



# Letters

Spring 2019

## The Case for a Green 'No Deal'

by Steve Milloy, E&E Legal Senior Policy Fellow  
As appearing in the *Wall Street Journal*



The Senate rejected the Green New Deal on a 57-0 procedural vote last month. Not a single senator voted to bring the proposal to the floor, including its chief sponsor, Massachusetts Democratic Sen. Ed Markey. Climate alarmists demanded that Republicans come up with a plan of their own. But the best plan may be no plan at all, for at least four reasons.

First, cutting U.S. emissions won't have much of an effect on the climate. According to the United Nations Environment Programme, total man-made emissions of carbon dioxide and other greenhouse gases were an estimated 53.5 billion metric tons in 2017. If the U.S. went dark and magically stopped emitting CO<sub>2</sub> today, the rest of the world would continue to emit on the order of 45 billion tons of CO<sub>2</sub> annually, an amount far in excess of the Kyoto Protocol's goal of reducing annu-

al emissions below the 1990 level of 35 billion tons. Supposing the U.S. could go carbonless, the difference in atmospheric CO<sub>2</sub> levels by 2100 would be only about 29 parts per million. Based on Intergovernmental Panel on Climate Change modeling, this would make no discernible difference in mean global temperature.

Second, claims of reductions in national emissions should be taken with a grain of salt. According to an August 2018 report from the ClimateWorks Foundation, Western industrial nations have simply outsourced as much as 25% of their emissions to Asia, where labor is cheaper and environmental and workplace regulation is less expensive. Local emissions may be "cut," but global emissions aren't. Despite decades of climate alarmism, the world is burning more coal, oil and natural gas than ever. Still, a billion people around the world live in homes without electricity. The U.N. projects that global population will grow from 7.6 billion today to 11.2 billion by 2100. So long as people who are living in poverty seek a way out of it, CO<sub>2</sub> emissions will rise.

Third, the only thing certain about CO<sub>2</sub> is that it's necessary for life

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## Hypocrisy Runs Rampant in California Climate Case

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



Time is running out for Oakland and San Francisco politicians who are desperately trying to salvage their failing bid to grab billions of dollars from oil companies, including Exxon, Chevron, BP and Conoco Phillips. Their meritless lawsuit was dismissed and now their case hinges on an appeal.

“If the facts are against you, argue the law. If the law is against you, argue the facts,” Carl Sandburg said. “If the law and the facts are against you, pound the table and yell like hell,” he famously quipped.

Their lawsuit maintains that those companies alone are responsible for climate change that could, they theorize, damage sea walls and swamp sewer systems. As U.S. District Court Judge William Alsup summed it up prior to dismissal, “You’re asking for billions of dollars for something that hasn’t happened yet and may never happen to the extent you’re predicting it will happen.”

That’s a remarkable statement considering the judge is a Clinton appointee in San Francisco.

Absent any legal basis, the municipalities are desperately attempting to “pound the table” to get the dismissal reversed. While they have failed to make their case in court, they have succeeded in getting amicus (or “friend of the court”) briefs filed on their behalf by the usual “who’s who” among activist fringe groups and liberal politicians urging that the case be reinstated, most of whom are

in the pockets of leftist billionaires like George Soros and Tom Steyer.

An amicus brief filed by senators Sheldon Whitehouse, Diane Feinstein, Richard Blumenthal, Mazie Hirono, Ed Markey and Kamala Harris argues that the defendants spend a lot of money lobbying Congress to oppose climate change regulation, both directly and through trade associations such as the Chamber of Commerce. Their brief reasons that the court should therefore not accept the defendants’ request to leave climate change to the political branches because defendants, apparently, have been successful with getting their way with the political branches.

The document also rails against energy CEOs flying to Davos on private jets despite the fact that their climate-hawk colleague Sen. Bernie Sanders spent \$342,000 on private jet travel since the last presidential election. But the cherry on the hypocrisy cake has to go to Feinstein of the Judge Brett Kavanaugh nomination debacle fame, the only amicus brief signatory who was in the Senate in 1997 when it voted 95-0 on a resolution against the international climate change treaty known as the Kyoto Protocol. Feinstein was one of only five senators who didn’t find the matter important enough to vote on it. This behavior is about as sincere as Senate proponents of the Green New Deal voting “present” instead of voting in favor of it.

Sincerity has never been a strong suit among the plaintiffs. In its lawsuit, Oakland warned of “ongoing and increasingly severe sea level rise,” which is projected to have up to “66 inches of sea level rise by 2100” and flooding damage to sewer systems with a “total replacement cost of between \$22 billion and \$38 billion.”

But its municipal bond dis-

closure paints a sharply contrasting rosy picture stating, “The City is unable to predict when seismic events, fires or other natural events, such as sea rise or other impacts of climate change or flooding from a major storm, could occur, when they may occur, and, if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City or the local economy.”

San Francisco’s bond disclosure is a near cookie cutter copy of nonchalance while its lawsuit is specific with a dire warning that “near-term risks include 0.3 to as much as 0.8 feet of additional sea level rise by 2030” and damage cost estimates of \$5 billion.

Olympic medal-worthy hypocrisy aside, the appeal to overturn the dismissal will ultimately center around the question of whether climate change matters should rightfully be decided by one judge’s opinion, or whether federal law prescribes that climate change policy be determined within the halls of Congress and the White House.

All the table pounding in the world will not change the fact that, in 2011 in the 8-0 *American Electric Power v. Connecticut* decision, the court ruled that corporations cannot be sued for greenhouse gas emissions because the Clean Air Act specifically deposits that regulatory authority into the hands of the Environmental Protection Agency.

The plaintiffs may “yell like hell,” but their hypocrisy cannot only be heard but also seen in how they continue to depend on gasoline and oil in their daily lives. Perhaps they should focus more on reducing their own carbon footprints instead of seeking “jackpot justice” to fill the holes in their poorly managed municipal budgets. □



## Is California Experimenting in ‘Green New Deal’

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



Following the devastating California wildfires of 2018, Pacific Gas and Electric recently announced it will cut power this summer to electricity customers on high-wind days to avoid future wildfires.

While PG&E's transmission lines ignited fires, others say many years with little to no forest management and cleanup of the forest floor and dead timber allowed the forests to ignite, and was the real cause of the devastation.

“After a very meticulous and thorough investigation, CAL FIRE has determined that the Camp Fire was caused by electrical transmission lines owned and operated by Pacific Gas and Electricity (PG&E) located in the Pulga area. The fire started in the early morning hours near the community of Pulga in Butte County,” California fire officials said in a statement, adding that “the tinder dry vegetation and Red Flag conditions consisting of strong winds, low humidity and warm temperatures, promoted this fire and caused extreme rates of spread.”

PG&E has cut power pretty regularly this fall and winter in the northern parts of the state. I own a cabin and land within the El Dorado National Forest, and received 12 text alert notifications of power outages from PG&E since October, most of which lasted days. The utility adjusted my electricity bill accordingly, but everything in the refrigerator and freezer had to be thrown out several times this winter and spring.

Cabin owners can expect this to happen. But imagine if this happens all over No. CA this spring, summer and fall when temperatures hit 100 degrees plus.

Mismanaged, overcrowded forests provide fuel to historic California wildfires, experts say. The 129 million dead trees throughout California's forests served as matchsticks and kindling during the most recent fires, and still threaten future fires.

Former Gov. Jerry Brown took the Clinton and Obama-era regulations — which added excessive layers of bureaucracy that blocked proper forest management and

increased environmentalist litigation and costs— a step further when he vetoed a bipartisan wildfire management bill in 2016, authored by Sen. Moorlach. While this bill may not have stopped all of the wildfires, it would have greatly helped the communities.

It is estimated that “for every 2 to 3 days these wildfires burn, GHG emissions are roughly equal to the annual emissions from every car in the entire state of California,” USA Today/Reno Gazette reported in 2017. What is disturbing is when California burns, the state's clean air achievements also go up in smoke.

The blazes spew enough carbon into the air to render the state's climate and clean air policies moot. Not addressing the causes of the state's historic wildfires makes any policy discussion about the need to reduce greenhouse gases pointless.

With the threat to cut power this summer, many are asking what about power to hospitals, health clinics, schools, businesses, government buildings and offices, public transit, street lights, sports arenas and stadiums, convention centers, hotels... the list is long.

Most do not realize just how much our country and state depend on electricity — particularly now that the state is pushing electric cars on everyone, amidst the threat to ban internal combustion engine cars. How will the Tesla and Volt drivers charge their electric cars with no power? Or will there be a two-tiered system determining whose power is cut?

Plunging millions of residents into darkness isn't a good long term solution. But the serious question is “why?”

While the plan may potentially solve one problem for PG&E, it obviously creates another with residents, businesses, hospitals and government facing blackouts. The last California Governor who authorized rolling blackouts was recalled by the voters.

After he signed off on \$42 billion in vastly overvalued energy contracts in 2001, Gov. Gray Davis instituted random, rolling blackouts that created chaos and severe economic damage in many parts of the state. “And it was Davis's state energy traders who arranged for the state to pay prices for energy that were well above market,” Human Events reported in 2003.

Following the veto of his 2016 wildfire management bill, in 2018, Sen. John Moorlach (R-Costa Mesa) proposed SB 1463 which would have dedicated 25

percent of state cap-and-trade funds to wildfire mitigation efforts. That bill was killed. But parts of its concept were incorporated into SB 901, which did pass, and uses \$200 million a year of cap-and-trade funds over five years for wildfire mitigation — how much per year.

“The connection with cap-and-trade is crucial. It's intended to fund the reduction of greenhouse gases,” Moorlach wrote. “Yet a few days of wildfires may generate a volume of greenhouse gases as great as every vehicle in the state operating for a whole year (in addition to the other toxic emissions and co-pollutants, not counting the immense loss of life and property).”

“Don't even get me started on the amount of cap-and-trade money that is going to the high-speed rail boondoggle. Perhaps we should divert every last cent to our fire-prone areas and abandon the not-so-bullet train? Especially since it will be electric-powered?”

In 2019, Sen. Moorlach authored Senate Bill 584 which would expedite opportunities for local jurisdictions located in Tier 3 fire-threat areas to underground current overhead electrical infrastructure for wildfire mitigation. The bill will also establish a Wildfire Mitigation Oversight Board to develop and implement policies that reduce the looming threat of more wildfires.

Moorlach says overhead utility lines and equipment have caused many devastating blazes, with the equipment of California's three largest utilities being responsible for igniting over 2,000 fires between 2014 and 2017.

“The current utility company solutions of turning off the power and managing vegetation have been largely ineffective,” Moorlach said. “Utility companies propose ‘hardening’ the overhead systems as a means of fire mitigation, but Southern California Edison noted in its Grid Safety and Resilience Program that hardening overhead systems is only 60% as effective as putting overhead systems underground.”

Lastly, there is no discussion of how utilities can keep expensive and unreliable renewable energy contracts for wind and solar when they have to constantly cut the reliable power that generates electricity and is needed as backup for wind and solar. The electric power supply is primarily coal, the second-largest energy source for U.S. electricity generation in 2018. Perhaps this is something the bankruptcy judge in the PG&E case should address. □

## A rare opportunity for America

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



I was among a small group that met recently with Arizona Congressman Paul Gosar, to talk about public land management. When the discussion turned to minerals, he picked up a dark brown rock from the Mojave Desert and passed it around, explaining that it was mostly composed of a "rare earth" element. Such rocks, he said, litter the desert by the millions, yet the United States imports 100 percent of the important mineral it contains.

He and other leaders have been concerned for years about America's growing reliance on China for rare earth minerals, several of which are critical in the production of renewable energy, and high-tech equipment like cell phones, computers, MRI machines, and satellites. Most Americans don't spend two seconds worrying about where we get our supplies of these particular elements with hard-to-pronounce names, like ytterbium, dysprosium, and praseodymium. But China's increasing use of economic espionage to steal technology has heightened concerns about the vast quantity of our imports from the land of the red dragon.

Last fall, the Justice Department indicted 10 Chinese intelligence officers and cyber hackers from the China's civilian espionage organization, the Ministry of State Security (MSS). They had stolen airline engine technology to aid the Chinese defense industry's development of a copy-cat engine. Just two weeks earlier, the

FBI arrested Yanjun Xu, a high MSS official who had illegally purchased General Electric commercial aviation technology. U.S. intelligence agencies have been warning that China is using students as spies, and mining social media sites like LinkedIn and Facebook to recruit more.

But it is China's growing dominance in manufacturing telecommunication systems that most concerns authorities around the world. That's because it is especially easy to embed spying equipment in technological equipment like cell phones, computers, servers, and in solar panels exported around the globe.

As the United States prepares to join other western nations in deploying "5G" mobile networks, several countries (Australia, New Zealand, Canada, the UK, Poland, Norway and others) are blocking involvement of the world's largest telecommunications equipment manufacturer, the Chinese company Huawei. Last month Canada arrested Huawei's chief financial officer, Meng Wanzhou, for using such exports for espionage. At the same time, Polish authorities arrested Huawei's Polish sales director for spying, and the plot is growing, in both geography and complexity.

No wonder suspicion has now focused on the same Chinese firm's production of solar panels. Since China now makes 70 percent of the world's solar panels, American officials worry that such panels could actually function as "sleeper agents" for disrupting the U.S. electrical grid. Considering how small modern cameras, microphones, and transmitters can be, these warnings are not as far-fetched as they might have seemed a few years ago.

A bipartisan group including Sens. Tom Cotton and Chris Van Hollen, and Reps. Mike Gallagher and

Ruben Gallego, introduced legislation to ban the export of U.S. components to any Chinese telecommunications company that violates U.S. sanctions or export control laws. The bills specifically cite Huawei and another Chinese firm, because the components they make could be used to spy, or to trigger power outages.

All of which brings us back to the question of why we rely so heavily on China in the first place. America's economy is heavily dependent upon energy and telecommunications, but does that require Chinese manufacturing? Clearly not. America has its own plentiful supplies.

In Congressman Gosar's office, the only thing really remarkable about the "rare earth" rock is that it isn't rare at all. The term "rare earth" is a misnomer, applied to 17 specific minerals because they were once considered difficult to extract from the surrounding rock in which they are found. But supplies abound worldwide, including all across the U.S., where our known reserves are at least 10 times the entire world's production.

China now produces 80-90 percent of the world's rare-earth minerals, according to the U.S. Geological Survey. Yet China has only about 37 percent of the world's estimated reserves. For decades, the U.S. supplied the world, mostly from one mine at Mountain Pass, California. Then, China started exporting rare earths, driving prices down and bankrupting that mine in 2002. The U.S. also had a national defense stockpile, but sold it all in 1998, while the last American processing plant in Texas was closing.

The mining process is expensive and subject to extreme market fluctuations, so the U.S. has simply let China have that market. As we are now realizing, that is not smart, it is not safe, and it is completely avoidable. □

**Case for Green 'No Deal' (Cont.)**

on Earth. It's plant food. NASA satellite images have charted the greening of the Earth since the early 1980s. The notion that climate change is necessarily bad is an assumption, and possibly an unfounded one. There is no known or demonstrable "correct" or "optimal" level of CO<sub>2</sub> in the atmosphere. There is similarly no known or demonstrable "correct" or "optimal" average global temperature. The climate is always changing, albeit gradually and often imperceptibly. The U.N. reported in its first climate assessment in 1990 that average temperatures in the Northern Hemisphere have been warming since about 1650, the end of a relatively cold period known as the Little Ice Age. Recent research has demonstrated that warming has helped increase corn yields and helped corn production move into

colder climes like the Canadian province of Alberta.

Fourth, pointlessly wrecking the U.S. economy is bad politics. Climate routinely ranks at or near the bottom in polls of voter priorities, and climate alarmism has never been a political winner. Bill Clinton tried and failed to get his BTU tax passed in 1993. The Senate voted 95-0 in 1997 on a resolution to keep the U.S. from signing the Kyoto Protocol. Sens. John McCain and Joe Lieberman couldn't rally enough support to pass a bipartisan cap-and-trade bill in 2003. Sen. Markey and Rep. Henry Waxman's cap-and-tax bill died on the vine in 2010. And then there is the recent skunking of the Green New Deal.

Climate crusaders do make a lot of noise, political and otherwise. Some activists mean well but are simply uninformed or wrongheaded.

Some use climate as a stalking horse to advance a socialist agenda. "System change not climate change" is a common poster at climate rallies. Some look for business or rent-seeking opportunities from stoking panic over the climate. Some go along with climate-change hysteria out of political correctness. All of this noise crashes into the realities of immense and growing emissions driven by the desire of poor people around the world to achieve a higher standard of living.

If the GOP needs a climate plan, consider what Utah Sen. Mike Lee suggested during the debate over the Green New Deal. "The solution to climate change is not this unserious resolution, but the serious business of human flourishing. . . . Fall in love, get married, and have some kids."

Amen, Senator. □

## E&E Action Urges Congress to Do Nothing on Climate



The Energy & Environment Action Team (E&E Action), a C-4 organization affiliated with E&E Legal, sent a document, *The Plan is...No Plan!*, to all 535 members of the U.S. House and U.S. Senate urging them that the best way to address "climate change" is to do nothing.

"In the wake of the job-killing, economy-destroying, Stalinist, 'Green New Deal,' Republicans in Congress for some inexplicable reason feel compelled to come up with a more moderate version of this horrible idea," said E&E Action Board Member

and Junkscience.com Founder Steve Milloy. "Half of crazy is still crazy, so we sent a plan to all Members of Congress urging them that the best action on climate is no action."

When socialist and media darling Rep. Ocasio-Cortez introduced her "Green New Deal (GND)" in February, Republicans and Conservatives appeared to be united in their opposition to her dangerous rehash of ideas that have destroyed countries like Venezuela. Even Democrats wanted nothing to do with it as witnessed by no Senator, including those who sponsored the GND, voting for the measure when it was brought to the Floor for a vote in late March.

As Milloy noted in a Wall Street Journal op-ed following the Senate Vote, which appears in this newsletter, "Climate alarmists demanded that Republicans come up with a plan of their own. But the best

plan may be no plan at all..."

President Donald Trump was elected in large part by promising to rollback energy and environment over-regulations introduced by the Obama Administration that destroyed large segments of this country and severely hurt the middle and lower classes. The President withdrew the U.S. from the one-sided, economy-destroying, "Paris Agreement," for example, pointing out correctly that it's a bad deal for America. The Republican base and most Americans in general have responded overwhelmingly favorably, cheering lowering energy prices, a booming economy, and a skyrocketing stock market.

Yet, some Republicans feel the need to give the far left in this country validity by publicly acknowledging a need to address "climate change." And then doubling down by introducing their own versions of the GND. □



## An End to Jackpot Justice in Louisiana is Long Overdue

by Craig Richardson, President  
As appearing on *RealClear Energy*

Thanks to a decades-old system of good-ole boy politics and cozy relationships between elected officials and judges, Louisiana has earned one of the worst reputations in the nation for offering “jackpot justice” in the courts. Frivolous and corrupt lawsuits abound.

For example, many businesses in the state are targeted for minor accessibility complaints concerning the Americans with Disabilities Act. These lawsuits are commonly filed without notice to the business operator. Court costs alone are enough to force many small businesses to close – even after one suit..

Similarly, state trial lawyers are known for working behind the scenes to drive up auto insurance costs, forcing more people to drive uninsured. More than half of Louisiana’s drivers have no insurance coverage – meaning a potentially bigger payday for the lawyers who take these cases to trial.

Louisiana was ranked the fifth-worst state by the American Tort Reform Foundation’s 2018-2019 Judicial Hellholes Report. Ridiculous lawsuits are very common in Louisiana because they have a minimum payout of \$50,000 for a jury trial in a civil case. That means that no matter how trivial the issue, the punishment may easily outweigh the crime. Trial lawyers and politicians abuse this minimum payout by donating to and electing friendly judges, then abusing the court system in the state to make an easy score.

But the Mardi Gras King of frivolous litigation goes to recent, multiple cases filed against energy companies operating in Louisiana. Separate lawsuits in at least six coastal parishes

in Louisiana have been filed against oil companies alleging they are solely responsible for the state’s eroding coastline. The lawsuits ignore dozens of other companies and industries operating along the coast - such as construction, shipping, or other heavy industries.

A cabal of greedy trial lawyers are specifically targeting energy companies, hoping to score big payouts for a costal remediation plan that will likely never be enacted. This is very simply an all-out money grab by trial lawyers.

Aside from the shady dealings of the Louisiana judicial system, there are several problems with these coastal erosion cases. Coastal erosion is not a local or state issue. The EPA and the Interior Department have worked with numerous coastal states for many years trying to help mitigate damage to coastlines.

If such issues are to be brought before a judge or Jury, the federal court system is clearly the proper venue. However, the Louisiana colluders have specifically avoided using the words “climate change” or “global warming” in their court filings.

This was done intentionally by trial lawyers who don’t want to see their cases move to federal courts and more objective jurists. Energy companies have taken action to move these cases to federal court and the venue question is yet to be decided.

Secondly, these lawsuits brought against energy companies are just plain unfair. The lawsuits claim modern-day coastal damage from decades-old drilling projects that have long been shuttered. The litigation ignores how these drilling rigs were all properly permitted, built and inspected by state and federal agencies at the time.

These drilling projects were also touted and encouraged by state officials who cheered on oil and natural gas exploration and viewed energy development in Louisiana as an economic windfall. How and why should companies that were following all the rules of

the day – 40 years ago – suddenly be held accountable to arbitrary new standards and accusations decades later? It all reeks of money grabbing.

Additionally, these lawsuits not only cause great harm to one of Louisiana’s most successful industries – energy production – they jeopardize the health of local economies. Louisiana Lawsuit Abuse Watch found the civil court system in Louisiana is responsible for the loss of more than 15,000 jobs a year.

Suing energy companies as the sole entity responsible for coastal erosion might be a great get-rich-quick scheme for trial lawyers, but apparently Governor Edwards is forgetting or is ignoring the needs of thousands of people who are employed by energy companies in the state. America is now a net exporter of oil and natural gas and one of the biggest export facilities in the nation resides in Louisiana.

Staging a series of trials in local courts is no way to properly address complex issues such as whether or how the climate is changing or the degradation of Louisiana’s coastline. It’s clear the proper, fair venue for any legitimate litigation concerning the state’s coastline is the Federal Court system. Evidence, input from the EPA and other federal agencies should be considered as well. It’s time to end the longstanding game of jackpot justice in Louisiana. □

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