 200 nations, including the United States under President Barack Obama's administration, agreed in 2015 to reduce greenhouse gas emissions in an effort to combat global warming, now called "climate change."

Axios reported that EPA Administrator Scott Pruitt will work on the withdrawal along with a small team, which will have to decide on

whether to initiate a full withdrawal, and/or exit the underlying United Nations climate change treaty.

"It also makes the U.S. an outlier among the world's nations, nearly all of whom support the climate change accord," *The Hill* wrote. Given America's contributions to science, culture and economics, the rest of the world are the outliers.

Trump's decision to pull out of Paris is the greatest way to unravel Obama's climate legacy. *C'est si bon!* And, this is one way to start to put California's go-it-alone business-killing global warming regulations to an end.

### Gov. Jerry Brown's Holy War Against Climate Change

Climate change is California Gov. Jerry Brown's "crusade," his jihad, his holy war. Yet Gov. Brown's climate change and drought policy is flooded with a manic madness – never has his manic obsession with climate change been more evident.

Gov. Brown's 2017-18 Budget priorities are climate change policy and spending, and the green economy, including another \$2.2 Billion for the faltering cap and trade program, of which Brown promised to increase efforts to prop up.

California's go-it-alone venture into regional carbon markets has been a disaster, despite the grandiose promises otherwise. The last 2016 auction of carbon credits brought in an embarrassing 2 percent of the revenues promised. Future auctions are also expected to fall short, largely because the creators of this false commodity don't understand economics or the free market: there is a glut of carbon credit allowances, as well as legality issues plaguing the cap and trade scheme.

Yet, cap and trade is really leading to economic collapse instead of reducing CO<sub>2</sub>, Alessandro Bruno recently wrote in the Lombardi Letter, an investment research organization. "Government enforcers are fully aware

that any business whatsoever that uses carbon-based energy to manufacture, create, or transport goods and services will shift their increased expenses to consumers. They will simply charge more. Cap-and-trade is an unfair imposition with severe consequences. Its inherent injustice contains the seeds of an economic collapse."

Also, in May 2016, Gov. Brown signed a climate change compact (an illegal treaty) between 12 regional and provincial governments in seven countries, committing to reduce greenhouse gases which they claim cause global warming. Brown's motive was to demonstrate California's commitment to the rest of the country and world.

Prior to that illegal compact, in 2015 I reported on the collusion between the California, Washington and Oregon governors' offices, British Columbia and environmental groups, in the form of an illegal compact to force climate policy coordination and collaboration across the U.S. "In October 2013, California Gov. Jerry Brown, together with the Governors of Oregon and Washington and the British Columbia Premier, signed the Pacific Coast Action Plan on Climate and Energy, "to align climate change policies and promote clean energy." The Pacific Coast Collaborative links with the West Coast Infrastructure Exchange (WCX), a compact between California, Oregon, Washington and British Columbia, formed in 2013 to promote "the type of new thinking necessary to solve the West Coast's infrastructure crisis." And the WCX is linked to the Clinton Foundation's Clinton Global Initiative.

In March 2016, in a Washington Post article, Brown reiterated his urgency to deal with climate change: "I think this almost has to be at the level of a crusade."

Let that sink in... Climate change is Jerry Brown's "crusade" – not the state's sick economy, or the millions of tax-paying citizens, businesses and jobs leaving the state, or the failing

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## E&E Legal Forced to Sue State Dept. for Paris Treaty Records



On May 16, E&E Legal filed a Motion for Summary Judgment with the U.S. District Court for the Eastern District of Virginia over the State Department's continuing, abusive withholding of correspondence about its orchestration of the Paris climate treaty. These withholdings also include emails with outside parties.

State has continued its withholding practices despite specific E&E Legal objections throughout the course of an ongoing Freedom of Information Act (FOIA) lawsuit filed in March 2015. Most abusively, just at the end of last week State withheld its list of green group and industry "validators" it identified to support the Obama administration's position on the Paris agreement, presently the subject of public advocacy by businesses hoping to benefit at taxpayer expense, lobbying the Trump administration to break Trump's promise to withdraw U.S. participation.

State has been producing emails in tranches for two years while withholding portions, often farcically, about Paris and Obama administration dealings with industry and green pressure group lobbies. Late last week, State's production included a bombshell in the negative, an email listing "validators" among "green groups", "China hands/national security luminaries", "business", and others. "Validators" is a term used for lobby interests an agency collaborates with to advance a shared agenda. E&E Legal and the Competitive Enterprise Institute (CEI) both have found numerous such Obama administration lists through

FOIA productions — never redacted, since there is no basis in FOIA for withholding their identities (here, State implausibly claims that they are exempt both as "deliberative" and under the exemption protecting "personal privacy"). CEI first encountered such lists in the "Richard Windsor" false-identity email account of Obama's former EPA chief Lisa Jackson, citing groups the Agency had coordinated as surrogates, advocating the Agency's position without noting their surrogate status.

"In hiding the identities of its targeted partners in advocacy for the global warming agenda, State is clearly, yet again, invoking FOIA's non-existent "political embarrassment" exemption", said E&E Legal Senior Legal Fellow Chris Horner. "The time for the public to see this information could not be more perfect, just as the effort to hide this information from the public could not be more suspect. Surely, some of these 'validators' are among those who have come out in recent days attesting to the propriety of the Obama administration's Paris scheme, working with Obama holdovers and sympathetic Trump appointees to keep the U.S. in the Paris climate treaty".

Horner continues, "The public has a right to compare these names with those parties now purporting to make "the business case" for President Trump breaking his promise to withdraw from Paris."

An early May production also provided for one email from an earlier tranche, produced in almost totally redacted form and which E&E Legal also seeks a court review and order to release. This was the subject of a November 9, 2015 story in the Washington Times, "The cost of climate change: Cold, hard cash sought for support of Obama's deal", reporting White House and State Department officials acknowledging that other countries expected the U.S. taxpayer to pay them to agree to this environmental priority of President Obama's — under which the payee countries don't even face the

reductions President Obama purported to commit the United States to, if without the required Senate approval.

This new email is between Obama negotiator Todd Stern and the Center for American Progress, with CAP's lobbyist noting the oddity of "foreign ministry folks coming through our door lately report... top brass wants a climate deal and they don't particularly care about my details. This is a first in my experience." Of course the former email removes any mystery: they want the money the U.S. taxpayer is to pay under the Paris treaty for the purpose of hobbling our own economy out of sympathy for what Europe is doing to itself.

Yet another email, a State Department cable, released at the end of last week further illuminates that economic harm occurring from this agenda in Europe, which the U.S. is to import for no projected climate impact. In a compilation of US embassy comments we see an understanding that the Paris "climate" agenda is putting European economies at a distinct competitive disadvantage, and risks doing more harm going forward. The cable suggests Europe is forging ahead with this scheme due to its reliance on Russian natural gas, leaving it vulnerable to its neighbor; the U.S. is to follow suit out of economic fairness to Europe. The cable does not address why it makes sense for the U.S. to do this too, rather than help Europe out of its self-created mess through increased liquified natural gas exports.

Further withholdings include discussions with and about green pressure groups lobbyists who, records produced in this suit show, were instrumental in coordinating post-Obama climate campaigning with China, and developing State's argument on Paris's "legal form", to avoid the constitutionally required Senate approval.

These records take on critical importance and are of tremendous public interest given recent reports of efforts — led by State Department

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## Records Show NY AG Keeps Some Very Infamous Company

by Matthew Hardin, FME Counsel



In the New York County Supreme Court in lower Manhattan, E&E Legal and several citizens groups recently discovered something remarkable: the New York Attorney General's Office had corresponded with the scheduler for Tom Steyer, a democratic political donor, and Lee Wasserman, of the Rockefeller Family Fund, immediately prior to launching an unprecedented campaign to prosecute ExxonMobil for alleged heresy on the issue of global warming. Rather than turn over these records in response to requests from E&E, however, NYOAG attempted to shield the records behind the alleged "law enforcement" privilege.

The law enforcement privilege allows the state to shield records it obtains in the course of a criminal investigation. The purpose for this privilege is obvious: it prevents criminals from using transparency laws to determine what the police know

about criminal enterprises. No one wants the Gambino crime family, for example, to be able to use open records laws to seek law enforcement files which might identify informants keeping the police apprised of criminal activities.

In New York, however, the law enforcement privilege is not being used to protect a sensitive investigation, but to prevent the political embarrassment of the state's chief law enforcement officer, the New York Attorney General. As the Attorney General admitted in his briefs, Exxon's attorneys have long been aware that Exxon is under investigation for alleged crimes against the climate change consensus. The New York Attorney General has served Exxon with numerous subpoenas seeking information about the company's finances, including donations to non-profit groups. The company has responded by filing suit in federal court, seeking an injunction preventing the New York Attorney General from using his law enforcement powers to violate Exxon's constitutional rights. In short, disclosure of the records at issue would not result in any secrets being let out or any harm to an ongoing law enforcement investigation.

Not only would disclosure not result in harm, however, but the records at issue have already been disclosed, to po-

litically connected donors like Tom Steyer and the Rockefeller family. In short, the New York Attorney General's office took the remarkable position that millionaire political donors have more rights to see government records than E&E Legal and New York citizens do.

Without even taking a look at the records New York's Attorney General admits to sharing with wealthy political donors, however, a New York judge ruled on May 16, 2016 that any argument that the records were generated as part of a political campaign rather than a law enforcement investigation was "speculative." The judge specifically discounted the dozens of interviews the New York Attorney General has held with media outlets, and the Attorney General's own political goals as outlined in a letter he sent to other Attorneys General throughout the country, and denied the petition of E&E Legal and several New York citizens to release the records publicly.

We will continue to fight for the public's right to know what politicians are doing behind closed doors with wealthy donors. Our attorneys filed an appeal on May 30, 2017, and expect to present evidence to the New York Supreme Court's Appellate Division this fall. □

## State Dept. Stonewalling (Cont.)



holdovers, and one recently departed senior aide — trying to derail President Trump's promise to "cancel" the purported December 2015 U.S. agreement to the Paris treaty. Trump had unambiguously declared he would withdraw from Paris on the express basis that it was "bad for

US business" and allows "foreign bureaucrats control over how much energy we use". That has not changed. With release of these records, the public's — and President Trump's — understanding of how we got here and what is really at play would be greatly improved.

Horner added, "State continues to withhold records from the public that appear to be highly instructive about the Paris treaty's development without any legitimate claim to privilege. We look forward to confirming, by this suit and others, that the current Administration will not in fact continue the Obama administration's brazen practice of keeping records secret, and will reverse these uses of the non-existent yet remarkably persistent 'political embarrassment' exemption to FOIA."

Regardless of what lies behind the widespread failure to reverse facially improper withholdings of public records, it reminds us all that the Trump administration should prioritize review of current disputes over withholdings, finally implementing President Obama's much-hyped, thoroughly disregarded transparency memo to the heads of all agencies. Any general counsel taking over a private sector entity would immediately review records on its system that relate to current or likely litigation. The obligation is particularly obvious as these apply to records relating to key priorities and campaign promises. It is critical here, given signs that parties close to President Trump's Administration seek to continue the Obama climate treaty policy. □

## 'Climate Risk Disclosure Campaign' (Cont.)

President Obama would never sign.

And it is a fact that much of the coal industry actually supported the anti-coal Waxman-Markey cap-and-trade bill in the vain and naive hope that peace could be negotiated with politically-driven coal industry opponents.

The result to shareholders of the coal industry management's failure to combat its opponents was dramatic. The market value of coal companies declined from \$69 billion in 2011 to \$4.8 billion in 2016 — a 93% drop in five years. Many large publicly-owned coal companies filed for bankruptcy. When the largest, Peabody Energy, emerged from

bankruptcy in April 2017, shareholders had their stock zeroed out.

Exxon Mobil shareholders ought to consider than when they vote on my proposal. Here's why:

First, Exxon Mobil's attempted appeasement of climate activists, from its supporting climate policies to refusing to fund climate skeptics, has gotten the company nothing — except an activist-inspired RICO criminal investigation by state attorneys general led by New York's Eric Schneiderman.

Next, while the world can't function without oil and gas, the world can function without Exxon Mobil shareholders. Even though

coal companies went bankrupt and shareholders were zeroed out, the coal companies nevertheless provided fuel for about one-third of our electricity needs during 2011-2016.

I submitted the shareholder-proposal-to-end-all-proposals once before in 2008. Although the proposal failed, my presentation at the annual meeting was received with thunderous applause. At that meeting, my message was directed at the poseur activist shareholders: "If you don't like the oil and gas business, get out," I urged.

It hadn't quite dawned on me at the time that the message might have been better directed at Exxon Mobil's management. □

## Paris Treaty (Cont.)



schools ranked worst in the nation — Jerry Brown said climate change is his "crusade."

In November, following the presidential election, Gov. Brown said, "We will protect the precious rights of our people and continue to confront the existential threat of our time—devastating climate change." This is Brown's evangelism, despite how arbitrary, inconsistent and destructive environmental regulations have become, and how out of touch the lawmakers are who vote for them. Those who refuse to acknowledge that CO<sub>2</sub>, a colorless, odorless gas, is not a pollutant, and

is however, an essential plant nutrient, are prevaricators, and also deny climate change has been occurring for more than 4 billion years. Today's "Climate Change" crusade is about money; many world leaders are on record admitting it is about wealth redistribution.

Nowhere in the Paris Climate Accord agreement are the words "CO<sub>2</sub>" and "carbon dioxide" defined. Instead they use "emissions" and "carbon" (not "carbon dioxide"), which allows for easily manipulated rules.

"None of this will stop droughts or storms," Daniel Greenfield wrote at Frontpage Mag. "But it will move money to the right people. The ones, like Al Gore, living in luxury condos in San Francisco about to be flooded by the Great Green Apocalypse that never comes. And it's always been about the money. Everything else is theater. Rain or sun, flood or drought, the scripts get rewritten, the bills get passed and the Global Warming show goes on."

With the U.S. pulling out, the Paris Climate Accord will become meaningless. Europe doesn't have the money to pay for it. And eventually, it just won't matter who stays in.

We Never Had Paris: C'est Si Bon! □

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