

How Greenhouse Gases and ESA Administrative Revisions Can Hurt You....

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In the last year, we have seen increased pressure applied by environmental groups to unravel Bush Administration reform efforts and using climate change to re-mold the Endangered Species Act (ESA) into a regulatory hammer. The efforts have ramped up in recent months, and it appears that the new administration may be responding.

Nearly 130 scientists last December asked the Interior Department to change the policy set under the Bush administration guiding how agencies decide whether a species is endangered. Also in December, the Endangered Species Coalition released a report that names America's top ten endangered fish, wildlife and plant species impacted by global warming. World Wildlife Fund at the same time released its annual list of some of the most threatened species around the world, saying that the long-term survival of many animals is increasingly in doubt due climate change, and calling for a step up in efforts to save them. On both lists are several key species and their habitats which could impact Western water users, including Pacific salmon and bull trout. Earlier, some of these same environmental groups elevated public criticism of the Obama Administration's USFWS for not listing more endangered species. These groups – led by the Center for Biological Diversity (CBD) – are critical of the USFWS's proposal so far to list only two plant species, out of nearly 250 on the ESA "candidates" list.

CBD and other environmental organizations also petitioned the Environmental Protection Agency (EPA) in early December to designate greenhouse gases as "criteria" air pollutants, which would require EPA to establish allowable nationwide concentrations for the gases. Later in the month, EPA Administrator Lisa Jackson unveiled the Administration's final "endangerment determination", which sets the stage for broad nationwide regulations to limit greenhouse gas emissions and poses a risk to all Western resource producers.

Budd-Falen Law Offices (WYOMING) has developed new information that shows how new climate change policy regarding greenhouse gases could impact Western irrigators and taxpayers, alike. According to Budd-Falen, environmental groups have been "winning" attorney fees for litigating over greenhouse gases for some time, now. The environmental litigants and the federal government essentially agree to "negotiate" how much in tax payer dollars the environmental groups will be paid for those cases. Many of these cases were suits over the failure of the federal government to "timely" respond to environmental groups' ESA listing petitions. As with the greenhouse gas Clean Air Act litigation, the environmental groups are not asking the federal court to decide whether a species is scientifically threatened or endangered or whether greenhouse gases adversely impact the species; the majority litigation is only over the timing of the federal government's decisions or the process used to make the decisions.

Although Congress has yet to pass sweeping climate change legislation, I have to agree with a conclusion made in the latest Budd-Falen memo: Global warming is already being enforced in the United States, based upon procedural statutes and payment of millions of dollars in attorney fees.