

February 4, 2025

THE SURGE

BY THE COMPETITIVE ENTERPRISE INSTITUTE

This edition of *The Surge* includes:

- Legislators hide PROVE IT Act language in spending bill report
- WOTUS rule has a significant problem
- One way to address housing affordability: get rid of flawed "green" policies
- Will Congress reward successful species recovery efforts and delist the Mexican and Gray Wolves?

If you are not subscribed already to this publication and special updates, please [subscribe here](#).

1) Carbon Tax Proponents Can't Garner Support, So They Get "Cute"

The energy and water development spending bill was part of a three bill "minibus" appropriations package that became law on January 23. The text of the bill didn't say anything about carbon taxes. But buried within a [report](#) (see page 112) accompanying the legislation was language that directs the Department of Energy (DOE) to study the carbon intensity of domestic and foreign goods, helping to lay the necessary foundation to impose an American border carbon tax and inevitably a domestic carbon tax. If this sounds like the [PROVE IT Act](#) that conservatives soundly rejected last Congress, then that's because this report language was a way for some lawmakers, including a handful of Republicans, to help accomplish the anti-energy, pro-tax objectives of that legislation. Technically, the report language [isn't law](#), but agencies usually take them seriously.

--

- [CEI's PROVE IT Act webpage](#)
- [Republicans Let 'Carbon Tax Framework' Slip Through Funding Bill, Opponents Warn](#) (Audrey Streb, Daily Caller)

2) Major Coalition of Conservative Organizations Alerts DOE About Pro-Carbon Tax Language

The American Energy Alliance (AEA) and CEI [led](#) a coalition of 37 organizations that sent a letter to Energy Secretary Chris Wright alerting him to the pro-carbon tax language in the energy and water development spending bill report. The letter states:

We are deeply concerned about the implications of this directive. While framed as a study, the structure and scope closely mirror the foundational work required to implement a U.S. carbon tax. Given your well-known opposition to carbon taxes and related schemes, we wanted to ensure you were fully aware of this provision and its potential trajectory. While this language appears only in a report, rather than statutory text that was passed, it is troublesome nonetheless.

A new energy tax is the last thing Americans need, yet proponents of punitive carbon taxes seem to want to lay the groundwork for a U.S. border carbon tax while shielding themselves from actually voting on such a measure. Perhaps they know that energy taxes are widely unpopular with their constituent.

--

- [Coalition letter](#)
- [Coalition to Secretary Wright: Senate Carbon Tax Crowd Wants You to Help Them Implement New Energy Taxes](#) (American Energy Alliance)

3) New Proposed WOTUS Rule Has a Significant Problem

The Environmental Protection Agency and the US Army Corps of Engineers have proposed a [new rule](#) defining the “Waters of the United States” or WOTUS. This definition is critical because it determines which waters are regulable under the Clean Water Act (CWA). In 2023, the Supreme Court issued a decision in [Sackett v. EPA](#) that finally provided clarity as to what is meant by WOTUS.

The new proposed rule is more in line with *Sackett* than the Biden administration’s regulatory [efforts](#), but the agencies’ use of the so-called “wet season” to define

regulable waters could make the rule legally vulnerable. For example, the Supreme Court has [explained](#) that waters covered under the CWA must be “relatively permanent, standing or continuously flowing bodies of water ‘forming geographic[al] features’ that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes.’” The proposed rule though states that “relatively permanent” means “standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or *at least during the wet season.*” [Emphasis added]. In other words, according to the agencies, a “relatively permanent” water can lack surface water for most of the year. This is unreasonable and inconsistent with *Sackett*.

--

- [New WOTUS rule has a problem: The use of ‘wet season’](#) (Daren Bakst, OpenMarket)

4) Trump’s Appliance Reset: One Year of Deregulation

President [Donald Trump](#) has sharply diverged from his predecessor on nearly every issue, perhaps most of all concerning federal home appliance regulations. The Biden administration loved regulating appliances, imposing new requirements for stoves, dishwashers, furnaces, air conditioners, water heaters, light bulbs, refrigerators, washing machines, and more. Trump wasted no time targeting such meddling with an [Inauguration Day executive order](#) reconsidering [these regulations](#), and his administration is making progress on this priority.

--

- [Trump successfully turns off crazy Biden era regulations on your home appliances](#) (Ben Lieberman, Fox News)

5) How "Green" Policies Raise Housing Costs

There are many policy ideas for addressing rising housing costs, ranging from good ones like tax code changes that bring more homes onto the market, to bad ones like bans on investor purchases of houses. But often overlooked in this discussion are the effects of costly federal environmental measures targeting housing. The Trump administration has taken steps to counter this ill-advised greening of American homes, but there is more to be done. This includes addressing appliance regulations, building codes, and permitting.

According to the National Association of Home Builders, each \$1,000 increase in the

price of a home disqualifies an estimated 115,593 buyers, so, for example, one particular building code provision with estimated costs of up to \$9,000 could prevent a million or more prospective homeowners from purchasing a home.

--

- [Greener housing is costlier housing](#) (Ben Lieberman, OpenMarket)

6) Increasing Oil and Gas Lease Sales is Critical for the US

A couple weeks ago, the comment period ended for the Bureau of Ocean Energy Management's [Draft Proposed Program](#) for the 11th Outer Continental Shelf Oil and Gas Leasing Program. This program proposes to expand the number of available leases from three to 34. Such an expansion will allow the US to produce more oil domestically, reducing the leverage of OPEC+ countries while helping to lower prices. It also creates a more stable and predictable environment for oil and gas companies to make investment and staffing decisions. The proposed plan is a significant improvement on the Biden administration's previous plan, and could be improved by expanding leases even further, including into the Atlantic region.

--

- [The Case for Expanding Offshore Leasing to Support Affordable and Reliable Energy](#) (Paige Lambermont)

7) Mexican and Gray Wolves May Get Delisted

On January 22, the House Committee on Natural Resources voted in favor of [H.R. 4255](#), the Enhancing Safety for Animals Act, a bill introduced by Rep. Paul Gosar (R-AZ) that delists the Mexican Wolf from the Endangered Species Act (ESA). This comes a little over a month after the House passed [H.R. 845](#), the Pet and Livestock Protection Act from Reps. Tom Tiffany (R-WI) and Lauren Boebert (R-CO) with a vote of 211-204, a bill that requires the Secretary of Interior to delist the Gray Wolf. Both species have experienced incredible [recovery](#) over the last [several years](#) that should be celebrated by delisting and giving management authority to the states.

Doing this will reward the stakeholders who have played a part in recovering the wolves by lifting burdensome regulations and free up resources for imperiled species.

8) CAFE Standards Have a Significant Effect on Vehicle Affordability

Corporate Average Fuel Economy (CAFE) standards have had multiple perverse effects on the car market in the US over the years, including the far more straightforward one that it has simply made vehicles more expensive and thus has squeezed the poorest households out of the market for a car entirely. This is why the Trump reform of the program was called the “Safer **Affordable** Fuel-Efficient (SAFE) Vehicles” [rule](#).

Affordability is especially important for those at the bottom of the socio-economic ladder. Transportation consultant Alan Pisarski wrote a [study](#) for CEI in 1999 titled “[Cars, Women, and Minorities](#)” which emphasized the value of private car ownership as a form of liberation – from single women not having to depend on a man for transportation to civil right activists in Alabama being able to keep the [Montgomery Bus Boycott](#) (1955-56) alive while still getting to work.

--

- [Perverse Incentives of Gas Mileage Regulations](#) (Richard Morrison, Great Capitalism - Substack)

FEATURING OUR FRIENDS

[Donald Trump's COP Out](#), Stephen Eule, Real Clear Energy.

[Nuclear Power: A Free Market Approach](#), Robert Bradley, American Institute for Economic Research.

[A faster way to power AI ambitions: Make your own electricity](#), Travis Fisher and Glen Lyons, The Hill.

[Net Zero is Grinding to a Halt Very Rapidly](#) (video), Andrew Montford, Net Zero Watch.

Competitive Enterprise Institute
1310 L Street NW, 7th Floor
Washington, DC 20005

www.cei.org

[Manage Email Preference](#)