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Will Administration Grab Vast New Climate Change Powers and Open Door to Endless Lawsuits?

Interior Department Faces May 9th Deadline for Decision on ESA Polar Bear Rule

WASHINGTON, D.C. – Today, House Natural Resources Committee Ranking Member Doc Hastings called upon Secretary of the Interior Ken Salazar to maintain the final 4(d) special rule for polar bears, which states that the listing of the polar bear as a “threatened” species under the Endangered Species Act (ESA) should not be used to regulate greenhouse gas emissions from lawful activities, such as the construction of a new factory or road, throughout the country.

“Coupled with the Environmental Protection Agency’s recent decision to list CO₂ as a hazardous pollutant, withdrawing this rule would give the federal government vast new climate change powers to regulate any federal or federally-permitted activity in our country that emits greenhouse gases,” said Ranking Member Hastings. “Projects that could be targeted include energy production, agricultural practices, increases in livestock numbers, or construction of new buildings and infrastructure projects such as schools, roads and bridges. This reaches far beyond the scope of polar bears in the Arctic and could put jobs and economic activity across the entire nation at risk.”

If Secretary Salazar decides to withdraw this rule, the Administration must answer numerous questions regarding the impact this decision will have on our economy:

- Is it the Department of the Interior’s official position that the ESA should be used to regulate man-made CO₂ emissions throughout the U.S.?
- Environmental groups have stated their intention to use the listing of the polar bear as a “threatened” species to stop economic development that increases CO₂ emissions. The [Center for Biological Diversity has said](#) they would “definitely consider lawsuits.” Does the Administration believe that litigation is a legitimate tool for reducing our country’s carbon emissions?
- Does withdrawing this rule open the door to lawsuits used to stall, halt or block the “shovel ready” job-creating projects in the economic stimulus bill because these actions would emit CO₂?
- Would a new job-creating factory in Florida that emits CO₂ face possible litigation

because of its potential harm to polar bears? What about a power plant in Kenai, Alaska, which is hundreds of miles outside the range of the polar bear?

- Did the Administration request the Congressional authority in the Omnibus Appropriations bill to waive all public notice and comment requirements for this type of action?
- Why did the Administration choose to exclude the public from this process when there's a process under existing law to withdraw this rule? How is this closed-door process consistent with the Obama Administration's pledge that all federal actions would be open and transparent?

Background

In May 2008, Interior Secretary Dirk Kempthorne listed the polar bear as a "threatened" species under the Endangered Species Act. He simultaneously issued an interim rule (known as the 4(d) special polar bear rule), to ensure that the listing of the polar bear under the ESA would not be inappropriately used as a tool to regulate greenhouse gas emissions outside the State of Alaska.

The final rule, which was updated to also protect activities in the State of Alaska that are outside the range of the polar bear, took effect on January 15, 2009. The final rule corrected a flaw in the interim rule, which could have been challenged as arbitrary.

Even the [Washington Post](#) commented last year, "Though the polar bear deserves protection, the Endangered Species Act is not the means and the Fish and Wildlife Service is not the agency to arrest global warming."

On March 10, 2009, [Congress passed](#) the Omnibus Appropriations Act that included secret language to allow the Secretary of the Interior to expeditiously withdraw, without any public comment, public hearings or public input, the common sense 4(d) rule for Polar Bears. The bill gives the Secretary of the Interior 60 days (until May 9th) to decide whether or not to withdraw the rule. This allows the Obama administration to avoid the public notice and comment period that is normally required to change such a rule.

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