



# Green Legislative Update

*Published Weekly During West Virginia's Legislative Session*

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## Under the Dome

*by Donald S. Garvin, Jr.*  
WVEC Legislative Coordinator

**Week Three** – After two weeks of relative calm, the sideshow is cranking up to warp speed. Just yesterday ALL the environmental rule packages were sent from the joint rulemaking committee to the Senate with assignments to the appropriate committees.

There were at least 32 separate “rules” bills affecting the environment introduced in the Senate on Thursday (the same bills were introduced in the House today). Rules bills contain the regulations proposed by various state agencies, such as the Division of Environmental Protection. Currently we only know the proposed contents of a few of these bills, because the specific provisions of each individual bill are not printed in the bill itself; instead, the agencies file the specifics of each rule with the Secretary of State’s Office, and we, the citizens, either have to pay real money or find some other way to beg, borrow, or steal, just to get copies of the rules! (I’m not pulling your leg here, folks!).

Twenty of the rules bills introduced yesterday were DEP rules: 11 air quality rules, 3 water quality rules, 3 coal rules, 1 hazardous waste rule, and 2 enforcement rules. In addition there are two Environmental Quality Board rules on water issues, a Division of Highways rule on transporting hazardous waste, four Department of Agriculture rules, a development office rule on coal field development, and four Division of Health rules.

A few of the short titles of the bills may give you an idea of what we’re up against: “S.B. 297, Authorizing Division of Environmental Protection to promulgate legislative rule relating to ambient air quality standards for sulfur oxides and particulate matter;” “S.B. 305, Authorizing Division of Highways to promulgate legislative rule relating to transportation of hazardous wastes upon roads and

highways;” “S.B. 326, Authorizing Division of Environmental Protection to promulgate legislative rule relating to coal – related dam safety;” and “S.B. 344, Authorizing Division of Health to promulgate legislative rule relating to recreational water facilities.”

Right now, your guess is as good as mine as to exactly what’s in each of these rules. Public hearings have been held on some of them, like the EQB rules, for example. Most of them, however, were developed by the agencies “in house” and have only been dealt with up to now at the legislative interim committee meetings (another good reason why WVEC should have a lobby team to cover interims).

But the real problem with these rules packages is the process. West Virginia is the only state I am aware of that allows the legislature to actually “promulgate” agency rules. Sure, the rules are proposed by the various agencies, but in West Virginia, the legislature can amend these rules, and even substitute their own rule in place of the agency rule. The result is the maximum politicization of the process, giving the regulated industries full control over the very rules they are regulated under.

So once again the public gets the short end of the stick. It stinks, and the process ought to be changed. But until it does, from now until the end of the session the WVEC lobby team will be running helter-skelter through the halls of the capitol trying to find out which committee each rule is in, when the committee meets, what amendments might be introduced, and when.

**The fun begins. AAAGH !!!**

**Don't Forget to Attend E-Day! at  
the state capitol ~ February 22**

# Sustainable Development

## Part Two

### Land Use Planning Necessary For Sustainable Development

by John Taylor

“Sustainable Development” hasn’t entered the working vocabulary of most West Virginians. However, the Governor’s December 2001 “West Virginia. A Vision Shared! Economic Development Strategy - A Plan For West Virginia’s Future” explicitly endorses and recommends Land Use Planning.

#### Governor Wise’s plan states:

“Land Use Planning should not be confined only to zoning or regulating land usage. Communities, regions and states should carefully plan for *the future*, so as not to be overwhelmed or unprepared when change arrives. Land use planning serves to facilitate discussion about what a place wants to be and look like *in the future....* Carefully managing development towards what a community, region or state wants to be *in the future* is a must in the New Economy, as businesses are looking for stable, progressive, and well-planned locations”, page 13, (emphasis added).

Note that the word “**future**” appears *three* times in this relatively short paragraph. Concern for the world we are leaving to future generations is one of the main requirements for sustainable development planning.

The Governor’s plan is an interesting but curious document. It honors the concept of sustainable development without ever naming it as

such, and indeed without ever using the dreaded “E” words: “**ecology**” and “**environment.**”

The plan lists a Council For Community and Economic Development whose membership includes many “movers and shakers” of the business community. “Sponsors and Contributors” to the plan include some of our largest corporations and enterprises and many of the largest trade associations, labor unions, banks, law firms and the two main universities.

It also has a number of pages reciting the usual dismal litany of how bad off we are (low per capita income, poor educational attainment, massive loss of manufacturing jobs, etc.) and how we have come to be in such a sorry state of affairs.

#### A Vision Shared?

The responsibilities of leadership cannot be evaded. The health, or lack of health, of any organization, including the political entity called West Virginia, is entirely a function of the skill of its leadership. If it’s in good shape, the leadership gets the credit. If it’s in wretched shape, the leadership must take the blame.

We must inescapably conclude that, by listing their names on the Governor’s plan, the above-mentioned Council, Sponsors and Contributors, are taking responsibility for its contents and recommendations. This is a good thing, and not a bad thing.

Equally inescapably, we must conclude that most of the main business and professional leadership of West Virginia is now ready to move forward toward a new economy based on the premises and requirements of sustainable development. The inclusion of the concept of Land Use Planning leads us inevitably to this conclusion. If we conclude otherwise, then we will have to sorrowfully admit that the

Governor, and all those who signed on to the “Vision Shared!” document were blowing smoke and getting out their biggest mirrors.

*"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."*

Martin Luther King, Jr.  
1929~1968

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# Can Better Logging Control Reduce Flooding?

by John McFerrin and Frank Young

Some of us think it regrettable that it took an event like last summer's floods to focus attention on timbering and how logging practices relate to flooding. At the same time, we think that the floods may have helped create an opportunity to improve timber and logging laws.

The Coalition for Responsible Logging (CORL) has been working for years to pass bill(s) to amend the state's Logging and Sediment Control Act. Up until now the goal has mostly been to reduce erosion and sedimentation. Recently, some of us have contemplated how our bill(s) would reduce flooding.

The general scientific principles that apply to timbering and flooding are so well established and so obvious that there is no reason to debate them here. Whether there is a flood depends upon what's called "peak flow." It doesn't matter what the average flow or the total flow over time is. What matters is how much water gets to the stream at any one time. To prevent a flood, all we have to do is prevent so much of the water from reaching the stream at the same time.

Trees help tremendously to keep all of the water from reaching the streams at the same time. Some sticks on the leaves, evaporates, and never reaches the stream. By the time other raindrops meander their way through the leaves, over the ground, etc. the water that fell a while ago has already made its way downstream. We don't have large quantities reaching the stream at once, creating a flood. There are computer models which calculate runoff for different types of slope, soil type, vegetation, and rainfall. Those models will tell us what our common sense already does. For steep slopes with hard surfaces, most of the rain runs off and does so quickly. For gentle slopes with trees or absorbent surfaces, less runs off and what does run off runs off more slowly.

Newspapers have reported that the Governor's task force on flooding is doing computer modeling. We can assume they are feeding in data about the actual land use in watersheds, soil types in particular watersheds (available from the U.S. Geological Survey) and comparing the runoff with what it would have been (or the computer would have predicted) had there been no timbering, less timbering, better regulated timbering, etc.

## So how do CORL's bills help the problem of flooding?

(1.) Steep timber roads likely act as channels to direct water downhill faster than it could travel if it had to meander through the fallen leaves, around trees roots, etc. Our bills makes it more likely that there will be water bars

installed on roads. Water bars are designed to retard the flow of water and re-direct it onto undisturbed or less disturbed areas. Anything that retards the flow reduces the peak flow of the stream.

(2.) Our bills would result in faster re-vegetation. Grass doesn't retard the water flow nearly as well as trees do, but it's better than bare dirt.

(3.) Our bill would help maintain the carrying capacity of the stream channels by reducing erosion of soil into streams, reducing their water carrying capacity. To the extent that our bills reduces sediment, it maintains the channel capacity and the ability of the channel to carry the water without the stream leaving its banks.

(4.) By making it more likely that currently only nominally required Best Management Practices would be followed, our bills would reduce logging debris (mostly limbs, branches and leaves, but sometimes even whole logs) that clog culverts and streams.

## Inspirational Tips on Lobbying

by Chuck Wyrstok (chuckwyro@hotmail.com)

Usually when somebody considers lobbying their legislators, a look resembling indigestion comes over their face. For those of us not fortunate enough to have a Senator Jon Hunter or Delegate Mary Pearl Compton as their rep, we may be faced with indifference or outright hostility from our "elected" officials.

After all, chances are we didn't finance their election. Special interests with deep pockets probably did. And *those* are the boys they answer to because there will be another election soon with more money needed. Campaign finance reform.....the reform that makes all other reforms possible...ah, but I digress.

Consider this. **You** are the voter. You **do** carry some weight - especially collectively. When you write, call, or visit your delegate or senators, they do recognize that you are a constituent. If they get a sense that you are connected to a family of voters and/or an active group of citizens, they will pay more attention. Most effective is a visit to their office (lobby team folks are happy to guide you around the capitol and bring you up to speed on issues). Letters (especially handwritten) are the next best tool, phone calls work well, with e-mails being the least effective.

So, choose your method, but *please do something!* You can take tips from Chris Hogbin's e-mail alerts or you can simply let your legislator know that you are interested in them pursuing a future devoid of poisoned air and water. There are *many* degrees of activism. They ALL count.

...continued on page 6

# Environmental Groups Sue Bush EPA over West Virginia's Weak Clean Water Policy

The Ohio Valley Environmental Coalition (OVEC), West Virginia Rivers Coalition (WVRC), and 23 other environmental organizations and citizens filed a lawsuit on January 23, 2002 against the U.S. Environmental Protection Agency (EPA) over a water quality policy that is supposed to keep West Virginia's high quality rivers and streams from being unnecessarily polluted.

Joe Lovett of the Appalachian Center for the Economy and the Environment (The Appalachian Center) in Lewisburg, W.Va. and Jim Hecker of Trial Lawyers for Public Justice in Washington, D.C. represent the plaintiffs.

The complaint, filed in federal district court in Huntington, W.Va., alleges that EPA approved an illegal antidegradation implementation plan for West Virginia. The plan, passed by the state Legislature in 2001, was approved by the Bush EPA this past November.

"The Bush EPA approved plan is a better deal for polluters than it is for the citizens of this state," said Margaret Janes, senior policy analyst for The Appalachian Center. "It does not comply with federal law. That's why we had to sue."

The antidegradation provision of the 1972 federal Clean Water Act is supposed to ensure that clean waters are protected and polluted waters are not polluted further. However, West Virginia's policy is full of exemptions and weak provisions. For example, the lower reaches of the Mon-ongahela River and Kanawha River are exempt from anti-deg review. Additionally, all existing dischargers in the state are exempt from review, unless they significantly expand. Certain classes of activities are exempt, such as valley fills from mountaintop removal operations, and some of West Virginia's high quality trout streams are exempt for certain types of pollutants.

"This lawsuit has national implications for clean water and could set the standard for the whole country," said Joan Mulhern, co-chair of the Clean Water Network, a national coalition of over 1,000 advocacy organizations. "The Bush EPA has backtracked on antidegradation policy, so it is doubly important that West Virginians hold the agency accountable."

"This is what you get when you take rule making away from expert agencies and place it in the hands of the legislature and high paid lobbyists," said Bryan Moore, chair of the WV Rivers Coalition Board of Directors.

"This is the sort of policy making we're seeing across the country from the Bush EPA," added Margaret Janes. A copy of the complaint in *Ohio Valley Environmental Coalition v. Whitman* is available at [www.tlpj.org](http://www.tlpj.org).

*Green Legislative Update*

# Shameless Plea

## "What? Not Again!!!"

Yes, friends and fellow travelers, I'm baaaack. Back to remind you that the WVEC lobby team depends on your financial support. Actually, we TOTALLY depend on your financial support, and this year in particular we need your help more than ever.

By now most of you know that we have new and expanded expenses this year – new office space, more rent to pay, more phone and communications costs. And we have a really great lobby team again, a team that deserves to be paid something closer to a living wage.

So if you haven't sent us a contribution or renewed your membership, please do so today. And if you have already renewed, why not consider sending WVEC an additional donation?

You rely on the lobby team to represent environmental interests at the legislature and to keep you updated on what's going on. Please remember as well that the team relies on you!

*by Don Garvin,  
For the Lobby Team*

## Feature: *Lobby Team Member* *Amy Lynn Strege*

Hello! My name is Amy Strege, and I am the intern for the WVEC this semester. I am a graduate from Roane County High School and am a Sophomore at University of Charleston, studying Political Science and History.

I will be helping the lobby team track bills and will help Denise Poole with the newsletter, and filling in everywhere else I am needed.

Educated by my parents (the only "hippies" in my neighborhood) to be Green, I am looking forward to helping the E-Council and the Green Movement in general. I have already met some of you and will be seeing you soon, and the rest of you I will see around the office or the capitol I am sure.



**"Success is never a destination ~  
it's a Journey."**

*Satenig St. Marie*

# Economic Development and Improving the Environment: “Vision Shared”

By Allan Tweddle,  
“Ideapreneur”

For those of us who are old enough to remember that delightful philosopher, Pogo said, “I have seen the enemy, and he is us.” Actually, if I recall, it was emblazoned on the virtual swamp boat he and his buddies relied upon to wander the Okefenokee Swamp. As we wander the myriad of environmental issues and challenges in the mountains of West Virginia, I hear Pogo whispering his wisdom in my ear.

“Environmentalists” are labeled, and are perceived to be opposed to any and every thing that a free enterprise system produces. That must change, and I think it is beginning to happen. Recent surveys have shown that the majority of Americans want clean air, clean water, and clean use of the land . . . and they believe that it can be achieved **in concert** with free enterprise. When it is realized that a method, a practice, or a product is bad for our society, and when reason prevails and the scientific evidence is clear, we have moved to abandon that method/practice/product rather quickly.

If I told you that I had a potential enterprise that would use a mineral that we must mine and transport and then process to be a “usable” product in energy applications of all kinds, in all society, would you invest with me in a business to mine it and put it to use for our profit?

Would you do so even if I disclosed to you that we would probably cause serious, life threatening lung disease, even premature death, for the miners and their families? Or, if similar risks exist in the post-extraction processing plants and in the minerals’ transportation, handling and end use, would you still invest with me? What if I even told you that the health of children would also be similarly affected by their daily proximity to its deployment? Still with me?

Well, I’m not talking about coal (or am I?). The actual mineral I just described has now been banned, although an entire industry supplied **asbestos** for decades in many uses widespread in our society. But we have now found alternatives and life has carried on without asbestos being deployed (the clean up and removal of asbestos is now a big business, ironically). The Quebec companies that mined, refined and distributed asbestos are either gone

or restructured. The workers are employed elsewhere, those who are able. We as a society and an economy have survived the brief economic transition from the use of asbestos to a myriad of other more healthy alternative materials. With **leadership** West Virginia can and will survive transition, just like Quebec did.

We can escape the doldrums of pessimism that Pogo struggled with if we think of ourselves as open-minded, opportunistic, but pragmatic problem solvers. Look aggressively and espouse sustainable alternatives to end pollution and, instead of the label “environmentalists,” maybe the use of the title “environmental entrepreneurs” will *be us*. (Today’s Pogo might even suggest some alternatives: wind, solar, biomass, fuel cells, etc.).

As environmental entrepreneurs I urge us all to continue to talk and seek positive alternative free enterprise solutions to the multitude of environmental challenges. I, for one, am excited and optimistic about our future and prospects.

## Mineral Taxation Hearing

A public hearing on mineral taxation has been scheduled for 4:00 PM Monday, January 28, in the Senate Finance Committee room to discuss lowering the tax rate on mineral reserves (mainly unmined coal). Lowering these tax rates would have severe impacts on current county tax revenues and budgets. Will industry support raising taxes on produced minerals to compensate for these losses?? Sure, they will. You may want to alert your county commissioners about this hearing

### Bills Update

Other than the environmental “rules” bills introduced in the Senate on Thursday and the House on Friday, there were only a couple of minor bills relating to the environment issued in both chambers this week. We’ll have a complete update of all the bills introduced so far this session, including the rules bills, in next week’s Update.

# Bush-Enron Energy Plan: Pretzel Logic

by Vivian Stockman

On Tuesday 24 representatives of state enviro groups assembled along Bush's motorcade route to protest the proposed Bush-Enron energy policy. That policy subsidizes (in \$Billions) the "Clean Coal" lie and has grave ramifications for West Virginia's still-standing coal-bearing mountains.

We picketers represented our groups' members, AS WELL AS THE NINE OUT OF TEN AMERICANS WHO FAVOR ALTERNATIVE ENERGY METHODS TO SOLVE SHORTAGES. (Nov. 27, 2001 Gallup Poll: [www.gallup.com/poll/releases/pr011127.asp](http://www.gallup.com/poll/releases/pr011127.asp)). An Energy Task Force made up of political donors and/or business execs wrote the energy plan during closed-door meetings. The plan smells so bad, the General Accounting Office has demanded to see the meetings' records. VP Dick Cheney won't hand those over, and the GAO is considering suing the Bush administration.

Apparently believing that Americans are so ga-ga over his War on Terrorism he can get away with anything, Bush says his energy policy is all about National Security and Jobs. But, his visit was obviously a taxpayer funded cheerleading session for Coal and Capito, at taxpayer expense. The costs for all the security surrounding his visit must be huge. His motorcade is so long, so full of gas-guzzlers, we could surely cut our dependence on foreign oil, thus boosting National Security, if he would only stay home.

Did Bush advisors study at the Orwell U? Jobs? Decades ago, there were over 100,000 miners. Now there are about 16,000, despite record coal production. Bush exceedingly inflates the job numbers that would come from drilling for oil in ANWR.

National Security? Plu-eeze. What's secure about tearing down the mountains, fouling the air and water, pumping mercury into the air and ultimately into our bodies? "Clean Coal?" Read my lips: There is no such thing as clean coal. From extraction (mountaintop removal, black lung, acid mine drainage, abandoned mine lines, longwall mining, etc.), to processing (coal dust, sludge impoundments), to transportation (coal dust, dangerous overweight coal trucks and damaged infrastructure), to burning (global warming, acid rain, rising asthma rates, increasing learning disabilities), to disposal of the ash (even if "Clean Coal" technologies do manage to remove some of the coal combustion pollutants from the air, what happens to the pollutant-laden ash—it eventually makes its way into groundwater), there is no such thing as "Clean Coal."

*Green Legislative Update*



*photo, Vivian Stockman*

## **Enviro picketers along motorcade route, January 22.**

It's likely the Prez didn't even see us picketers as his motorcade passed. Two limos broke out of the motorcade line, practically buzzed us, keeping the presidents limo on the inside, shielding him from DANGER: A different point of view.

**No matter.** The Bush-Enron plan is a plan to keep Fat Cats' wallets fat, at great peril to current and future generations. The Bush-Enron energy plan is in for a battle. Though the House has passed an ecocidal plan, Senate Democrats are balking. **Perhaps they recognize that the rest of the world is galloping towards that new energy economy, embracing cleaner alternative energy in a big way.** Perhaps the Senate can craft an energy policy that's a type of Marshall Plan for alternative energy, with it's true promise of jobs, tax revenue, revitalized local economies. **An energy policy that let's us keep the lights on and keep the mountains—what a concept!**

Governor Wise's own Energy Task Force can come up with a similar energy plan—one that recognizes the true toll from Coal, begins to wean our state off coal, and moves us into the new energy economy.

## **Inspirational Lobbying Tips....***continued from pg 3*

**Don't let apathy and frustration drag you down.** Unload on your legislator. Lobbying may help alleviate the feeling of helplessness we are all experiencing in the wake of 9/11. Our opposition, especially on the national level, has not been deterred. They have taken every opportunity to make hay out of the tragic events, sometimes making asses of themselves. But positive efforts can be born of tragedy. This war is really about oil and our dependence on it. The sooner we move on to hybrid vehicles, fuel cells, wind and solar power, the better the chances for peace and real security.

So come lobby with us when you can. We'll hook you up with the E-Team's effort to bring legislators out of their fossil fuel mind set. We know what the future can be. Ain't no time to waste! (See page 8 for State Capitol contact information)

# Calendar of Events

**February 2:** Deadline for comments to DEP about Waco Oil and Gas (Glennville, WV) seeking permit to strip mine on a parcel of land they have purchased on Browns Mountain. *For more information contact: Norman Wolcott: nwolcott@kreative.net or 304-799-6579 with Browns Mountain Area Preservation Society.*

**February 5:** Bill Moyers Special, "Trading Democracy." on PBS at ten p.m. Reveals how an obscure provision hidden in NAFTA can cost taxpayers millions of dollars when multinational corporations sue the government over environmental and health laws that threaten their profits.

**February 14:** Rally to reign in HB 4014 (Overweight Coal Trucks). Join Coal River Mountain Watch, OVEC, WV-CAG, Citizens Coal Council, WVEC and others at the capitol this day. Candlelight Vigil to remember victims in evening. *Stay tuned for more details.*

**February 15:** Deadline for Young Writers Green Space Coalition "River of Words" Competition. Open to all K-12 students, ages 5-19. *For more information contact: Chad Pierskalla, 304-293-2941 ext. 2410 or e-mail: cpierska@wvu.*

**February 22:** Annual WVEC Fundraiser. After E-Day! festivities, join us for live music, dancing and spirits. *Details to be announced. Stay Tuned.*

**February 22: Annual WVEC E-Day! at the state Capitol.** 10:00-3:00 p.m. Displays, speeches, awards, lobbying. *For more information contact: WVEC office: 304-346-5905 or e-mail: deniseap@earthlink.net*

**February 26:** 30th Anniversary of Buffalo Creek coal waste dam disaster.

**March 9:** Legislative Session 2002 ends at stroke of midnight! Stayed tuned to *Update* for WVEC issues "alive" or "dead" - and for end of session plans.

**April 29-30:** Sustainable Tourism Conference. Flatwoods Days Inn. *For more information contact: Dave Bassage or Candice Shrewsbury at 304-926-3647.*

## CONTACT INFORMATION

**Governor Wise:** governor@wv.gov  
**Legislators:** cglagola@mail.wvnet.edu (put Senator or Delegate's name in subject line)  
 or write to: **The Honorable \_\_\_\_\_ Member, WV Senate or House of Delegates Bldg. 1, State Capitol Complex, Charleston WV 25305**  
**You can fax letters to: (304) 347-4819**  
**DEP Director Callaghan: mcallaghan@mail.dep.state.wv.us or call (304) 7590570**  
**Call your Legislators toll-free at: 1-877-565-3447**  
**Call Governor Wise toll-free at: 1-888-438-2731 or (304) 558-2000 (Charleston).**

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## Support the West Virginia Environmental Council

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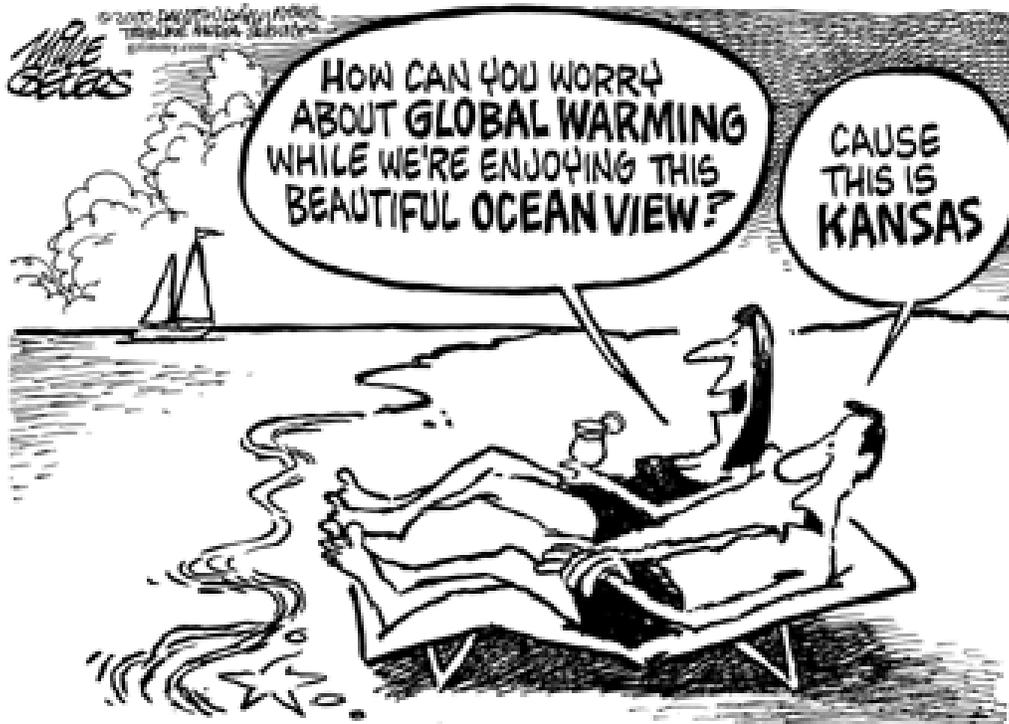
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- \_\_\_\_\_ \$ 50 Seedling
- \_\_\_\_\_ \$ 100 Sustaining
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- \_\_\_\_\_ \$ 1,000 Old Growth
- \_\_\_\_\_ \$ Other

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