

Pushing climate change in courts

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Byline: Jack Moran, The Register-Guard, Eugene, Ore.

Body

Dec. 17--Like the raging wildfire that killed dozens of Northern California residents last month, the news on **climate change** is both terrifying and relentless.

Most **climate** scientists agree that the **climate** is quickly **changing**, the impacts of warming already are being felt and there's a critical need to reduce greenhouse gas emissions in order to avoid increasingly worsening impacts. Several recent reports -- including two released by the federal government on Nov. 23 -- spell out the issue's urgency.

But the president says he doesn't believe it. And while there is some hope that a new batch of Democratic members of Congress can push through a plan to overhaul the nation's energy system and create jobs by doing so, many **climate** activists are hesitant to look to Washington, D.C., for leadership on combating **climate change**.

Instead, they're using the courts more than ever.

More than 900 **climate**-related lawsuits have been filed in the U.S. since 1986. Nearly one-third of those have come since 2016, according to the Sabin Center for **Climate Change** Law at Columbia University.

Climate change litigation took off in the mid-2000s in response to "the refusal of the George W. Bush administration" to tackle issues surrounding global warming, according to Michael Gerrard, a Columbia Law School professor who founded the center in 2009. One of its objectives is to develop legal analyses and databases that can be used in court, as well as by public officials and students.

"Most **climate** suits (during the second Bush's presidency) were brought by environmental groups and pro-**climate** (regulation) states seeking more action," Gerrard said. "During the Obama administration, most **climate** suits were brought by industry and anti-**climate** states, seeking to block regulations. Now we're back to a period when most **climate** suits are brought by environmental groups and pro-**climate** states."

'Climate kids' lawsuit

Environmentalists' biggest victory in the courts came in 1997 when the Supreme Court ruled that the federal Clean Air Act gives the Environmental Protection Agency the power to regulate heat-trapping greenhouse gas emissions. And Gerrard pointed out that a number of court decisions have held that **climate change** was inadequately considered in various projects' environmental-impact statements and in listing endangered species.

But no decision has held that any private companies are liable for **climate change**, or that a "public trust" doctrine requires government to act to stop **climate change** for the benefit of future generations.

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A youth-led lawsuit filed in 2015, which includes constitutional claims and seeks to hold the federal government accountable under the public trust doctrine, had been set to go to trial in Eugene late October. But while the government in that case hasn't denied that man-made climate change is a real threat, it has succeeded in getting the trial placed on hold indefinitely while arguing that courts have no business ordering the nation's climate policy.

"I can't tell you that I don't think they can't win at trial," one of the plaintiff's lawyers, Phil Gregory, said. "I can only tell you that the Trump administration is pulling out all the stops to keep this case from going to trial, and why would they do that -- waste such an incredible amount of judicial resources -- if they thought they could win?"

Plaintiffs in the case include 21 youths between the ages of 11 and 22. Six of them are from Eugene.

Pretrial challenges filed by the government are pending in both the U.S. Ninth Circuit Court of Appeals and the Supreme Court, and proceedings in the case are otherwise suspended. But last week, the youths' lawyers asked U.S. District Judge Ann Aiken in Eugene to restart the case to avoid potential delays that could push back a realistic trial date until 2022.

The attorneys based their arguments on findings included in the pair of federal reports released Nov. 23. Both the Fourth National Climate Assessment and the Second State of the Carbon Cycle Report conclude that emission reductions are needed to ease short-term harms associated with climate change and potentially avoid even worse longer-term impacts.

President Trump said "I don't believe it" when asked by reporters about the climate assessment's conclusions. The study involved 13 federal agencies and more than 300 climate scientists who warned about catastrophic impacts of climate change.

Denial and delay

Meanwhile, the federal government continues to promote and subsidize the use of fossil fuels such as gas, oil and coal, according to the youths' lawsuit.

"This administration is not just ignoring the climate science published by its own scientists but it is acting contrary to the recommendations of those climate scientists," Gregory said.

Earlier this week, Trump energy adviser aide Wells Griffith remarked at a United Nations convention on climate change in Poland that administration officials "strongly believe that no country should have to sacrifice economic prosperity or energy security in pursuit of environmental sustainability," according to the Washington Post. The comment was mocked by others in attendance.

The youth-led lawsuit -- which is backed by Our Children's Trust, a Eugene group that has supported similar lawsuits in all 50 states -- is potentially groundbreaking. As Gerrard, the Columbia Law professor, pointed out, Aiken is the first federal judge to recognize a constitutional right to a safe climate system.

The suit asserts the government has long known about the dangers associated with the burning of fossil fuels but has willfully ignored those risks while permitting and encouraging the use of fossil fuels, which the plaintiffs allege has allowed human-generated, atmospheric carbon concentrations to escalate to unprecedented levels that have destabilized the climate system.

The lawsuit seeks a court order directing the government to stop permitting, authorizing and subsidizing fossil fuels in order to phase out carbon emissions; and to put in place a national plan that works to stabilize the climate.

The trial, if it goes forward, would be only the second held in a climate suit filed in the U.S., Gerrard said. The other was a Vermont case that went to trial in 2007 over the state's vehicle emissions rules.

The government, however, insists the Eugene case does not belong in court. And even if it does get to trial and the plaintiffs prevail, it's expected that the government will appeal any adverse verdict. Under that scenario, the Supreme Court would have the final say on the matter.

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"This lawsuit is an unconstitutional attempt to use a single Oregon court to control the entire nation's energy and climate policy," Jeffrey Wood, the acting assistant attorney general for the Justice Department's Environment and Natural Resources Division, told The Register-Guard in October.

"Those policies should be decided by the elected branches, not the courts," Wood said.

Action in Congress?

While Trump has spent time rolling back climate regulations established under Obama, many activists and climate attorneys characterize Congress as being largely asleep at the wheel when it comes to taking on major, climate-related legislation.

Some signs hint the priorities may be shifting somewhat. Twenty-five senators last month signed a resolution introduced by Sen. Jeff Merkley (D-Ore.) that backs the National Climate Assessment and calls for action to fight climate change.

"Climate chaos is already wreaking havoc on the U.S., most prominently from massive forest fires and more powerful hurricanes," Merkley said in a news release. "We need to act boldly to save our economy and our environment. We are paying for our inaction, and the catastrophic events we're experiencing are just a sliver of what's to come if we don't dramatically reduce carbon pollution."

A similar resolution has been introduced in the House of Representatives. Meanwhile, a group of incoming Democratic members of Congress are gaining attention for pledging to make climate change their top priority. One of the freshmen lawmakers, Rep. Alexandria Ocasio-Cortez (D-N.Y.) is pushing what she calls a "Green New Deal" that involves establishing a new select House committee that deals strictly with climate issues and works toward transforming the nation's power generation to renewable sources within 10 years. There are, however, concerns that cutting carbon emissions would put many people employed in the fossil fuel industry out of work.

U.S. Rep. Peter DeFazio, a Springfield Democrat, said he supports the goals of the Green New Deal and is open to the idea of potentially establishing a select committee while he awaits more information on the plan.

DeFazio added that as incoming chairman of the U.S. Transportation and Infrastructure Committee, he could press for a number of improvements that could work to reduce congestion -- idling in traffic wastes fuel -- and carbon emissions.

He also said that he supports the youth-led lawsuit filed in Eugene, but emphasized that federal lawmakers need to deal head-on with the issue.

"If the courts could force a reluctant Congress to act, that would be great," DeFazio said. "However, I'm optimistic that Democrats are going to move very significant legislation addressing the existential threats of carbon pollution and climate change in this Congress. Obviously we will have difficulty dealing with the Republican-led Senate and our climate-denier president, but I will continue to push for bold congressional action on climate change."

But with plenty of uncertainty surrounding the ability of Congress to take meaningful steps to tackle climate change, it won't be surprising if more and more groups turn to the court to seek relief.

In October, another far-reaching climate case was filed against the government in U.S. District Court in Eugene. The lawsuit brought by plaintiffs including the Animal Legal Defense Fund includes some allegations similar to those made in the youth-led action that's now stalled. And like the other case, the suit asserts numerous violations of constitutional rights and asks the court to order the government to put in place an "enforceable national remedial plan" that would work to draw down greenhouse gases until the climate system stabilizes.

"The Animal Legal Defense Fund is leading the charge on this groundbreaking claim because it is time to reevaluate the standards by which we protect our wildlands," Animal Legal Defense Fund Executive Director Stephen Wells said.

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