



Letters

Summer 2019

E&E Legal Petitions SEC Re: Corporations' Misleading Climate Change Statements



On August 13, E&E Legal petitioned U.S. Securities and Exchange Commission (SEC) to take action to prevent and prohibit registrants from making false and misleading statements with respect to global climate change. The petition was authored by E&E Legal's Senior Policy Fellow and JunkScience.com founder Steve Milloy.

"Almost everyone can make false and misleading statements with virtual impunity," Milloy observed, "except if you are the CEO of a publicly-owned company. As Tesla's Elon Musk recently discovered via a \$20 million fine and other legal sanctions, the SEC takes false and misleading statements by CEOs very seriously."

The petition is based on a number of undisputed facts and realities including:

1. Manmade greenhouse gas emissions are presently about 53.5 BILLION tons of CO₂-equivalent annually.
2. Manmade greenhouse gas emis-

sions are growing with no end in sight.

3. Even if US emissions (about 7 BILLION tons) went to ZERO, the rest of the world's emissions (46.5 BILLION TONS) are way above the Kyoto Protocol goal (i.e., below 35 BILLION tons).

4. Even if the US stopped emitting today, the difference in atmospheric greenhouse gas concentrations and global temperature would not be meaningfully different over the 21st century from the US not cutting emissions.

"But when businesses talk about climate and their own related actions, none of this reality is reflected in their typically untethered statements and claims," Milloy said. Companies routinely boast of cutting emissions to address climate change. "But regardless of your view of climate science, the companies are not actually addressing climate change in the least as the claimed emissions cuts are mere inconsequential drops in the bucket."

The petition cites four examples of this sort of climate "greenwashing."

1. Apple's claims it is "significantly reducing emissions to address climate change." But Apple's claimed CO₂ emissions amount to a mere 0.04% of the global total of 53.5 BILLION tons.

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Steve Milloy and CEI's Ebell Release Report on 50 Years of Failed Eco-pocalyptic Predictions

by Craig Richardson, President

front, which included *Time* jumping into the fray.

relenting. This is their chosen tactic for controlling one of the most important resources known to mankind - one that has the greatest impact on our species in human history.

Since their bought-and-paid-for scientists have failed so miserably in sounding the alarm bell and achieving their much desired worldwide control of energy, they turned to a 16-year old child from Sweden. There is nothing organic about her rise to "environmental prophetess," she is simply a media creation who is being used a human shield to push a Leftist-socialist agenda. The way they pumped her up is sickening, and reading accounts of her sail across the Atlantic in a modern-day yacht makes it sound like she's as brave as the Pilgrims who made the same journey in 1620.

She's the perfect foil when you don't have the truth on your side, or so they believe. Who would dare speak out against her, she's a teenager?!

Well Steve Milloy for one. He was one of the first critics to step into the fray and challenge her credentials and absurd statements as the following Tweet illustrated:

Steve Milloy @JuraScience
A couple facts for the ignorant teenage climate puppet:

1. There is no war against nature.
2. People are trying to improve their standard of living by using Earth's resources.
3. Trees grown back -- especially with more CO2 in the atmosphere.



Ten years ago, @AIGore predicted the North polar ice cap would be gone. Inconveniently, it's still there

On December 14, 2008, former presidential candidate Al Gore predicted the North Polar Ice Cap would be completely ice free in five years. As reported on WJXT, Gore made the prediction to a German TV audience at the COP15 Climate Conference:



Al warned them that "the entire North [polar] cap will disappear in 5 years."

As the media-created "phenom" Greta Thunberg neared the shores of New York in her yacht to deliver more hot air about how the world's going to hell in a hand-basket, E&E Legal's Steve Milloy and CEI's Myron Ebell released a report reminding people that catastrophic weather predictions are nothing new. Titled, *Wrong Again: 50 Years of Failed Eco-pocalyptic Predictions*, the CE-released report is a walk down memory land that clearly shows dire weather predictions have been used for at least half a century by Globalists in an attempt to control one of the most important resources in our lives and that's of course energy.

As the report notes: Modern doom-sayers have been predicting climate and environmental disaster since the 1960s. They continue to do so today. None of the apocalyptic predictions with due dates as of today have come true.

The document then includes a series of newspaper clippings starting in 1967 with a snapshot of the prediction of the day. For example, in 1967, the scare was a "Dire famine by 1975."



By 1970, death by famine was replaced with predictions of a coming ice age, which would rock the world by the year 2000. Publications throughout the early 1970s ramped up the rhetoric about this impending devastating cool-

Ozone depletion, acid rain, droughts, famines, and endless summers carried this weather-disaster narrative into the late 1980s. The *Miami News* is a typical story of the era.



By 1989, as the report notes, an impending ice age was replaced by global warming and rising sea levels. It will happen so quickly that even the Globalists' cherished United Nations would be underwater by the year 2000 the Associated Press declared.



As the actual weather continued to frustrate the powers-that-shouldn't-be since none of the horrible predictions came anywhere close to becoming a reality, "global warming" was replaced with the one-size-fits-all "climate change." This perfect moniker to slap on any weather situation has been the operating tagline ever since.

Despite the overwhelming evidence of false predictions and baseless scare tactic, as so clearly presented in the CEI report, the Globalists and their complicit media show no signs of

Of course, Milloy's comments set the media into a frenzy. How could anyone be so callous and call out a young girl?! Their double-standard is transparent as they relentlessly push a narrative people aren't buying.

Greta will return to Sweden and hopefully to life as a normal life teenager who uses an enormous amount of energy connecting through social media. And we will all wait to see what the next dire weather prediction the corporate media has in store for us. □

Which is worse? The ailment or the cure?

by Greg Walcher, Senior Policy Fellow
As appearing in *The Daily Sentinel*



It is commonly said of ill-advised policies that "the cure is worse than the ailment." That's often true, but not always. It came to mind this week when several websites expressed horror over a report regarding numerous environmental policy changes. Several articles carried headlines about the "staggering scope of environmental rollbacks by Trump administration."

Interestingly, not one article expressed the slightest wonder about the "staggering" scope of the policies being "rolled back." One change was even criticized because it was made by executive order — even though the policy being changed had also been created by executive order. That process was apparently acceptable for President Obama, but not for President Trump.

That is the crux of the debate over this "report," issued by the Center for Western Priorities (CWP), an environmental industry group based in Denver but funded by the "Resources Legacy Fund." The latter is a California fund launched by the Packard Foundation with a \$175 million check, and into which the usual environmental donors have lavished millions to push a preservation agenda. They do that by funding projects like CWP in California, Colorado, Idaho, and Montana.

The report declares that Trump administration has "rolled back more than 50 environmental protections," based on analyses of 53 specific policy changes — all labeled "rollbacks" of vital protections. Worse,

it claims, the changes were made at the behest of the energy industry. There is no mention of how new the "rolled back" policies were, but most date from the Obama era. The environmental agenda progressed astoundingly during those eight years, but nobody seems to have been "staggered" about that.

The most shocking thing about this revelation is that anyone is shocked. After all, Donald Trump campaigned on a promise to produce America's own domestic energy resources. He promised to re-open public lands where most of those resources had been locked up, repeal the anti-coal "clean power plan" and the "Waters of the US" rule, withdraw from the Paris climate deal, and generally facilitate American companies producing American energy. Those promises are partly why he was elected, so the follow-up should surprise nobody.

The CWP report, called "Drilling and Mining Industry Wish List," was designed to provoke outrage at the supposed impropriety of adopting policies that any industry supports. It accuses the Trump administration of "granting the wishes of oil, gas, coal, and uranium companies at a breathtaking pace."

As evidence of something unethical, we are reminded that in 2017, the Trump administration "requested public input on which regulations and policies should be repealed, replaced or modified." What an outrage, asking for public input! Apparently, they heard back from many, including energy companies, as well as mining and oil industry trade associations, leading to the "wish list" of policy changes.

How is this different from meetings between Obama transition officials and environmental industry leaders? Before Obama's inauguration, the Washington Post reported, nearly 30 environmental and conservation

groups "presented their top policy recommendations to President-elect Barack Obama's transition team yesterday... the groups provided a document laying out recommendations on key federal agencies and issues, including land, air, water, oceans and public health." They also hosted a major conference to highlight over 200 policy changes they wanted. Most of their "wish list" was steadily implemented over the next eight years.

Trump officials, we are informed with righteous indignation, have developed "cozy relationships" with industry leaders, meeting with them frequently. For instance, in May, 2018 EPA employees met with representatives of local mining and petroleum industries in Billings, Montana! They may even have discussed incentives for new copper smelters and coal fired-power plants! The CWP report pronounces that "Oil, gas, and coal companies have taken advantage of the Interior Department's open door, meeting extensively with senior officials, then hiring them when they leave public office."

That sounds sinister, but it is really new? The CWP and its leadership not only met with senior staffers in former Sen. Mark Udall's office to influence policies they supported, but hired them when they left public office. CWP Executive Director Jennifer Rokala should know — she was one of them. So were at least two of her CWP policy staff, as were leaders of their parent organization who once worked for the Obama Interior Department, other Senators, and a host of environmental industry groups.

Presidents implement policies their allies support — that's why they are called allies. While some may pretend to be outraged by the Trump administration's economic policy changes, we ought to remember the ailment these "rollbacks" are intended to cure. □

U.S. Needs to Diversify Its Energy Portfolio

by Craig Richardson, President
As appearing in the *InsideSources*



America is vulnerable and exposed. Despite increased production, the United States has yet to achieve the level of energy independence adequate for national security or consumer protection.

Today's headlines are full of examples.

When Iran captures vessels in international waters, it sends shockwaves reverberating through the global energy market. Another example is Venezuela, where descent into political chaos may lead to the exit of American producers — with China and Russia being the potential beneficiaries. A more extreme example occurred when oil prices quadrupled following the 1973 OPEC embargo of oil exports to the United States.

Geopolitical upheaval makes the global energy marketplace nervous. Uncertainty translates into higher prices. And even though the United States is producing a greater portion of the energy that we use in comparison with just a few years ago, geopolitical events can still hit American motorists at the gas pump, as we saw earlier this summer.

To the extent that domestic energy production can be ramped up in times of turmoil, the more America will remain secure and economically immune from such upheaval. A small area adjacent to the Arctic National Wildlife Refuge in northern Alaska presents the best opportunity.

President Jimmy Carter signed legislation in 1980 creating more than 100 million acres of national park land and wilderness along Alaska's North Slope, as well as a relatively tiny reserve known as "Section 1002" from which oil could be drilled, subject to congressional approval.

Beneath Section 1002 lies an estimated 5.7 billion to 16 billion barrels of oil. That volume of natural resources is so massive it needs to be put in perspective to be appreciated. It's vast enough to provide 10 percent of America's daily oil production, according to U.S. Energy Information Administration estimates. It represents about 8.7 percent of the total undiscovered, recoverable oil within the United States.

We can no longer ignore such an untapped reserve within American borders. Supplementing our oil supplies with domestic barrels from ANWR better insulates us from the volatile world oil market. Americans deserve a steady energy supply, and not only does energy independence benefit us from a national security perspective, it also bolsters our economic security.

Energy independence and the stability that comes with it would better allow American businesses to more accurately forecast their future financial outlays, enabling them to clearly see where they can afford to invest more time and money in expanding their operations. This benefits the consumer in the form of lower gas prices and a more secure America.

Drilling in the coastal plain of ANWR would also reduce dependence on foreign oil reserves, better shielding us from unpredictable tyrants in oil-producing nations hostile to the United States.

We must start drilling in Alaska. It takes time and money to move and build the infrastructure necessary to start tapping into that resource, which is why it is crucial to begin work now. It could take years from the time exploration and development of gas and oil from ANWR begins to when the crude oil is finally transported and refined for use by American businesses and consumers.

Policymakers must move now to ensure that a supply gap from Venezuela, as well as other potential future interruptions from other sources, are minimized.

While Congress approved drilling in part of ANWR in 2017, some politicians — predictably — aligned with self-serving green groups seeking to block it. Senators Kamala Harris, Bernie Sanders and Elizabeth Warren, for example, have all championed legislation that would curb any drilling operation in ANWR.

Additionally, litigation by "keep it in the ground" groups opposed to all oil production will undoubtedly further delay the start of drilling operations in the area, as would the miles of red tape that must be navigated by any company wishing to secure permits.

The National Environmental Policy Act of 1969 is yet another bureaucratic hurdle that must be overcome before the energy that will ultimately benefit our economy and consumers can even begin to be produced.

It's time to take control of our ability to shape the oil market so that we can, once and for all, become impervious to the whims of dictators of foreign, oil-rich nations, and we can emerge not only energy-independent but energy-dominant. □

CA Is Playing Water War Games To Get Even With Trump

by Katy Grimes, E&E Legal Senior Media Fellow
As Appearing in the *California Globe*



Playing water war games with the people's water is getting old in California. The winter of 2019 brought 200 percent of average rains and snow pack. Yet the state is still holding back on water to farmers, and residents will be rationed starting next year.

Under President Donald Trump's administration, radical EPA regulations have been thoroughly reviewed, relaxed, and some overturned. However, the Legislature and Gov. Gavin Newsom are taking their own shot over Trump's bow with Senate Bill 1, the California Environmental, Public Health, and Workers Defense Act of 2019. "This bill establishes specified minimum federal environmental, public health, and labor standards as state baselines in the event the Congress or President repeals or weakens corresponding federal standards, and prohibits the corresponding California standards from falling below those baselines. In the event that new federal standards fall below the baseline, this bill allows private citizens to enforce state standards," bill analysis says.

What the bill would really do is send billions of gallons of water out to the Pacific Ocean ostensibly to save more fish.

California Globe spoke last week with Paul Souza, Pacific Southwest Regional Fish and Wildlife Director, about updating the 2008 Biological Opinions on the Bureau of Reclamation's Long Term Operations of the Central Valley Project and State Water Project. The Fish and Wildlife Service and the National Marine Fisheries Service, known as NOAA, are currently undertaking a second independent scientific peer review of the analyses in their draft Biological Opinions. Both agencies previously carried out an independent scientific peer review of an earlier draft of their analyses this spring. Both agencies expect to complete the Biological Opinions by August 30th.

The conversation with Paul Souza largely stayed in the Fish and Wildlife camp, discussing water deliveries for fish populations, and concerns for salmon runs and Delta Smelt. Souza said the second peer review of the

biological assessment update was currently taking place and would be out within the month. "We are taking the time to get it right," Souza said. While Souza's focus is on important water for fish populations, California has a serious government-created water shortage for agriculture and humans in the Central Valley.

More back story: The Obama administration weaponized NOAA, which according to some federal government insiders, is a bunch of environmental zealots within the Department of Commerce, trying to screw up water plans that benefit humans.

In a recent meeting with Rep. Tom McClintock (R-CA), we discussed water storage in California. McClintock explained that the most expensive way to produce water for human and agriculture is desalination at the cost of \$2,300 per acre-foot. Water recycling costs \$1,500. Importing water costs \$925. Groundwater storage costs \$737. "The cheapest source of water is good, old-fashioned surface storage – dams and reservoirs – at \$600 per acre-foot," McClintock said. "Surface water storage gives us nearly four times as much water for the dollar as desalination."

Thus, what makes the most sense for additional water storage in California is to raise the Shasta Dam.

"Everyone agrees we need to produce more water infrastructure. The question is, for the same price, would it be better to get one gallon or four gallons?" McClintock said in opening remarks during the April House Natural Resources Committee Water, Oceans and Wildlife Subcommittee hearing on "The State of Western Water Infrastructure and Innovation." McClintock is the ranking member.

"Instead of storing California's abundant rain-fall before it reaches the ocean, they prefer to spend four times the cost of storage to reclaim the water AFTER it has been needlessly lost to the sea," McClintock said.

"The last generation understood this, and it built the dams and aqueducts that we still rely upon today. They did so through the beneficiary pays principle: the state and federal governments advanced money for construction that was then repaid by the users of the water and power produced by the projects."

"In the 1970s, we abandoned these projects – sometimes in mid-construction."

When McClintock and I spoke, he said the Shasta Dam was designed to be built to 800 feet but currently stands at only 600 feet. "The extra 200 feet would produce nine

million acre-feet of additional storage – nearly doubling the water we could store on the Sacramento system. But a project to raise the dam just 18 feet – that would store an additional 630,000 acre-feet – has been stalled for decades by endless environmental reviews."

"So I now pose the question again: abundance or shortage?" McClintock said at the hearing. "We could spend \$1.4 billion to raise Shasta Dam by 18-feet or spend \$1 billion for another Carlsbad desalination plant. Shasta would yield as much as 630,000 acre-feet each year; Carlsbad 56,000 acre-feet. And consider this: when water is drawn out of Shasta, it generates enough electricity to supply about 710,000 homes. When water is drawn out of Carlsbad, it consumes ¼ megawatt for every acre-foot of water. In other words, Carlsbad consumes enough electricity to power 250 homes in order to produce enough water for one home."

"Droughts are nature's fault; water shortages are our fault," McClintock said. "That's the choice we made 40 years ago when we discouraged construction of new dams. And we now have to ask ourselves whether we really want to live in an era of unnecessary self-imposed water and power scarcity or restore abundance as the object of our water and power policy."

In 2017, President Trump signed an Executive Order directing the Environmental Protection Agency and the U.S. Army Corps of Engineers to review the Obama administration's "Waters of the United States" rules, which defined all bodies of water that fall under U.S. federal jurisdiction. Trump's plan is "paving the way for the elimination" of the rule.

In 2018, the U.S. Environmental Protection Agency and the Department of the Army, proposed a clear, understandable, and implementable definition of "waters of the United States" that clarifies federal authority under the Clean Water Act. Unlike the Obama administration's 2015 proposal, the new proposed rule contains a straightforward definition that would result in significant cost savings, protect the nation's navigable waters, help sustain economic growth, and reduce barriers to business development.

As for President Trump's memorandum on Western Water, House Republicans say "with this executive action, there is a strict timetable for rewriting the biological opinions that lie at the root of the water crisis. This executive action also prioritizes building critical projects to expand water storage in our state so that we can store more water during wet years for use in dry years." □

SEC Petition (Cont.)

2. ExxonMobil claims it plays an “essential role in addressing the risks of climate change.” While ExxonMobil pats itself on the back for cutting its own emissions by 22 MILLION tons of last year, the company sold oil and gas worth 588 MILLION tons of emissions during the same time period.

3. Electric utility Xcel claims its climate actions (i.e., shuttering coal plants) is “grounded in climate science,” namely the 2-degree Celsius mean global temperature target limit. However, as revealed in the 2009 Climategate emails, the 2C target is arbitrary in nature and without actual scientific foundation.

4. Nuclear utility Exelon sounds like an unhinged environmental group on its web site, proclaiming: “We need the Earth. Today, it needs

us.” Towards that self-exalted purpose, Exelon boasts of shuttering the few coal plants it had. Meanwhile, China is building more coal power capacity in 2019 alone (45 gigawatts) than all US utilities plan to shutter through 2025 (17 gigawatts).

“All of these corporate claims are false and/or misleading,” said Milloy. “To the extent investors are making decision based on such claims, they are being defrauded,” Milloy emphasized.

The SEC first issued climate guidance to US companies in 2010. But that guidance only applied to disclosure regarding business risks from climate change. Since then, US companies have evolved from merely disclosing risks to their businesses to dubious marketing use of their climate actions as advertising points.

“If a company wants to talk about climate, that’s fine, but they

must do so in a manner consistent with the full disclosure and anti-fraud provisions of the federal securities laws,” said Milloy, formerly an SEC attorney and mutual fund manager. “The false and misleading posturing must stop and it is the SEC’s job to issue appropriate guidance to companies,” Milloy added.

Earlier this year, the SEC Division of Corporation Finance upheld Milloy’s position in related shareholder proposals he filed against electric utilities Duke Energy and Exelon. “It was encouraging that the SEC upheld my proposals in the face of blatantly false and misleading statements made by Duke and Exelon,” said Milloy. “Now it is time for the SEC to take action applicable to all public-owned companies,” he concluded. □

Walcher Calls for Better Forest Management at U.S. House Hearing



On August 18, E&E Legal’s Senior Policy Fellow and Board Member Greg Walcher testified in front of the House Natural Resources Committee Subcommittee on National Parks, Forests, and Public Lands in support of H.R. 1572, “Botanical Sciences and Native Plant Materials Research, Restoration, and Promotion Act.”

In his testimony, Walcher noted, “In the wake of catastrophic fires that have devastated more than 100 million acres of national forests in the past 20 years, there ought to be even greater attention on federal management strategies that have utterly failed

to maintain and enhance these priceless resources.”

He added, “Making public land management decisions without understanding the specific local circumstances defies logic, so to be credible the process must include the knowledge of – and concern about – the people who live there. So in the debate about environmental restoration today, the issue is not just about fairness from a geographic perspective. Rather, it is about the inescapable fact that federal land management is poor management.

He concluded, “Ecosystems should be managed by the people who live in the area, and who by definition know the ‘landscape-scale’ issues best. A far better approach to the crisis of federal land management would be to further empower state and local decision-making, consistent with national priorities.”

In addition to serving as a

Board Member and Senior Policy Fellow for E&E Legal, Walcher is also President, Natural Resources Group, and the Former Executive Director, Colorado Department of Natural Resources. □

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