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Table of Contents

SPECIALTY MEDIA CLIPS
Thursday, June 24, 2010

AFRICAN AMERICAN 2
Politics Slowing Progress on New Energy Policy (*Black America Web*) 2
Ohio Tries To Save Jobs Over Environmental Rule (*Black Enterprise Magazine)* 3
NATIVE AMERICAN 4
Split appeals court rules against EPA and Navajo concerns (*Indian Country Today*) 4

AFRICAN AMERICAN

Politics Slowing Progress on New Energy Policy (*Black America Web*)

Date: Friday, June 18, 2010
WASHINGTON – Politics will slow immediate substantive change to the nation's energy and climate policies, but slow change is better than none, and a disaster like BP oil spill in the Gulf of Mexico helps push things along, a panel on environmental policy issues said Thursday.

"Politics is the art of the possible," Daniel J. Weiss, senior fellow and director of climate strategy for the Center for American Progress, said at the forum sponsored by the Joint Center for Political and Economic Studies.

Weiss joined a panel of experts on the environment as part of the Center's speakers series on critical issues in climate change. The focus was on the green economy, clean energy and the implications on policy changes in those areas in light of the oil spill in the Gulf.

He said even though the current energy/climate change bill making its way through Congress wasn't perfect, it was politically impractical to wait for perfection. Rather, he said, it makes more sense to get a policy implemented and make adjustments along the way.

"Someone told me ... any bill that we could conceivably get passed through the United States Senate will be inadequate to address global warming, but we've got to start somewhere, and we've got to start now." Weiss said.

Once people see that it's workable and cheaper than they initially believed, they will start to come around, he said.

Leslie Fields, director of national environmental justice and community partnerships director for the Sierra Club, who is a member of the Commission to Engage African-Americans on Climate Change, said it is time for Americans – especially the poor and people of color – to get angry.

"There are about 2,000 rigs in the Gulf, and the Gulf is the energy center of the United States and, unfortunately for a lot of environmental centers, it's the sacrifice area of the United States. We really have to upset about this," Fields said. "The green economy has the possibility of pulling us apart again unless we demand" to be a part of it.

The makings are there, Fields said, for more affluent communities to make the money and control the jobs that result from the effort to go green unless there is a major grassroots movement to ensure more equitable distribution.

Otherwise, there's a chance for more environmental pollution in poor and minority communities, and policies may pursue more disproportionate plans for restoration of spoiled areas.

Pursuing uranium mining, for example, could lead to more mining on American Indian lands, resulting in more cancer clusters because of exposure to radiation in those communities.
It's already happened, Fields said, elsewhere in the Gulf.

“One of the largest spills was after Hurricane Ike in 2008 devastated Galveston. It was the fourth-largest hurricane after Katrina, Rita and Wilma,” Fields said.

Because there was a warning the hurricane was coming, the oil companies shut down operations before it hit, but still, said Fields, “A bunch of oil platforms sustained damage. There were 448 releases of gas and oil after Ike, and we’ve never heard about what happened to the ecosystem down there.”

“If there is inaction,” Weiss said. “the ones who will be hurt the most are those who can least afford it,” adding that poor and minority communities will see coastal areas where many make their living ruined, there will be more disease affecting wildlife and, ultimately, people, and more an increase in respiratory ailments, like asthma.

The BP incident is not a spill but an “underwater volcano,” according to Arjun Makhijani, president of the Institute for Energy and Environmental Research.

Makhijani supports radical change in environmental policies, including harnessing solar power to reduce the energy usage in the average home, eliminating dependency on fossil fuel and a requirement that automakers produce cars that get 100 miles to the gallon.

The technology exists to make it happen, he said.

“The problem is not technical; it’s not economic. The problem is political,” Makhijani said. “And unfortunately, President Obama is in this town at a time when it is ungovernable,” noting contrarian and obstructionist policies pursued by Republican leaders who simply want to see the president fail.

He said Obama should veto any bill that takes away the authority of the Environmental Protection Agency or prevents states from enacting environmental standards stricter than federal ones.

All of the panelists said EPA Administrator Lisa Jackson was doing a good job and had surrounded herself with good people on her staff, but expressed concern that Republicans – especially if they fare well in the midterm elections – will try to enforce changes that will diminish Jackson’s authority.

The panelists also agreed there needs to be a stronger movement at the grassroots level to force change that is fair and equitable for everyone.

There is a sizeable and growing movement, Weiss said, “but it’s not enough to force (Congress) to change their policy. The visionaries should keep having their visions while the grassroots keep pushing politicians.”

Ohio Tries To Save Jobs Over Environmental Rule (*Black Enterprise Magazine)*

NORTH BALTIMORE, Ohio (AP) — Ohio's governor has asked state environmental regulators to come up with a way to save 214 jobs at a northwest Ohio plant that is considering a move to Indiana because of an environmental rule.

Continental Structural Plastics, an auto parts plant in North Baltimore, said a state regulation

requires it to use a machine that reduces pollution and costs $500,000 to operate each year.

But the company says the machine is no longer needed to meet Ohio Environmental Protection Agency standards because it has cut production at its paint shop and it has increased use of robotics and air recycling.

Indiana is being considered because it does not have the same rule.

Officials met over the weekend to see if anything could be done, and Gov. Ted Strickland's office said the state will explore every option to keep the jobs in Ohio.

"I've been led to believe if we can resolve this, we have an excellent chance to retain it," said state Rep. Randy Gardner, R-Bowling Green.

Ohio EPA spokeswoman Dina Pierce said the agency in the past has worked with companies that want to change their pollution permits when they either expand or decrease their production.

She said regulators want to meet with the company to further discuss the issue.

NATIVE AMERICAN

Split appeals court rules against EPA and Navajo concerns (*Indian Country Today*)

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DENVER – Navajo residents worried about uranium mining's impact on their northwestern New Mexico community were handed a defeat by a narrowly divided federal appeals court in an en banc ruling June 15.

Justices of the 10th U.S. Circuit Court of Appeals ruled 6-5 that a tract of land owned by a uranium company surrounded by Indian lands did not constitute "Indian country," as legally defined, and that the state, not the federal government, would enforce drinking water regulations at a leach mine that injects water and chemicals into an underlying aquifer, withdraws the solution and recovers uranium.

While the EPA said the aquifer beneath the Hydro Resources Inc. tract does not and will not serve as a drinking water supply, "tailings from uranium mines have contaminated air, groundwater, streams and soil on the Navajo reservation," according to one dissenting judge. "The wind blew dust from the tailings piles into Navajo homes and water sources. Holding ponds on the reservation associated with the uranium mines were not well-maintained."

Because of differences of opinion over the way in which "Indian country" was defined, one of the judges said the long-running litigation is likely to go to the Supreme Court, noting the current majority ruling "undoes decades of settled Indian law based upon sound principles."

The tract owned by HRI east of Gallup is within the boundaries of Church Rock Chapter (a tribal unit established by the federal government in 1950) and is six miles from the chapter house and Church Rock community. EPA described the land as "completely surrounded" by lands set aside for Indian use – a dependent rural Indian community that is part of the chapter and one in which some families have used the land for generations.

Federal law defines Indian country as including reservation lands under U.S. jurisdiction, Indian allotments, and all "dependent Indian communities" in the U.S. whether in original or acquired territory.

A three-judge 10th Circuit panel in April 2009 upheld the EPA's 2007 decision that HRI's proposed in situ leach mine was inside "Indian country" as legally defined and therefore would be permitted and regulated by EPA and not the state, the assertion disputed by HRI and vacated June 15.

EPA's position rested in part on a complex two-stage definition of whether surrounding lands – the "community of reference" – when further defined by social, public, and jurisdictional factors constituted Indian country and encompassed the immediate area as a dependent Indian community.

In its ruling vacating the panel's decision, the full appellate court said that EPA argued federal, not state, criminal jurisdiction applied to the HRI tract because it is part of a dependent Indian community, but that two key requirements for that status – explicit use by Indians as Indian land, and federal superintendence – had not been met.

"Had EPA chosen to define its authority under the SDWA (Safe Drinking Water Act) in a different way, the result in this case might have been different," the judges noted in a 116-page document.

"While groups of Indians may very well live on such lands in socially and politically discrete communities, they do not live in 'Indian country' because the land in question has not been explicitly set aside by Congress for use as a 'dependent Indian community.'

"The superintendence requirement means that the federal government currently must be 'actively controlling the lands in question, effectively acting as a guardian for the Indians,'" the court said.

But, "Over the last 20 years in this circuit, we have held that a 'community-of-reference ' test must be employed to determine the appropriate community, before determining whether that community is both 'dependent' and 'Indian,'" wrote Senior Judge David M. Ebel for the minority.

“By overturning decades of our precedent, the majority introduces confusion into an area of law that had been largely settled, and does so based on a case that did not even consider the issue.”

Land in Church Rock Chapter is overwhelmingly owned by or for Navajos, some 98 percent of the chapter’s residents are Navajo or married to Navajos, and the Navajo Nation provides police protection, housing, electricity, drinking water, and other utilities to the residents in what constitutes a dependent Indian community, the judges stated.

The hydrology of the HRI tract is tied into the hydrology of the entire Church Rock Chapter, where three separate aquifers run directly beneath the tract and throughout the chapter. Fourteen wells from one of the aquifers, from which most chapter residents draw drinking water, are within 20 miles of the tract, and “Any pollution into the aquifers would likely affect much of the Chapter population,” the dissent states.

The Church Rock Chapter is the appropriate community of reference and HRI’s tract is within a dependent Indian community, it states, noting that consequences of the majority ruling “are likely to be enormous, reintroducing checkerboard jurisdiction into the Southwest on a grand scale and disrupting a field of law that had been settled for decades,” which may ultimately require Supreme Court resolution.

In an additional statement, three of the dissenting justices noted “the externalities produced by a mining operation – including pollution, traffic, and the aesthetic harms by having a large mining operation nearby – also affect the surrounding community.” They cited “the largest nuclear spill in U.S. history” near Church Rock in 1979 that caused extensive damage and contamination.

Briefs in support of HRI were filed by the National Mining Association, United Nuclear Corporation, and the states of Colorado, Kansas, New Mexico, Utah and Wyoming, while those supporting EPA and the Navajo Nation were filed by the Pueblos of Santa Clara, Sandia, Isleta and Zia.