



Letters

Summer 2017

Paris Treaty Withdrawal Spawns 'Climate Resistance' Movement

by Chris Horner, E&E Legal Senior Fellow and
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*U.S. governors, mayors, businesses, investors, colleges
and universities say:*

WE ARE STILL IN

*and will work together to ensure the
U.S. remains a global leader in reducing carbon emissions.*

In June of 2017 President Trump announced that the United States would withdraw from the so-called 'Paris Climate Agreement'. Paris was illegitimately entered by President Obama given it is, by its own terms, custom and practice, a treaty for United States purposes. This possibly explains why so many nations' legislatures held ratification votes on it as such. Indeed the President noted the "serious legal and constitutional issues", and his "obligation and greatest honor to protect" our Constitution, while standing in the Rose Garden on June 1, 2017, announcing his intention to withdraw.

The "not-a-treaty" agreement has always been on questionable legal ground as President Obama's unprecedented usurpation of the Senate's role was an ostentatious dare to avoid certain defeat. He rightly banked on the Senate's inability to rise to the challenge. Yet while the

'treaty' did permit nations to voluntarily meet their targets for reductions of CO₂ emissions — the first such promise of which Obama made painfully unrealistic — it also requires them to revise those targets in favor of greater reductions, every five years in perpetuity. They must then report their progress, to assist what promoters called a "naming and shaming" campaign.

In announcing that the decision to withdraw, President Trump explained that this agreement would harm American jobs and the US economy to the benefit of global competitors. He indicated that the United States would follow the withdrawal procedure laid out in the pact, which only permits communication of a formal withdrawal three years after the deal takes effect (November 5, 2019), taking effect one year after that, or two days after the U.S.'s 2020 elections.

The President had other options for a speedier termination of the accord, particularly by withdrawing the United States from the United Nations Framework Convention on Climate Change, the organic treaty which other deals, like the Kyoto Protocol (also a treaty), amended. The UNFCCC was signed by the U.S. in 1992 at the Rio de Janeiro Earth Summit and hurriedly ratified. Paris represents the inarguable abandonment of the shared

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E&E Legal's Senior Policy Fellow Chris Horner guest authored a USA Today article on the release of the quadrennial "National Assessments on Climate Change."

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A Step Toward Scientific Integrity at the EPA

by Steve Milloy, Senior Policy Fellow
As Appearing in the *Wall Street Journal*



The Trump administration in May began the process of replacing the small army of outside science advisers at the Environmental Protection Agency. In June, 38 additional EPA advisers were notified that their appointments would not be renewed in August. To Mr. Trump's critics, this is another manifestation of his administration's "war on science." Historions aside, the administration's actions are long overdue.

The most prominent of the EPA's myriad boards of outside advisers are the Science Advisory Board and the Clean Air Scientific Advisory Committee, or CASAC. Mostly made up of university professors, these boards also frequently draw members from consulting firms and activist groups. Only rarely do members have backgrounds in industry. All EPA boards are governed by the Federal Advisory Committee Act, which requires that they be balanced and unbiased. While the EPA is required by law to convene the SAB and CASAC, the agency is not bound by law to heed their advice.

The EPA's Obama -era "war on coal" rules and its standards for ground-level ozone—possibly the most expensive EPA rule ever issued—depend on the same scientifically unsupported notion that the fine particles of soot emitted by smokestacks and tailpipes are lethal. The EPA claims that such particles kill hundreds of thousands of Americans annually.

The EPA first considered regulating fine particles in the mid-1990s. But when the agency ran its claims past CASAC in 1996, the board

concluded that the scientific evidence did not support the agency's regulatory conclusion. Ignoring the panel's advice, the EPA's leadership chose to regulate fine particles anyway, and resolved to figure out a way to avoid future troublesome opposition from CASAC.

In 1996 two-thirds of the CASAC panel had no financial connection to the EPA. By the mid-2000s, the agency had entirely flipped the composition of the advisory board so two-thirds of its members were agency grantees. Lo and behold, CASAC suddenly agreed with the EPA's leadership that fine particulates in outdoor air kill. During the Obama years, the EPA packed the CASAC panel. Twenty-four of its 26 members are now agency grantees, with some listed as principal investigators on EPA research grants worth more than \$220 million.

Although the scientific case against particulate matter hasn't improved since the 1990s, the EPA has tightened its grip on CASAC. In effect, EPA-funded researchers are empowered to review and approve their own work in order to rubber-stamp the EPA's regulatory agenda. This is all done under the guise of "independence."

Another "independent" CASAC committee conducted the most recent review of the Obama EPA's ground-level ozone standards. Of that panel's 20 members, 70% were EPA grantees who'd hauled in more than \$192 million from the agency over the years. These EPA panels make decisions by consensus, which has lately been easy enough to achieve considering they are usually chaired by an EPA grantee.

Would-be reformers have so far had no luck changing the culture at these EPA advisory committees. In 2016 the Energy and Environment Legal Institute, where I am a senior fellow, sued the agency. We alleged that the CASAC fine-particulate subcommittee was biased—a clear violation of the Federal Advisory Committee Act. We found a plaintiff who had been

refused CASAC membership because of his beliefs about fine particles. Unfortunately, that individual was not willing to take a hostile public stand against the EPA for fear of professional retribution. We ultimately withdrew the suit.

The EPA's opaque selection process for membership on its advisory boards has opened the agency to charges of bias. In 2016 Michael Honeycutt, chief toxicologist of the Texas Commission on Environmental Quality, was recommended in 60 of the 83 nominations to the EPA for CASAC membership. The EPA instead selected Donna Kenski of the Lake Michigan Air Directors Consortium. Ms. Kenski received only one of the 83 recommendations. While no one objected to Mr. Honeycutt's nomination, Sen. James Inhofe (R., Okla.) lodged an objection to Ms. Kenski's nomination, claiming she had exhibited partisanship during an earlier term on the committee.

Congress has also tried to reform the EPA's science advisory process. During the three most recent Congresses, the House has passed bills to provide explicit conflict-of-interest rules for EPA science advisers, including bans on receiving EPA grants for three years before and after service on an advisory panel. The bills went nowhere in the Senate, where the threat of a Democrat-led filibuster loomed. Had they passed, President Obama surely would have vetoed them.

President Trump and his EPA administrator have ample statutory authority to rectify the problem. As Oklahoma's attorney general, Scott Pruitt spent years familiarizing himself with the EPA's unlawful ways. He is in the process of reaffirming the independence of the agency's science advisory committees. This won't mean that committee members can't have a point of view. But a committee as a whole must be balanced and unbiased. Mr. Pruitt's goal is the one intended by Congress—peer review, not pal review. □

California's economic suicide

by Greg Walcher, Senior Policy Fellow
As Appearing in *Grand Junction Daily Sentinel*



Last fall, California Gov. Jerry Brown signed a law requiring his state to reduce its greenhouse gas emissions 40 percent below 1990 levels. That ratchets the state's already severe limits down even tighter, now requiring a reduction to levels not seen since the 1950s or earlier. Some are beginning to understand that it cannot be done in the modern era without extreme new regulations, which could quite literally give the state power to control nearly every detail of life.

James Sweeney, director of Stanford University's Precourt Energy Efficiency Center, warned that the requirement will result in a much more fragile economy. "Meeting the requirement will require severe restrictions, far beyond those seen to date," he said. A cabinet-level official agreed that "it is the biggest thing we have done yet in sheer volume. It requires a level of coordination between different agencies that we haven't seen before."

One Los Angeles Times writer says officials are discussing rules to determine the kind of houses and businesses that might be allowed, as well as automobiles. They may need to require people to limit miles driven, to use public transportation, and to walk or bicycle to work. The state is poised to dictate how much and what kind of energy people can use, and even what kind of food can

be grown on the state's farms.

The legislature cited "evidence" that the new requirement will help limit global temperature increases to 2 degrees. That's hard to believe, since California only produces about 1 percent of the world's total carbon emissions, so a 0.4 percent reduction is virtually meaningless environmentally. In response, "Governor Moonbeam" Brown — never to be denied his optimism — claims other countries will follow California's lead, though there is absolutely no evidence to support that hope.

In fact, China's global economic strategy is based on building new coal-fired power plants; it has been involved in 240 coal power projects in 65 countries since 2001. Similarly, India is building dozens of new coal-burning power plants, despite its voluntary emission reduction targets under the Paris agreement. In both countries, several billion people are finally getting off bicycles and into cars, obviously not following California's example. California has a much more energy-efficient economy than most of the world, yet China and India are apparently not envious enough to follow.

Indeed, the only really measurable result of the regulatory nightmare about to begin in California will be the slow and painful death of economic prosperity. The state's Air Resources Board (in charge of producing the new regulations) says it will cost the economy up to \$14 billion and perhaps 102,000 jobs. It will likely be much worse. The construction sector alone says it may lose 75,000 jobs in the short-term, and the Farm Bureau openly wonders whether agriculture has any place in the state's future.

The truth is that nobody can really estimate the long-term impact. That's because most economic models are based on an assumption

that the emission targets can be met, and that new technologies will be implemented efficiently. It is more likely, though, that businesses and jobs will simply move away. Consider what high taxes and oppressive regulations, along with stiff competition from elsewhere, did to Detroit, Buffalo, and Dayton.

Leaders from elsewhere in the West are salivating over the prospect of attracting California companies looking for a friendlier business climate. Many have already moved. In 2000, that state produced 5.6 percent of all U.S. manufacturing investment, but today it's only 1.8 percent, according to the California Manufacturing and Technology Association. That organization predicts that "over the long term, manufacturers will be choosing to put their money elsewhere."

Why would the people of California allow their leaders to commit such economic suicide? The likely answer is that most people simply take for granted the conveniences of modern life, without thinking much about their source. We live in comfortable homes with heating and air conditioning, change dark to light with the flip of a switch, enjoy hot and cold running water, brew our own coffee, drive ourselves wherever we want to go, and buy products from all over the world at local stores.

All of that is made possible by oil, gas, and coal — supplying about 90 percent of America's energy. We are so accustomed to a comfortable lifestyle that we don't even associate these conveniences with energy, much less any specific source. Many people just imagine they can live without it. In California, they may be sacrificing their way of life on the altar of political correctness. □

Don't hype draft climate studies

by Chris Horner, Senior Legal Fellow
As Appearing in *USA Today*



Another week of the Trump presidency, another bout of fevered reporting on claims promoted by the career (and holdover) federal employee “resistance.” But particularly when it comes to climate change, it seems the ordinary way of doing things is simply too much to ask.

“Climate” has become very big business since Congress first requested quadrennial “National Assessments on Climate Change” in 1990. A big part of that business is government. Another is the news media. Both of which

thrive on the end-of-days narrative.

The two met this week to ride the latest national assessment, a draft of which prompted excited reportage and a particularly embarrassing correction by *The New York Times*.

The first step overboard was to hype a long available draft document as a leak, smuggled from a censorious regime’s clutches. It’s enough to remind one that drafts generally do not survive required reviews intact.

The first national assessment was due in 1994, but only with the 2000 presidential election looming was the bureaucratic machinery engaged to produce one. Curiously, that voluminous tome heavy with policy implications emerged mere days before the election with then-Vice President Gore on the ballot.

After...the Competitive Enterprise Institute filed litigation, that doc-

ument was ultimately stamped with a disclaimer that it had not complied with the Federal Information Quality Act, which sets standards for “influential scientific information.”

It seems that the bureaucracy took the wrong lesson from this episode, hyping drafts instead of perfecting final products to survive challenge.

Aggressive campaigns politically weaponizing drafts as authoritative, and publicly available documents as prized “leaks,” are reason enough for caution. But measure is a characteristic that the global warming — now climate change — debate has lacked for too long.

Last week was yet another reminder we would be well-served by returning to standard procedure, be it by ratifying major international (e.g., climate) commitments as treaties, conducting science, or reporting the news. □

Horner Briefs House of Lords on President Trump’s Paris Climate Treaty Decision

London, England — On July 10, E&E Legal Senior Legal Fellow Chris Horner gave a talk in the UK House of Lords, hosted by Lord Lawson of Blaby and Dr. Benny Peiser of the Global Warming Policy Foundation. Attended by several members of the House and other interested parties, Horner’s talk and the discussion afterward centered on the Trump Administration’s announced intention in June 2017 to withdraw from the Paris Climate Treaty, how the Paris “Exit” camp prevailed (to date), and potential implications for the UK of the Administration’s deciding factor — increased legal risk, which was detailed by Horner and Marlo Lewis in a May 2017 paper.

Horner addressed the campaign to use courts to impose the Paris agenda, citing to the June 2015 opinion in *The Hague District Court in Urgenda Foundation v. The Netherlands* being promoted by the United Nations as a means of “holding governments

to their legislative and policy commitments.” Relevant to this, Horner explained our own AGs’ “climate RICO” scheming uncovered by E&E Legal freedom of information requests, an abusive campaign expressly organized to “ensur[e] that the promises made in Paris become reality.” The audience was rightly appalled at what we have found regarding the latter, though otherwise, reveling in the success of

the (admittedly, not yet consummated) Paris announcement, a jolly good time was had by all.

Horner later sat down with James Delingpole for a podcast discussing Paris, the global warming industry and the “rent-seeking” industry that loves it (and indeed, helped create it), and climate-RICO among other topics. □



Climate Resistance in Wake of Paris Treaty Withdrawal (Cont.)

understandings which form the basis of UNFCCC and as set forth by our Senate when ratifying it — for example, that any decision of the UNFCCC “Conference of the Parties” (or COP) requires Senate advice and consent to take effect against the U.S. Paris was the Decision of the 21st Meeting of the COP, and requires targets, to be revised every five years, an obvious timetable.

The U.S. may withdraw from Rio at any time and that takes effect in just one year. Thus had the President chosen to withdraw from the Rio Treaty, it would have terminated US participation in the ‘Paris Treaty’ within a year. He may do so on his own, and this option remains viable.

Immediately after the President’s announcement, a number of left-leaning politicians and organizations began working to counteract the decision to withdraw. The sympathetic press heavily promoted them as having made meaningful pledges, vs. having engaged in political theater with no substance behind it. The cheerleading was echoed by business leaders who had benefitted heavily from the previous administration’s focus on “finally mak[ing] clean [sic] energy the profitable kind of energy”, at the expense of existing American industries.

This criticism from the left has coalesced into two separate campaigns, both of which are little more than websites, if with fairly massive private and 501c3 backing to run their public relations efforts, and all of the staffing that that entails.

The first of these is known as the “We are Still In” movement. “We are Still In” is an effort by a number of green organizations to gather beneficiaries of the booming pot of federal “climate” tax dollars — local governments, businesses and university — to oppose the President’s position.

Emails obtained under open records laws show the organization itself is built on top of and run by existing green groups like the World Wildlife Fund, Bloomberg Philanthropies, Ceres, and the Center for American Progress. These groups provided the organizing and outreach efforts to get cities and businesses to sign up, host the websites, provide PR and work with media, etc.

The “We are Still In” movement is principally aimed at getting its signatories to agree to other pet projects of these green groups such as getting businesses to buy electricity from favored renewable energy providers, or getting investors to redirect their investments to preferred sectors. The organization’s purpose is to oppose the decision to withdraw from the Paris treaty, while not committing its signatories to do anything, rhetoric notwithstanding. For example, they do not commit to making up the scores of billions in promised wealth transfers from federal coffers, which now will not come.

The other organization spawned from the President’s announcement is the United States Climate Alliance. Made up of governors of fourteen states and the territory of Puerto Rico, the Alliance promises to uphold their share of the proposed US commitment to greenhouse gas reductions under the Paris treaty (but, again, not to provide the wealth transfers; so, no, none of them are “Still In”). The founding Alliance Governors include Jerry Brown from California, Jay Inslee from Washington and Andrew Cuomo from New York.

The “Alliance” held a press event in mid-September to promote their campaign which in practice simply means promoting the governors’ profiles and touting their ideological agenda. Still, one of the

Alliance members, Hawaii, placed its commitment to the Paris Treaty into state law, requiring that the state align with the standards and goals of the ‘treaty’.

Were this Alliance itself in any way substantive instead of a media campaign to elevate the members’ standing and get their international travel and even additional, if off-the-books personnel and public relations advocacy paid for, it would reflect a highly questionable test of the constitutional bounds of their authority.

The Constitution explicitly reserves the conduct of foreign policy to the federal government and bans states from making treaties with foreign nations. States have, however, long engaged in foreign outreach for economic purposes and have signed partnership agreements and memorandums of understanding with foreign countries and provinces aimed at promoting economic growth. Here, the express claim is to undermine and in some ways even conduct specific foreign policy; the goal is to serve as the “Resistance”, seizing a platform to promote themselves and denounce political opponents at negotiating confabs among nations (without ever actually entering there treaty as parties, of course).

However, despite all of the lofty rhetoric and facially questionable claims of purpose, in the end USCA is merely a vehicle for aspiring politicians to underwrite a PR campaign touting the governors, personally, as “leaders”. It is political. The specifics of how they plan to do this and, according to hints in recent news reports, already are doing this, raise serious legal questions for the elected officials as well as those working in their service. E&E Legal expects to have more to report on this campaign and the the model of political advocacy it represents, in coming months. □

A Year Later, E&E Legal Still Battling VT for Public Records

by Matthew Hardin, FME Counsel



E&E Legal first sued the Vermont Attorney General in June of 2016, seeking records related to that Office's role in organizing a "climate-RICO" cabal among activist attorneys general, and private activists, targeting political opponents. Ordinarily, in public records suits, the law allows for a speedy resolution, because the law recognizes that getting information quickly is often just as important as getting it at all.

Unfortunately, over a year later, E&E Legal is still fighting a "stone wall" that bureaucrats in Vermont have built to keep records out of the public eye. After William Sorrell retired from office and was replaced by TJ Donovan, the new Attorney General attempted to argue he wasn't responsible for searching or maintaining his predecessor's files.

Vermont's Office of the Attorney General is refusing to search for records

on a non-official count E&E has already demonstrated to the courts the former AG, William Sorrell, used for work. Simultaneously, Sorrell's co-ringleader in New York, Eric Schneiderman, also refused to search an account E&E Legal has established was used to create government records.

E&E Legal was forced to file a motion to bring former A.G. William Sorrell back into court. Media outlets have proven that Sorrell used a Gmail account, as well as an official email account, to conduct business of the State of Vermont. The current Attorney General hasn't searched Sorrell's Gmail account, or even taken measures to ensure that Sorrell turned over copies of all public records in his possession before leaving office.

E&E is especially troubled that Vermont's current attorney general is the lawyer protecting former AG Sorrell's work-related Gmails from public disclosure, and apparently also from compelling Sorrell to turn over to the government and to the public the very records that he created in the use of a taxpayer-funded office. This is not how a transparent government operates, and the people of Vermont deserve better. It

is especially unfortunate that TJ Donovan has chosen to embrace his predecessor's aversion to transparency.

Now that the Court has ordered Sorrell joined in E&E Legal's lawsuit, E&E was hopeful that the citizens would finally be able to get some answers about his use of Gmail. E&E even sent out a Notice of Deposition requiring Sorrell to answer questions under oath regarding his use of nongovernmental email accounts and his preservation of public records. On October 4, E&E attorneys will travel to Montpelier to finally ask Mr. Sorrell the questions he has been avoiding since 2016.

Unfortunately, as the public learned in the highly-publicized cases of Lois Lerner and Hillary Clinton, sometimes bureaucrats are allergic to sunlight and answering the tough questions. Just this afternoon, Vermont officials told E&E Legal's attorneys that Mr. Sorrell would object rather than answer the questions E&E has been fighting to ask for over a year.

E&E Legal will keep fighting in Vermont until the truth is revealed. It's unfortunate that bureaucrats have already delayed our cases for over a year without releasing records, but we won't rest until transparency wins the day. □



E&E Legal President Craig Richardson's June 26th statement regarding the U.S. EPA and the U.S. Army Corps of Engineers plans to rescind the Waters of the United States (WOTUS) rule:

"Earlier this year, President Trump took a significant step in returning sanity to environmental regulatory rule making by remanding the Obama-era centralized

federal power grab known as the Waters of the United States (WOTUS) rule to the U.S. Environmental Protection Agency (EPA) and the Army Corp of Engineers. With its broad definition and draconian regulations, the WOTUS rule was an attack on property rights, an affront to small businesses, and an undue burden on America's farmers and ranchers. Today, EPA Administrator Scott Pruitt, along with the U.S. Army Corps of Engineering, are proposing a rule to rescind WOTUS, removing a major roadblock to economic growth. We applaud Administrator Pruitt for taking the lead on restoring balance to how Washington conducts its regulatory practice, and for the anticipated relief for America's hardworking ranchers, farmers, and small businesses owners." □

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