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Green Watch

The EPA's War Against the States

States are supposed to lead in fighting pollution, but federal bureaucrats have usurped the states' role

By William Yeatman

Summary: *Congress intended the Environmental Protection Agency to work closely with state and local officials—those nearest to the people. But since 2009, the Environmental Protection Agency has waged war on the states. In an end-run around the Constitution, the EPA has collaborated with environmentalist groups such as the Sierra Club and the Natural Resources Defense Council to implement policies that have little to do with protecting the environment.*

'Before' and 'after' photos from Oklahoma and New Mexico show the imperceptible difference between state and EPA haze controls. Additional cost of EPA controls in the two states: $2.57 billion a year.

The Environmental Protection Agency, proposed by President Nixon, was created by Congress in 1970. "Cooperative federalism" was to be part of the EPA's foundation.

Federalism involves dividing governmental power between a central government (what we now call the federal government) and regional governments (the states). It is embodied in the U.S. Constitution and protected by the 10th Amendment, which was written to stop the federal government from usurping the authority of the states and the people.

Under the principle of "cooperative federalism," the EPA was supposed to work with state governments as partners in protecting the environment. That arrangement made perfect sense. Most environmental problems in 1970 were local. For example, Los Angeles with its smog and Cleveland with its river pollution faced widely varying challenges with regard to the environment. Maine and Texas and Alaska had very different concerns.

It is an axiom in American politics that our system works best when power is kept closest to the people, and that local officials are best suited to solving local problems. It didn't make sense to have Washington bureaucrats impose one-size-fits-all solutions in every place in the country. Imposing regulations from Washington without regard to local priorities—protecting jobs, for example—could have unnecessarily negative, even disastrous consequences.

Congress intended for states to be first-among-equals in this federalist arrangement. In the preamble of the Clean Air Act (1963), Congress declared that "air pollution prevention . . . at its source is the primary responsibility of States and local governments." According to the opening of the Clean Water Act (1972), "It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution."

Congress's intent is recognized by federal courts. For example, in the recent case of *Texas v. EPA*, a Fifth Circuit Court of Appeals panel noted that "the principles of cooperative federalism . . . are an essential part of the Clean Air Act."

Congress envisioned a division of labor. It wanted the EPA to set basic environmental standards, which the states would then put into effect while taking into account local circumstances and conditions. The EPA's role in implementation was primarily to provide technical assistance and financial support.

Since 2009, however, the EPA has radically altered this balance of power. The agency has expanded its own prerogatives at the expense of the states' rightful authority. Not even the strongest advocates of "feds first," top-down policymaking could have foreseen the degree to which EPA has done this. In football terms, even the advocates of a "feds first" approach saw a division of authority with the federal government as the coach and the state governments as the quarterback. Yet now the states have been benched, and the feds are serving as both coach and quarterback.

EPA's power grab

The numbers don't lie. Throughout the current administration, the EPA has aggressively expanded its own authority at the expense of the states, in direct contravention of what Congress intended when it wrote the environmental laws.

Under both the Clean Air Act and Clean Water Act, the EPA has the authority to "disapprove" a state's strategy to meet national environmental goals. A regulatory disapproval is no small matter. State officials spend countless hours and tax dollars crafting implementation plans to comply with the Clean Water Act and the Clean Air Act. The EPA effectively throws this work out the window when it issues a regulatory disapproval.

Since President Obama took office, the number of regulatory disapprovals has skyrocketed. The EPA issued 44 disapprovals during President Clinton's second term, 42 during President George W. Bush's first term, and 12 during Bush's second term. But during President Obama's first term, the EPA issued an unprecedented 95 disapprovals.

Also alarming is the huge increase in the number of EPA takeovers of state regulatory programs. "Federal implementation plans," or FIPs, are the EPA's most aggressive action, because a FIP entails the complete usurpation of a state's regulatory authority. From 1997 through 2009, the EPA imposed only two FIPs. But since President Obama's first inauguration in 2009, the EPA has proposed or imposed 54 regulatory takeovers!

When the EPA imposes a FIP, it implies that state officials don't care about their own environment as much as federal bureaucrats do inside the Beltway. That's a serious accusation—one that, you might think, would come with strong evidence. Unfortunately, the rationale for a FIP is often weak.

Consider the EPA's takeover of seven states' programs to implement a Clean Air Act regulation known as Regional Haze, whose purpose is to improve visibility in national parks. The EPA takeovers resulted in no perceptible improvement in visibility over the states' plans.

See for yourself. Computer software developed by researchers at Colorado State University allows us to analyze the differences between the EPA's Regional Haze FIPs and plans submitted by Arizona, New Mexico, and Oklahoma. The EPA's FIPs cost these states $640 million, $770 million, and $1.8 billion respectively (see the pictures on Page 1; larger, color versions can be seen at http://alec.org/docs/EPA_Assault_State_Sovereignty, page 9). The vistas portrayed by the images are indistinguishable from one another. Simply put, the EPA's federal takeovers cost billions of dollars, yet achieved results that are literally invisible.

The EPA's takeover of the Texas permitting program for new stationary sources of air pollution was similarly baseless. In a December 2010 determination, the EPA claimed it had erred when it approved Texas' permitting program in 1992, because the state did not grant itself the authority to regulate so-called greenhouse gases at that time. Based on this putative error, the EPA imposed a FIP.

The reasoning behind the EPA's decision is preposterous. In 1990, as Congress enacted major amendments to the Clean Air Act, it explicitly declined to regulate green house gases. Yet astonishingly, the EPA now claims Texas made a mistake in 1992 in not foreseeing that a future administration would seize the authority to restrict emissions of green house gases based on Manmade Global Warming theory.

Yes, the EPA imposed a FIP because Texas couldn't predict the future that was almost two decades away.

The data show the extent of the EPA's power grab. During President Obama's first term, EPA disapprovals of state implementation plans were up 190% over the average during the previous three presidential terms. EPA takeovers of state programs are up an astonishing 2750%. This trend has shown no sign of abatement since the start of President Obama's second term. In February 2013, for example, the EPA proposed FIPs for 33 states.

Sue-and-settle: environmentalists in place of state officials

In addition to those FIPs proposed for 33 states, some 40% of the EPA's regulatory takeovers derived from a practice known as sue-and-settle, a legal strategy that lets the EPA effectively replace their state partners with environmentalist groups such as the Sierra Club. Since 2009, the EPA has imposed at least $13 billion in annual regulatory costs as a result of sue-and-settle litigation.

Sue-and-settle is made possible primarily by the fact that the EPA has more mandates than it can handle. For example, the agency is still implementing the 1997 National Ambient Air Quality Standard (NAAQS) for ozone, more than a decade after it was legally required to do so. Because the EPA's responsibilities far exceed its resources, establishing regulatory priorities is essential, and states should be involved in setting those priorities. EPA bureaucrats bypass the states and instead set their priorities through negotiations with environmentalists.

Here's how it works: An environmentalist litigation outfit like the Sierra Club sues the EPA for failing to meet a deadline for regulatory action required by the Clean Air Act or Clean Water Act. Instead of chal-

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Green Watch is published by Capital Research Center, a non-partisan education and research organization classified by the IRS as a 501(c)(3) public charity. Reprints are available for $2.50 prepaid to Capital Research Center.

lenging the suit in court, the EPA and the environmentalist groups engage in friendly negotiations behind closed doors, which lead to a settlement. By dictating how the EPA should use its limited resources, these sweetheart settlements effectively set official policy.

Of EPA's 54 regulatory takeovers, 44 derived from sue-and-settle. From 1997 to 2009, the EPA averaged 10 settlements with environmental special interests per presidential term. But during President Obama's first term, the EPA and "green" groups reached 48 sue and settle agreements, a 380% increase. On at least two occasions, the EPA actually went to court to *prevent* the participation of state and local representatives in negotiations with the environmentalists. [For a full report on the tactic of sue-and-settle, see the July *Green Watch*.]

Ozone and 'nonattainment'

The EPA's most onerous air quality regulations are for areas that are in "nonattainment" of the aforementioned NAAQS, an ozone regulation rooted in the Clean Air Act. Incredibly, the EPA is working on an ozone standard that would plunge most of the country into NAAQS-nonattainment. If that happens, virtually all states' ability to develop industry would be seriously compromised. (By the way, the calculation used to justify the EPA's ozone rule is largely based on a statistical sleight of hand. Despite their high costs, the NAAQS rules are unlikely to improve public health.)

NAAQS-nonattainment is a nightmare for business. It is much more difficult to build new industry in areas that are in NAAQS-nonattainment. Emissions from each new stationary source (such as a factory) built in a nonattainment area must be "offset" with emissions reductions elsewhere in the nonattainment area. In practice, this means that industrial development becomes a zero-sum game in which each new business's opening requires an existing business to close.

NAAQS nonattainment is also a nightmare for drivers. Typically, when an area is in NAAQS-nonattainment, state regulators must implement numerous new rules on motorists, including:

- ►Vehicle inspection and maintenance programs
- ►Vehicle idling restrictions
- ►"Clean" fuel programs
- ►Speed-limit reductions

In NAAQS-nonattainment areas, industry pays more to control emissions, and motorists pay more in vehicle registration fees. For these reasons, NAAQS-nonattainment is a serious impediment to a state's attractiveness for business investment. Finally, NAAQS-nonattainment imposes a significantly greater administrative burden on states' air quality programs.

The current standard for ozone is 75 parts per billion (ppb) and was established in 2008. In 2010, the EPA proposed to lower the ozone standard to between 60 ppb and 70 ppb. The agency says it will finalize the rule by July 2014. Of the 675 counties across America that have air quality monitors used by states and the EPA for Clean Air Act compliance, 322 counties (47%) are in NAAQS nonattainment for the current ozone standard. If the EPA makes that standard more draconian, the results will be dramatic:

- ►515 counties (76%) will be in NAAQS nonattainment for the least oppressive ozone standard the EPA is considering (70 ppb)
- ►608 counties (90%) will be in NAAQS nonattainment for a 65 ppb standard
- ►650 counties (96%) will be in NAAQS nonattainment for a 60 ppb standard (the most extreme proposed revision)

Thus, the final standard will throw 76% to 96% of those counties into nonattainment! If that happens, the compliance costs will be staggering. According to the Manufacturers Alliance for Productivity and Innovation, the proposed 60 ppb ozone standard would have these effects:

- ►California would incur a total burden of $210 billion a year and lose 846,000 jobs during 2020–2030.
- ►Texas would pay $452 billion and lose 1.6 million jobs.
- ►Pennsylvania would pay $85 billion and lose 351,000 new jobs.

In all, states would face a total of $1 trillion in annual compliance costs and the loss of 7.3 million jobs.

And for what? Despite the huge costs of the rule, its benefits result almost exclusively from a fairy tale constructed from the EPA's statistical assumptions. Anne Smith of Charles River Associates, an economic consulting firm, calculates that virtually all the quantitative risks to public health attributed to ozone by the EPA result from the agency's decision to dramatically lower its estimate of "background ozone"—that is, the ozone that naturally occurs or drifts into U.S. airspace from other countries.

In establishing the current ozone standard in 2008, the EPA assumed the background ozone concentrations were 40 ppb. In 2010, when the EPA proposed revising the ozone standard, the agency controversially used a lower background ozone concentration of 14 ppb to 34 ppb. According to Smith, 92% to 100% of the EPA's ozone risk estimate depends on this altered assumption.

Well, it depends on the meaning of "navigable waters"

The principles of cooperative federalism dictate that control of land use decisions properly rests with state and local governments. As the Supreme Court recognized in its *Rapanos* case, "regulation of land use is perhaps the quintessential state activity." As such, lawmakers in all 50 states should be concerned about a pending rule that would significantly expand the EPA's federal jurisdiction under the Clean Water Act, at the expense of the states' traditional land and resource management role.

Under the Clean Water Act, the EPA has authority to regulate "navigable waters" of the United States. Although it would seem simple to define "navigable waters"—and thereby define the limits of the EPA's power—in practice it has proven contentious. Indeed, the Supreme Court has twice checked the federal government's interpretation as being too broad, in 2001 and 2006 (*Rapanos*).

In 2011, the EPA and the U.S. Army Corps of Engineers, which co-administers a section of the Clean Water Act, sought comment on a new interpretation of "navigable waters" that would reflect the Supreme Court's decision in *Rapanos* limiting the federal government's definition of its own powers. Remarkably, given that the new interpretation should have bowed to the Supreme Court by *restricting* federal powers, the EPA went in exactly the opposite direc-

tion, significantly expanding the agency's authority.

The EPA, along with the Corps, simply refused to acknowledge that the Supreme Court had narrowed its authority. Indeed, they admitted that they were *expanding* that authority, "that under this proposed guidance the number of waters identified as protected by the Clean Water Act will increase compared to current practice."

That's an understatement: In practice, the 2011 interpretation would extend federal jurisdiction to virtually every drop of moisture in America.

The key to the EPA's expanded reach is an aggregate "watershed" analysis that will determine whether isolated waters have a "significant nexus" to navigable waters and are therefore subject to federal jurisdiction. The test is so amorphous that every ditch, vernal pond, mudflat, sand flat, and slough could easily fall under the EPA's jurisdiction. The agency's interpretation is so expansive that it expressly refuses to exclude swimming pools and ornamental ponds, saying that these water features are only "generally exempt" from federal regulations.

The EPA and the Corps of Engineers have estimated the annual costs of implementing the 2011 interpretation of the term "navigable waters" will be upwards of $242 million, but they arrived at that number without taking into consideration permitting costs, the increased delays associated with expanded federal jurisdiction, and the costs of new land use restrictions. When you consider that the average applicant for an individual permit already spends 788 days and $271,596 completing the process, these costs will mount quickly.

It is outrageous that officials crafted the 2011 "navigable waters" interpretation without consulting any state officials or their representatives. This arrogance is particularly striking when you recall that states are entitled to significant deference in land and water resource management, and that the proposal will interfere in activities where state authority should be absolutely undeniable, such as in the maintenance of ditches next to roadways.

That's no exaggeration. Transportation officials from Maine, New York, and Massachusetts—not states that are hotbeds of anti-environmentalist sentiment—warned the EPA that its proposed interpretation of "navigable waters" would include roadside ditches. As a result, the states cautioned, even the most humble roadside maintenance activities—like trash collection and grass-cutting—could be forced to apply for Clean Water Act permits.

In separate comments to the EPA, Oklahoma officials noted that the agency's 2011 jurisdictional interpretation of "navigable waters" clearly incorporates groundwater, which is not subject to federal control under the Clean Water Act. States are solely responsible for protecting, allocating, and administrating groundwater.

The EPA has not yet given a timetable for finalizing the 2011 interpretation.

Fuel choice and
Manmade Global Warming

In September 2013, the EPA proposed a regulation that would ban the construction of new coal-fired power plants. If finalized, the rule would severely limit the states' ability to craft air quality programs tailored to local circumstances. Currently, coal generates about 40% of the nation's electricity, and the percentage is much higher in states with significant coal resources. The EPA's regulation would effectively ban new coal-fired power plants by requiring them to capture their so-called greenhouse gas emissions—including carbon dioxide, which is invisible, which humans and other animals exhale, which makes up one part per 2,557 in the atmosphere, and which is a critical requirement for life as we know it.

Because the technology for "carbon capture" has never proven commercially viable, the Carbon Pollution Standard, in practice, renders it impossible to build a new coal-fired power plant.

Remarkably, the EPA never even tried to tether the regulation to a specific benefit that would accrue to the American people. That's understandable, however, because there are no such benefits. Even if one accepts Manmade Global Warming theory, U.S. policy on new electricity generation is an insignificant driver of global greenhouse gas emissions, compared to coal-fueled Asian economic growth. Unsurprisingly, the Carbon Pollution Standard rests on a discretionary authority which the EPA agreed to exercise after it arranged a sue-and-settle agreement.

Coal is abundant in this country, so abundant that the U.S. has been called "the Saudi Arabia of coal." Many states, particularly those with plentiful reserves, rely on coal for electricity generation. Other states incorporate coal into their fuel mix because its cost has historically been lower and less volatile than that of other fuels. The EPA's Carbon Pollution Standard would radically alter electricity generation in these states by limiting their choice of fuel mix.

Unfortunately, that's not the only adverse impact that the EPA has had on the electricity market. In 2008, then-Sen. Barack Obama told the *San Francisco Chronicle* editorial board that he would "bankrupt" the coal power industry if elected president. Since 2009, the EPA has been fulfilling this promise, by subjecting coal-fired power plants to unprecedented regulatory assault.

In February 2012, for example, the EPA promulgated a rule known as the Utility MACT. It will cost the power industry—and ultimately, ratepayers—almost $10 billion annually. The regulation's supposed purpose is to protect a small number of pregnant, subsistence fisherwomen who consume at least 225 pounds of self-caught fish from the most polluted one-tenth of America's fresh, inland water bodies. It's not that the EPA has ever identified a single member of this putative population. Rather, these women exist only in hypothetical models.

The aforementioned Regional Haze regulations focus almost exclusively on coal-fired power plants. And more anti-coal regulations are in the pipeline. One, known as the Cooling Water Intake rule under the Clean Water Act, would cost up to $4.8 billion every year in order to protect fish larvae from being sucked into the cooling systems of coal- and nuclear-fired power plants. Under a sue-and-settle agreement, the EPA is under a court-ordered deadline to finalize the Cooling Water Intake rule by November 4.

Another pending regulation, known as the Coal Combustion Residual rule, could result in the classification of coal ash as a toxic substance, at a total cost of $55 billion to $76 billion. Finally, the EPA has said it intends to issue greenhouse gas standards for existing coal-fired power plants. In previous

regulatory filings, the EPA suggested this regulation will give it authority to impose a cap-and-trade system, even though Congress has refused to pass such a system, even when controlled by Democrats.

As costs mount, many utilities will feel economically compelled to retire coal-fired power plants rather than comply with the EPA's regulatory assault. According to the Federal Energy Regulatory Commission, almost 81,000 megawatts of electricity generation are "likely" to retire because of regulatory costs. (As a rule of thumb, it's often said one megawatt can power 800-1,000 homes, although the actual math is more complicated.)

The overbearing oversight of fracking

As the American people are coming to realize, a technological revolution has occurred in the oil and gas industry over the last decade. Innovations in drilling and in hydraulic fracturing, or "fracking," have made huge oil and gas reserves accessible for the first time.

For now, the states primarily regulate fracking, but the EPA is actively trying to expand its authority to regulate fracking. In 2012, Fred Henchman, director of the EPA's Office of Science Policy, said the agency is taking "a pretty comprehensive look at all the statutes" to determine where "holes" may allow for additional federal oversight.

In 2010, Congress requested that the EPA study fracking in order to determine whether the practice poses any threat to drinking water. This question has been a point of contention between industry leaders and environmentalists. The former claim the process is safe and cite the fact that no proven instance exists of fracking contaminating aquifers. "Green" groups claim that the process threatens utility-scale (i.e., big) water supplies, but that's a charge for which they have yet to produce any evidence.

The EPA study is meant to clarify the matter. The study will likely determine whether the agency gets more authority to regulate the process, so a great deal hinges on its results. The study is underway, with results expected in 2014. In the meantime, troubling indications suggest the EPA's approach to science on fracking is needlessly alarmist and often wrong.

► In December 2010, for example, the EPA ordered Range Resources Corporation of Fort Worth, a natural gas company, to provide drinking water to residents in Parker County. EPA tests had concluded that the company's fracking operations "caused or contributed to the contamination of at least two residential drinking water wells." The EPA rendered this decision over the staunch objection of Texas officials, who argued that water in the Parker County wells had been contaminated by naturally occurring methane. Subsequent lab tests by the state's Railroad Commission, which regulates oil and gas extraction in Texas, exonerated Range Resources. The EPA dropped the order a year and a half later, apparently conceding that state officials were right.

► In December 2011, the EPA issued a press release alleging that an aquifer in Pavillion, Wyoming, "likely" had been contaminated by fracking. Actually, the EPA issued the press release after having reviewed only preliminary data, and before the process of peer review. Problems soon surfaced with the EPA's purported science, as Wyoming state regulators balked at the federal government's methodology. Specifically, state officials maintained that the EPA's inexpert drilling to collect water samples had itself led to the contamination. These concerns led the U.S. Geological Survey to agree to perform an independent retest of the Pavillion water samples. On the basis of those results, the oil and gas industry called on the EPA to withdraw its preliminary conclusions. The EPA has since delayed the peer review process of its Pavilion results, to the chagrin of Wyoming Gov. Matt Mead (R).

► In January 2012, the EPA issued a press release announcing that the agency would test water samples from Damask, Pennsylvania, where residents alleged that fracking had contaminated well water. The EPA did so over the objection of P. Michael Kramer, secretary of the state's Department of Environmental Protection, who had asked the EPA not to second-guess the state's handling of the matter. In a critical response, the EPA's then-Administrator Lisa Jackson insinuated that Pennsylvania was failing to ensure the protection of its own citizens. Three months later, the agency quietly informed Dimock residents that their well water had not been contaminated.

These three unwelcome intrusions into state oversight of fracking suggest that the EPA doesn't trust the states to properly regulate fracking on their own. Yet the experiences in Fort Worth, Pavillion, and Dimock demonstrate that EPA oversight of fracking has proven redundant or entirely misguided. By seizing the reins of regulation from the states, the EPA needlessly threatens to smother an industry that is a major driver of American job growth in the wake of the recession.

Conclusion

In the spirit of cooperative federalism, Congress intended for states and the EPA to work together to ensure the protection of the nation's environment. But instead of collaborating with the states, the EPA since 2009 has focused on confrontation. With increasing frequency, the agency is disapproving state initiatives under the Clean Water Act and the Clean Air Act. The number of outright takeovers of state regulatory programs has skyrocketed. Perhaps worst of all, the EPA is using the tactic of sue-and-settle to remove states from the environmental policymaking process, replacing them with environmentalist organizations.

The risk to the states of the EPA's power grab is severe. There are billions, perhaps trillions, of dollars of direct costs, but there is also a more insidious price: the loss of states' rightful authority. The EPA's expected ozone rule would seriously impede any state's ability to attract industrial development, and the EPA's pending interpretation of its own Clean Water Act jurisdiction is a threat to the states' land and resource management prerogatives.

This element of the EPA's actions—intruding on states' rightful decision-making—is insidious. It limits the extent to which local officials can take local conditions into account in determining how to improve the environment. By undercutting cooperative federalism, the EPA also undermines good policymaking.

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GreenNotes

Shortly before he was appointed **President Obama**'s first Secretary of Energy, **Stephen Chu** declared, "Somehow, we have to figure out how to boost the price of gasoline to the levels in **Europe**," typically $9 or $10 a gallon. In that regard, the Obama energy policy has been only partially successful. According to **AAA**, the gas price on September 17, 2013 was $3.52 a gallon, marking 1,000 consecutive days of gasoline prices above $3—the first time that's ever happened.

Eco-terrorist **Rebecca J. Rubin** is expected to plead guilty this month to charges of arson and conspiracy to commit arson. She was part of a group called "**The Family**" which acted under the auspices of the **Earth Liberation Front** and the **Animal Liberation Front**. Between 1996 and 2001, the group committed a series of arson attacks on ski resorts, lumber mills, and **U.S. Forest Service** offices, causing $40 million damage. She spent a decade as a fugitive before turning herself in as part of a deal with prosecutors. Two members of "The Family," **Joseph Mahmoud Dibee** and **Josephine Overraker**, are still on the run, and some reports put Dibee in **Syria**.

Speaking of Syria, **Maria Rodale**, CEO of the company that published **Al Gore**'s ***An Inconvenient Truth***, wrote a letter to President Obama declaring, "Yes, Syria has undoubtedly used chemical weapons on its own people. Maybe it was the government . . . But here's what I know for sure: We are no better. We have been using chemical weapons on our own children—and ourselves—for decades, the chemical weapons we use to win the war on pests, weeds, and the false need for even greater yields." There's no one like an environmentalist to put things in perspective!

The **Federal Energy Regulatory Commission** (FERC) deals with the interstate traffic in electricity, oil, and natural gas. Its main job is to ensure the power grid works. In years past, the agency has been uncontroversial, and its chairmanship has served mainly as a springboard to wealth as a D.C. lobbyist. But now, as the Obama administration seeks openly to circumvent **Congress** and substitute regulations for laws, the commission is drawing considerable attention. **Ron Binz**, former head of **Colorado**'s utilities commission and an idol to environmentalists, has been nominated to chair FERC, touching off a massive fight.

Binz is so opposed to carbon-based fuels that he considers even natural gas, which is relatively low-carbon, to be a "dead end" in the country's energy future. He has declared that regulators have a "legislative role," a view that runs counter to the Constitution. And his signature accomplishment is his negotiation of a crony-capitalist deal that forced Colorado ratepayers to finance a utility company's conversion from coal to gas at a cost of $1.3 billion, with the company enjoying a guaranteed 10.5% return. His justification for the scheme: it would fight Global Warming. If confirmed, it's expected Binz will slow-walk pipeline applications and work to force consumers to subsidize transmission lines for uneconomical wind energy projects.

Speaking of wind, businessman **T. Boone Pickens** has been dropped from the **Forbes 400** list of richest Americans, and a key reason is that he lost $150 million on investments in wind energy. "I lost my [behind] in the business," he said on **MSNBC**, adding, "the jobs are in oil and gas."

Pickens may be right about oil and gas. For example, the number of oil and gas wells in **North Dakota** reached a record 9,322 in July, almost all of them targeting the **Bakken** and **Three Forks** formations. The **U.S. Geological Survey** estimates that the state may contain 7.4 billion barrels of oil and 6.7 trillion cubic feet of natural gas.

In 2007, the **BBC** reported that Global Warming would leave the **Arctic Ocean** ice-free by the summer of 2013. In 2013, the amount of Arctic ice increased by 60% from the year before, covering almost a million more square miles. According to the ***Daily Mail***, at least 20 yachts that were intended to sail the **Northwest Passage** were left ice-bound. Oops.

Last April, physicist **Michio Kaku**, who appears regularly on **CBS News**, promoted a **Colorado State University** study that seemed to show the incidence of hurricanes is up 50% since the 1980s and '90s. "This could be, maybe, the New Normal," he said. This supposed increase in hurricanes has been cited countless times in the news media to promote Global Warming theory. In September, when the record was tied for the longest period in hurricane season without an actual hurricane, Kaku hardly backed down: "This is the quietest hurricane season in a generation. But when you play the odds in **Las Vegas**, sooner or later the Law of Averages catches up to you." (Actually, the idea that the Law of Averages catches up to you is known as the Gambler's Fallacy.) Of course, it's true a devastating hurricane could happen tomorrow, but the Obama presidency has marked the calmest time ever recorded for hurricanes.

CRC's Haller intern Paul McGuire contributed to this report.