# 1nc

### t - its

#### Interpretation: the resolution mandates federal ownership of the ocean development

#### “Its” is a possessive pronoun showing ownership

Supreme Court of Oklahoma 34

(Swindall v. State Election Board, 168 Okla. 97, Lexis)//BB

However, I view another phase of the act which is not considered in the majority opinion. It is my opinion that the expression, "its nominees," should have been construed by this court. Had this court so construed those words, it would have assisted the State Election Board in the furtherance of its ministerial duties, and would have set to rest the immediate question. It is my theory that the correct interpretation to place upon those words, "its nominees," is to the effect that those words do not mean all the nominees of any particular party. The word "its" is the possessive case, or the possessive adjective of "it", meaning of or belonging to it. Webster's International Dictionary. In other words, the expression, "its nominees," as applied to the Republican party, means nominees of it (the Republican party). The words, "nominees" of the "Republican party," do not and necessarily cannot mean all the nominees of the Republican party. Those words, however, do mean more than one nominee. It seems reasonable to conclude, in the absence of an expression like "all of its nominees," or words of similar import, that it was not the intent of the Legislature to make those words, "its nominees," all inclusive. It seems to me that a fair and reasonable interpretation would be that those words support and embrace the thought expressed by the New York statute, to wit, that it is the intention of the candidate to support generally at the next general election the nominees of the party from which he seeks his nomination, or that it is his intention to support a majority of the candidates of that party.

#### Ocean development is utilization of ocean resources

**Japanese Institute of Navigation, 98** (“Ocean Engineering Research Committee”, <http://members.j-navigation.org/e-committee/Ocean.htm>)

Discussions of "Ocean Engineering" are inseparable from "Ocean Development." What is ocean development? Professor Kiyomitsu Fujii of the University of Tokyo defines ocean development in his book as using oceans for mankind, while preserving the beauty of nature. In the light of its significance and meaning, the term "Ocean Development" is not necessarily a new term. Ocean development is broadly classified into three aspects: (1) Utilization of ocean resources, (2) Utilization of ocean spaces, and (3) Utilization of ocean energy. ¶ Among these, development of marine resources has long been established as fishery science and technology, and shipping, naval architecture and port/harbour construction are covered by the category of using ocean spaces, which have grown into industries in Japan. When the Committee initiated its activities, however, the real concept that caught attention was a new type of ocean development, which was outside the coverage that conventional terms had implied.¶ Special technologies are required for developing oceans, and an academic field is necessary to provide a base to construct such special technologies in systematic and organic ways. This academic field is Ocean Engineering. Dr. Tadayoshi Sasaki of the Tokyo Fisheries University stated that "Ocean Engineering" is the integration of several fields in which diverse approaches are to be taken for the ocean environment, unlike individual engineering fields in a traditional sense.

#### Violation – the aff incentives private sector development or exploration – it doesn’t mandate federal development or exploration

#### The industry would possess and maintain the development projects – that violates the core meaning of “its”

Appelate Court of Illinois 80

(“Hulett v. Central Illinois Light Co.,” 83 Ill. App. 3d 195, Lexis)//BB

The plaintiff responded to the motion for summary judgment to the effect that as to who owned or controlled the wires is immaterial, since CILCO was required to maintain and inspect all electric supply lines carrying its electricity and had failed to do so. In support of this contention the plaintiff relies upon Illinois Commerce Commission General Order 160 -- Revised, and effective as of June 1, 1963, which provides as follows:¶ "9. General Maintenance Requirements.¶ Each public utility operating a system of power or communication lines shall maintain *its* [italics in original] system of lines in such condition as will enable it to furnish safe, adequate and dependable service.¶ Power and communication lines and their associated equipment shall comply with the provisions of this General Order when placed in service, and shall thereafter by systematically inspected, and when necessary, be subjected to tests to determine their fitness for the service required of them, and for conditions of safety. Any defects revealed by such inspections and tests which could cause or create an unsafe condition, shall be promptly corrected. If such corrections are not immediately undertaken, a record of the condition found shall be made in the proper plant office of the utility. Defective lines or their associated equipment shall be placed in good operating condition, or otherwise effectively disconnected or removed." (Emphasis added.)¶ The purport of the trial judge's order is to this court clear in that a question of law is presented, namely, whether or not the Commerce Commission General Order 160 places a duty upon CILCO to maintain, repair and inspect the electrical lines in question, even though they are not and never have been owned or controlled by the power company. We note, however, that the plaintiff attempts to challenge the sufficiency of the Volk affidavit which denies ownership or control of the lines by CILCO. It is the plaintiff's argument that the affidavit referred to records as to premises located at 821 Tremont Township, Tremont, Illinois, and that the described premises have not been established as the place where the plaintiff was injured. We find no merit in this contention since it is [198] patently clear from the record that there was no concern on the part of the trial court or the parties to this action concerning the Volk affidavit or where the plaintiff was injured. It should be noted that the plaintiff did not file a counteraffidavit and consequently admitted that CILCO did not own or control the electrical line. (See Carruthers v. B. C. Christopher & Co. (1974), 57 Ill. 2d 376, 313 N.E.2d 457.) To raise on appeal the question of ownership appears to be an effort on the part of the plaintiff to obfuscate the true issue, to-wit, the meaning and effect of General Order 160.¶ We have set forth the pertinent provisions of the order and attention should be directed to the word its located in the first paragraph and which we have emphasized. The word its as used is a pronoun and is being used in its possessive form. By the use of the word it is clear that each public utility system shall maintain the power lines which it owns.

#### Voting issue –

#### Precision – the only way to provide a meaningful limit on the topic is to define it through court decisions – any other limit creates an arbitrary literature base and nullifies the benefit of any education

#### Limits – absent a restriction on the mechanism of the aff, any small adjustment to federal law becomes topical – dozens of incentives and regulation bodies remove any functional limits to the topic because small affs could just change the solvency mechanism every round

### private sector prizes cp

#### The United States federal government should institute a substantial monetary prize incentive for the purpose of ocean thermal energy conversion.

#### The counterplan is plan-minus – the private sector owns the project which severs “its”

Harrold 11 – Esq., brief to the Supreme Court of Indiana

(Dennis, “HAIRE v. PARKER, 2011 IN S. Ct. Briefs LEXIS 350,” Lexis)//BB

However, simply stating that Haspin Acres is released cannot afford enough protection because - under Indiana's law of agency or various theories of derivative liability - Haspin Acres would nevertheless face significant liability exposure for the negligent acts of its agents and affiliates. Under the doctrine of respondeat superior, a principal is liable for the negligent acts of his agent. See Comer-Marquardt v. A-l Glassworks, LLC, 806 N.E.2d 883, 887 (Ind. Ct. App. 2004). This explains the use of the language: "its officers, trustees, employees and agents, meet [15] officials, promoters, sponsors, motorcycle riders, mechanics and pit crew." (App. 26) Haspin Acres included this list of possible agents and affiliates to further reduce liability exposure. This list of categories is controlled by the possessive "its", referring to Haspin Acres. Thus, each category is subject to the same possessive. Therefore, the entities released are Haspin Acres and "its officers", "its .. . trustees", "its .. . employees and agents", "its .. . riders", etc. (App. 26) The effect of the possessive "its" controls the entire list, including "riders". The express provision states "its . . . riders," not all riders.

#### Prizes solve and stream line public-private partnerships– solves better in the long term

Gustetic ’12, Prizes and Challenges Program Executive NASA

Jenn, “Government as a Catalyst: Prizes for Tech Innovation”, http://www.pocg.com/blog/archives/736

At this year’s South by South West Interactive (SXSWi) conference, I’m pleased to be moderating a panel on the role of government and prizes in stimulating technology innovation and providing public services. Federal agencies have recently been given the authority by Congress to sponsor competitions for individuals, groups, and companies to develop new ideas and technology innovations for a chance to win potentially lucrative prizes. These competitions can range from new mobile outreach technologies to web-based data analytics tools to even vehicle-to-vehicle communications; the government is looking for breakthrough technologies from the minds of the most creative and forward thinking Americans.¶ The panel will highlight some of the coolest prizes for technology development that the government has been involved in to date, including the DOT’s Connected Vehicle Challenge, the VA’s industry competition and blue button projects, and NASA’s centennial challenges. Additionally we will explore what role the government should be playing in these activities moving forward by looking at some prizes where the government did not have a role.¶ Here’s a sneak preview about what you’ll hear if you come spend an hour with us. We believe prizes matter for many reasons, but we’ll focus on four during the session:¶ They work. How can we be so sure? You’ll hear about a series of prizes from NASA, VA, and DOT that demonstrate the value of government sponsored prizes.¶ They complement other innovation methods. There are many ways to stimulate technology development and many actors are involved in doing so. It doesn’t happen very often however that government gets a BRAND NEW way to stimulate innovation—and prizes are just that. Prizes are a new way for government to stimulate technology development that compliments other, traditional methods for innovation. We’ll give some interesting examples of where prizes work with other innovation methods in government to create some really cool results.¶ They're becoming a way of doing business. If government is spending money and doing business this way, entrepreneurs and industry alike should be paying attention. Imagine a world where as much money flows through an organization through prizes as it does through contracts. Now that’s big business.¶ They're exposing different roles for Government. Government does not always need to have a role for prizes to work however. The question no longer is CAN government have a role, but SHOULD they. The private sector is increasingly involved in activities that affect the public good and people WANT to get engaged in the public good. We believe this may create room for the public sector to disengage or interesting public-private partnerships to form. We’ll talk about some instances where this is happening.

### noaa da

#### NOAA weather satellite programs receiving increased funding now

Leone, 6/12 (Dan, 6/12/2014, “House and Senate Find Common Ground on NOAA Budget,” <http://www.spacenews.com/article/civil-space/40883house-and-senate-find-common-ground-on-noaa-budget>, JMP)

WASHINGTON — The U.S. Senate Appropriations Committee on June 5 approved a budget bill that would give the National Oceanic and Atmospheric Administration about $5.4 billion in 2015, including some $2.1 billion for its major weather satellite programs — a small increase over 2014 that is about even with the White House’s 2015 request and what House appropriators included in a competing bill approved in May. Senate and House appropriators now seem to be more or less on the same page when it comes to the weather agency’s 2015 budget, even if they do not agree fully with the White House — or each other — on every detail. Senate appropriators, like their counterparts in the House, agreed to give NOAA’s two major weather satellite programs the roughly $130 million boost the White House requested in March. That comes out to about $916 million for the Joint Polar Satellite System, some $95 million more than 2014, and about $981 million for the Geostationary Operational Environmental Satellite-R, roughly $39 million more than 2014. The second Joint Polar Satellite System spacecraft is slated to launch in 2017 — a testbed satellite launched in 2011 was pressed into service as the program’s first — while the next geostationary satellite would lift off in 2016. Likewise, both Senate and House appropriators have now directed NASA to take over full development responsibility for the Jason-3 ocean altimetry satellite and the Deep Space Climate Observatory (DSCOVR), stripping NOAA management of their role in the development process, but keeping the weather agency in charge of on-orbit operations. The House and Senate bills, however, differ on funding levels for these two projects. Senate appropriators included $25.6 million for Jason-3, a little less than the $25.7 million the White House wanted but $10 million more than the House bill includes. The Deep Space Climate Observatory would get $24.8 million under the Senate bill — $4.8 million more than the House approved and $3.5 million more than the White House requested.

#### Plan forces a tradeoff --- funding for weather satellites relies on constraints to the rest of the NOAA budget

Showstack, 12 (3/6/2012, Randy --- staff writer, Eos, Transactions American Geophysical Union, “NOAA Budget Would Boost Satellite Funding but Cut Some Key Areas,” vol. 93, no. 10, Wiley Online Library, JMP)

The White House’s proposed fiscal year (FY) 2013 budget for the National Oceanic and Atmospheric Administration (NOAA), announced on 13 February, looks favorable at first glance. The administration’s request calls for $5.1 billion, an increase of $153 million (3.1%) above the FY 2012 estimated budget. However, the increase for NOAA satellites is $163 million, which means that other areas within the agency would be slated for decreased funding, including programs within the National Ocean Service (NOS), National Marine Fisheries Service (NMFS), National Weather Service (NWS), and some NOAA education programs. The proposed overall budget for the agency “reflects the overarching importance of weather satellites to public safety, to national security, and to the economy,” NOAA director Jane Lubchenco said at a 16 February briefing, noting that difficult choices were made regarding the budget. “Due to significant resources required for our weather satellites and the economic conditions in the country, other parts of our budget have been reduced, in some cases quite significantly,” she said. She added that the imperative to fund both the Joint Polar Satellite System (JPSS) and geostationary satellites in FY 2013 “imposes serious constraints on the rest of NOAA’s budget.”The budget for the National Environmental Satellite, Data, and Information Service (NESDIS) would increase 8.7% to $2.041 billion. This includes full funding for the JPSS ($916.4 million, down from $924 million). In addition, funding for the Geostationary Operational Environmental Satellite–R Series (GOES-R) would increase to $802 million, up from $615.6 million. Environmental satellite observing systems would receive $123.2 million, up from $112.5 million. However, NOAA’s Climate Database Modernization Program to preserve and enhance the availability of climate and environmental data would be terminated. Cuts Proposed for NOAA’s “Wet” Side The NOS budget of $478.1 million (down 2.4% from FY 2012) would include $149.6 million for navigation services (trimmed from $148 million), $166.1 million for ocean resources conservation and assessment (down from $163.3 million), and $142.8 mil - lion for ocean and coastal management (a dip from $148.2 million). Lubchenco said the budget would maintain core mission functions, including funding for navigation services and marine sanctuary and coastal zone management programs. She highlighted the $24.3-million request for response and restoration capabilities, $29.5 million for the Integrated Ocean Observing System, and $11 million for NOAA competitive research. However, she said targeted losses would include the termination of navigation response teams and the coastal and estuarine land conservation pro - gram and a funding cut for mapping and charting. Compared to FY 2012, NMFS funding would drop to $880.3 million (down 1.6%). Some areas would receive boosts, including funding for fisheries research and management ($430.1 million, up $4 million) and for improving enforcement and observer programs ($110.3 million, up $4.9 million). However, programs on the short end would include Habitat Conservation and Restoration ($36 million, down $11.3 million) and NOAA’s regional councils and fisheries com - missions ($27.3 million, down $5.1 million). Lubchenco said it is unclear what the reduction will mean for the councils. The bud - get also calls for closing the James J. Howard Marine Sciences Laboratory at Sandy Hook, N. J., a move strongly opposed by several members of the state’s congressional delegation. The budget “is troubling due to the continued underfunding of NOAA and its ocean program,” said Jeff Watters, senior manager of government relations for the nonprofit Ocean Conservancy. “Adding to the burden of overall budget reductions, NOAA is tasked with paying for new, multibillion- dollar weather satellites, as well as managing our coasts and fisheries. As costs of the weather- related program continue to rise, there are fewer resources for NOAA’s core ocean programs. Americans shouldn’t have to choose between forecasting the weather and protecting our ocean. We need both.” Matt Tinning, executive director of the nonprofit Marine Fish Conservation Network, applauded targeted fisheries investments in NOAA’s FY 2013 budget proposal, including additional funding for fisheries science, surveys, stock assessments, and monitoring. However, he said, “For NOAA to be forced to reallocate funds from core ocean and science programs to avoid crippling gaps in our nation’s satellite capacity is unsustainable, and we urge Congress and the White House to urgently seek a new approach to satellite funding.”

#### Sufficient funding is necessary to ensure timely deployment of JPSS satellite and avoid gaps in data coverage

Kicza, 13 --- Assistant Administrator National Environmental Satellite, Data, and Information Service at NOAA (9/19/2013, Mary E., “HEARING TITLED DYSFUNCTION IN MANAGEMENT OF WEATHER AND CLIMATE SATELLITES BEFORE THE SUBCOMMITTEES ON ENVIRONMENT AND OVERSIGHT COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY U.S. HOUSE OF REPRESENTATIVES,” <http://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-113-SY21-WState-MKicza-20130919.pdf>, JMP)

2013 GAO Review of the JPSS Program NOAA was provided an opportunity to review the draft GAO recommendations and NOAA concurs with the five GAO recommendations for the JPSS Program reflected in that document. We will review the final report and the recommendations contained therein and will work to address them. The recommendations include direction to: ● track the extent to which groups of satellite data users are using Suomi NPP and JPSS products and obtain feedback on these products; ● establish a complete JPSS Program integrated master schedule that includes a logically linked sequence of activities; ● address the shortfalls in the ground system and spacecraft component schedules outlined in the report; ● update the joint cost and schedule confidence level for JPSS-1, if warranted and justified after completing the integrated master schedule and addressing shortfalls in component schedules; and ● establish a comprehensive contingency plan for potential satellite data gaps in the polar orbit that is consistent with the contingency planning best practices identified in this report. The plan should include, for example, specific contingency actions with defined roles and responsibilities, timelines, and triggers; analysis of the impact of lost data from the morning orbits, and identification of opportunities to accelerate the calibration and validation phases of JPSS-1. Refocusing the JPSS Program to a weather mission and moving content to other programs has improved our confidence on meeting the second quarter FY 2017 launch readiness date for the JPSS-1 satellite, thereby minimizing the possibility of gaps in data coverage noted in the GAO’s “High Risk” report. While there is still a risk of a gap in coverage, recent analyses and assessments have increased our confidence that we will launch JPSS-1 in the second quarter of FY 2017. This, coupled with a rigorous management regime for the Suomi NPP satellite to preserve operating life, gives us confidence that if the satellite continues to perform as expected, we will significantly reduce risk of a gap of coverage in the afternoon orbit. However, sufficient funding is required to ensure that we maintain the current acquisition schedule.

#### Gaps in coverage will wreck U.S. military readiness and damage major sectors of the economy

Conathan, 11 --- Director of Oceans Policy at American Progress (2/18/2011, Michael, “A Forecast for Disaster: Stormy Conditions Await if NOAA Funding Is Cut,” <http://americanprogress.org/issues/green/news/2011/02/18/9055/a-forecast-for-disaster/>, JMP)

Weather predictions used to be a frequent punchline but they have improved dramatically in recent years. More often than not you’ll need an umbrella if your local television channel or website of choice tells you to bring one when you leave the house. But we could take a huge step back to the days when your dartboard had a reasonable chance of outpredicting Al Roker if House Republicans have their way with the 2011 federal budget. The House of Representatives is debating the Full Year Continuing Resolution Act (H.R. 1) to fund the federal government for the remainder of fiscal year 2011. The Republican leadership has proposed sweeping cuts to key programs across the climate change, clean energy, and environmental spectrum. They have also decided that accurate weather forecasting and hurricane tracking are luxuries America can no longer afford. The GOP’s bill would tear $1.2 billion (21 percent) out of the president’s proposed budget for the National Oceanic and Atmospheric Administration, or NOAA. On the surface, cutting NOAA may seem like an obvious choice. The FY 2011 request for the agency included a 16 percent boost over 2010 levels that would have made this year’s funding level of $5.5 billion the largest in NOAA’s history. Even this total funding level, however, is woefully insufficient for an agency tasked with managing such fundamental resources as the atmosphere that regulates our climate, the 4.3 million square miles of our oceanic exclusive economic zone, the ecological health of coastal regions that are home to more than 50 percent of all Americans, response to environmental catastrophes including the Deepwater Horizon oil spill, and fisheries that employ thousands of Americans and annually contribute tens of billions of dollars to the national economy. More than $700 million of the president’s proposed 2011 increase in NOAA funding would be tagged for overhauling our nation’s aging environmental satellite infrastructure. Satellites gather key data about our oceans and atmosphere, including cloud cover and density, miniscule changes in ocean surface elevation and temperatures, and wind and current trajectories. Such monitoring is integral to our weather and climate forecasting and it plays a key role in projections of strength and tracking of major storms and hurricanes—things most Americans feel are worth keeping an eye on. In fact, NOAA has been making great strides in hurricane tracking. The average margin of error for predicting landfall three days in advance was 125 miles in 2009—half what it was 10 years prior. This data translates into a higher degree of confidence among the public in NOAA’s forecasts, which means individuals will be more likely to obey an evacuation order. Further, since evacuating each mile of shoreline costs approximately up to $1 million, greater forecasting accuracy translates to substantial savings. The United States needs these satellites if we’re to continue providing the best weather and climate forecasts in the world. The implications of the loss of these data far exceed the question of whether to pack the kids into snowsuits for the trip to school. The concern here is ensuring ongoing operational efficiency and national security on a global scale. In some cases it can literally become a question of life and death. Consider the following numbers: The $700 billion maritime commerce industry moves more than 90 percent of all global trade, with arrival and departure of quarter-mile long container ships timed to the minute to maximize revenue and efficiency. Shipping companies rely on accurate forecasts to set their manifests and itineraries. Forecasting capabilities are particularly strained at high latitudes and shippers have estimated that the loss of satellite monitoring capabilities could cost them more than half a billion dollars per year in lost cargo and damage to vessels from unanticipated heavy weather. When a hurricane makes landfall, evacuations cost as much as $1 million per mile. Over the past decade, NOAA has halved the average margin of error in its three-day forecasts from 250 miles to 125 miles, saving up to $125 million per storm. Commercial fishing is the most dangerous profession in the country with 111.8 deaths per 100,000 workers. A fisherman’s most valuable piece of safety equipment is his weather radio. When disaster strikes at sea, polar-orbiting satellites receive emergency distress beacons and relay positioning data to rescuers. This resulted in 295 lives saved in 2010 alone and the rescue of more than 6,500 fishermen, recreational boaters, and other maritime transportation workers since the program began in 1982. Farmers rely on NOAA’s drought predictions to determine planting cycles. Drought forecasts informed directly by satellite data have been valued at $6 billion to 8 billion annually. NOAA’s volcanic ash forecasting capabilities received international attention last spring during the eruption of the Icelandic volcano, Eyjafjallajökull. The service saves airlines upwards of $200 million per year. NOAA’s polar-orbiting satellites are America’s only source of weather and climate data for vast areas of the globe, including areas key to overseas military operations. Their data are integral to planning deployments of troops and aircraft—certain high-atmosphere wind conditions, for example, can prohibit mid-air refueling operations.All of these uses will be compromised if the Republicans succeed in defunding NOAA’s satellite program. At least an 18-month gap in coverage will be unavoidable without adequate funding for new polar-orbiting satellites this year. More troubling, taking an acquisition program offline and then restarting the process at a later date would lead to cost increases of as much as three to five times the amount the government would have to spend for the same product today. So here’s the choice: Spend $700 million this year for continuous service or $2 billion to $3.5 billion at some point in the future for the same equipment and a guaranteed service interruption. Environmental satellites are not optional equipment. This is not a debate about whether we should splurge on the sunroof or the premium sound system or the seat warmers for our new car. Today’s environmental satellites are at the end of their projected life cycles. They will fail. When they do, we must have replacements ready or risk billions of dollars in annual losses to major sectors of our economy and weakening our national security. That’s an ugly forecast. Tragically, it’s also 100 percent accurate.

#### Readiness key to deter global conflict

Jack Spencer, 2000, Research Fellow in Nuclear Energy Policy at The Heritage Foundation's Roe Institute for Economic Policy Studies. “The Facts About Military Readiness” Sep. 15, 2k. accessed July 31, 2010 <http://www.heritage.org/Research/Reports/2000/09/BG1394-The-Facts-About-Military-Readiness//Donnie>

Military readiness is vital because declines in America's military readiness signal to the rest of the world that the United States is not prepared to defend its interests. Therefore, potentially hostile nations will be more likely to lash out against American allies and interests, inevitably leading to U.S. involvement in combat. A high state of military readiness is more likely to deter potentially hostile nations from acting aggressively in regions of vital national interest, thereby preserving peace.

### Anthro k

#### Their extinction claims require a defense of the intrinsic value of human survival as separated from other forms of life. This involves the image of distinctly good human life contrasted to the banal useless existence of the genes. This makes the aff’s political subjectivity an affect of a species-contingent survival paradigm which abandons bare life.

KOCHI & ORDAN 2K8 [tarik and noam, queen’s university and bar llan university, “an argument for the global suicide of humanity”, vol 7. no. 4., bourderlands e-journal]

If only some of our genes but not our species has survived, maybe the emphasis we place upon the notion of ‘survival’ is more cultural than simply genetic. Such an emphasis stems not only from our higher cognitive powers of ‘self-consciousness’ or self-awareness, but also from our conscious celebration of this fact: the image we create for ourselves of ‘humanity’, which is produced by via language, collective memory and historical narrative. The notion of the ‘human’ involves an identification of our species with particular characteristics with and upon which we ascribe certain notions of value. Amongst others such characteristics and values might be seen to include: the notion of an inherent ‘human dignity’, the virtue of ethical behaviour, the capacities of creative and aesthetic thought, and for some, the notion of an eternal soul. Humans are conscious of themselves as humans and value the characteristics that make us distinctly ‘human’. When many, like Hawing, typically think of the notion of the survival of the human race, it is perhaps this cultural-cognitive aspect of homo sapiens, made possible and produced by human self-consciousness, which they are thinking of. If one is to make the normative argument that the human race should survive, then one needs to argue it is these cultural-cognitive aspects of humanity, and not merely a portion of our genes, that is worth saving. However, it remains an open question as to what cultural-cognitive aspect of humanity would survive in the future when placed under radical environmental and evolutionary pressures. We can consider that perhaps the fish people, having the capacity for self-awareness, would consider themselves as the continuation or next step of ‘humanity’. Yet, who is to say that a leap in the process of evolution would not prompt a change in self awareness, a different form of abstract reasoning about the species, a different self-narrative, in which case the descendents of humans would look upon their biological and genetic ancestors in a similar manner to the way humans look upon the apes today. Conceivably the fish people might even forget or suppress their evolutionary human heritage. While such a future cannot be predicted, it also cannot be controlled from our graves. In something of a sense similar to the point made by Giorgio Agamben (1998), revising ideas found within the writings of Michel Foucault and Aristotle, the question of survival can be thought to involve a distinction between the ‘good life’ and ‘bare life’. In this instance, arguments in favour of human survival rest upon a certain belief in a distinctly human good life, as opposed to bare biological life, the life of the gene pool. It is thus such a good life, or at least a form of life considered to be of value, that is held up by a particular species to be worth saving. When considering the hypothetical example of the fish people, what cultural-cognitive aspect of humanity’s good life would survive? The conditions of life under water, which presumably for the first thousand years would be quite harsh, would perhaps make the task of bare survival rather than the continuation of any higher aspects of a ‘human heritage’ the priority. Learning how to hunt and gather or farm underwater, learning how to communicate, breed effectively and avoid getting eaten by predators might displace the possibilities of listening to Mozart or Bach, or adhering to the Universal Declaration of Human Rights, or playing sport, or of even using written language or complex mathematics. Within such an extreme example it becomes highly questionable to what extent a ‘human heritage’ would survive and thus to what extent we might consider our descendents to be ‘human’. In the case where what survives would not be the cultural-cognitive aspects of a human heritage considered a valuable or a good form of life, then, what really survives is just life. Such a life may well hold a worth or value altogether different to our various historical valuations and calculations. While the example of the fish people might seem extreme, it presents a similar set of acute circumstances which would be faced within any adaptation to a new habitat whether on the earth or in outer space. Unless humans are saved by radical developments in technology that allow a comfortable colonisation of other worlds, then genetic adaptation in the future retains a reasonable degree of probability. However, even if the promise of technology allows humans to carry on their cultural-cognitive heritage within another habitat, such survival is still perhaps problematic given the dark, violent, cruel and brutal aspects of human life which we would presumably carry with us into our colonisation of new worlds. Thinkers like Hawking, who place their faith in technology, also place a great deal of faith in a particular view of a human heritage which they think is worth saving. When considering the question of survival, such thinkers typically project a one-sided image of humanity into the future. Such a view presents a picture of only the good aspects of humanity climbing aboard a space-craft and spreading out over the universe. This presumes that only the ‘good aspects’ of the human heritage would survive, elements such as ‘reason’, creativity, playfulness, compassion, love, fortitude, hope. What however happens to the ‘bad’ aspects of the human heritage, the drives, motivations and thoughts that led to the Holocaust for example?

#### This species-contingent paradigm creates unending genocidal violence against forms of life deemed politically unqualified.

KOCHI & ORDAN 2K8 [tarik and noam, queen’s university and bar llan university, “an argument for the global suicide of humanity”, vol 7. no. 4., bourderlands e-journal]

Within the picture many paint of humanity, events such as the Holocaust are considered as an exception, an aberration. The Holocaust is often portrayed as an example of ‘evil’, a moment of hatred, madness and cruelty (cf. the differing accounts of ‘evil’ given in Neiman, 2004). The event is also treated as one through which humanity comprehend its own weakness and draw strength, via the resolve that such actions will never happen again. However, if we take seriously the differing ways in which the Holocaust was ‘evil’, then one must surely include along side it the almost uncountable numbers of genocides that have occurred throughout human history. Hence, if we are to think of the content of the ‘human heritage’, then this must include the annihilation of indigenous peoples and their cultures across the globe and the manner in which their beliefs, behaviours and social practices have been erased from what the people of the ‘West’ generally consider to be the content of a human heritage. Again the history of colonialism is telling here. It reminds us exactly how normal, regular and mundane acts of annihilation of different forms of human life and culture have been throughout human history. Indeed the history of colonialism, in its various guises, points to the fact that so many of our legal institutions and forms of ethical life (i.e. nation-states which pride themselves on protecting human rights through the rule of law) have been founded upon colonial violence, war and the appropriation of other peoples’ land (Schmitt, 2003; Benjamin, 1986). Further, the history of colonialism highlights the central function of ‘race war’ that often underlies human social organisation and many of its legal and ethical systems of thought (Foucault, 2003). This history of modern colonialism thus presents a key to understanding that events such as the Holocaust are not an aberration and exception but are closer to the norm, and sadly, lie at the heart of any heritage of humanity. After all, all too often the European colonisation of the globe was justified by arguments that indigenous inhabitants were racially ‘inferior’ and in some instances that they were closer to ‘apes’ than to humans (Diamond, 2006). Such violence justified by an erroneous view of ‘race’ is in many ways merely an extension of an underlying attitude of speciesism involving a long history of killing and enslavement of non-human species by humans. Such a connection between the two histories of inter-human violence (via the mythical notion of differing human ‘races’) and interspecies violence, is well expressed in Isaac Bashevis Singer’s comment that whereas humans consider themselves “the crown of creation”, for animals “all people are Nazis” and animal life is “an eternal Treblinka” (Singer, 1968, p.750).

#### The alternative is that the judge should vote negative to reject the 1AC’s human survival ethic. This rejection enables an understanding of the species-being. That solves the ethical contradiction of their species-level racism.

HUDSON 2K4 [Laura, The Political Animal: Species-Being and Bare Life, mediations journal, <http://www.mediationsjournal.org/files/Mediations23_2_04.pdf>]

We are all equally reduced to mere specimens of human biology, mute and uncomprehending of the world in which we are thrown. Species-being, or “humanity as a species,” may require this recognition to move beyond the pseudo-essence of the religion of humanism. Recognizing that what we call “the human” is an abstraction that fails to fully describe what we are, we may come to find a new way of understanding humanity that recuperates the natural without domination. The bare life that results from expulsion from the law removes even the illusion of freedom. Regardless of one’s location in production, the threat of losing even the fiction of citizenship and freedom affects everyone. This may create new means of organizing resistance across the particular divisions of society. Furthermore, the concept of bare life allows us to gesture toward a more detailed, concrete idea of what species-being may look like. Agamben hints that in the recognition of this fact, that in our essence we are all animals, that we are all living dead, might reside the possibility of a kind of redemption. Rather than the mystical horizon of a future community, the passage to species-being may be experienced as a deprivation, a loss of identity. Species-being is not merely a positive result of the development of history; it is equally the absence of many of the features of “humanity” through which we have learned to make sense of our world. It is an absence of the kind of individuality and atomism that structure our world under capitalism and underlie liberal democracy, and which continue to inform the tenets of deep ecology. The development of species-being requires the collapse of the distinction between human and animal in order to change the shape of our relationships with the natural world. A true species-being depends on a sort of reconciliation between our “human” and “animal” selves, a breakdown of the distinction between the two both within ourselves and in nature in general. Bare life would then represent not only expulsion from the law but the possibility of its overcoming. Positioned in the zone of indistinction, no longer a subject of the law but still subjected to it through absence, what we equivocally call “the human” in general becomes virtually indistinguishable from the animal or nature. But through this expulsion and absence, we may see not only the law but the system of capitalism that shapes it from a position no longer blinded or captivated by its spell. The structure of the law is revealed as always suspect in the false division between natural and political life, which are never truly separable. Though clearly the situation is not yet as dire as Agamben’s invocation of the Holocaust suggests, we are all, as citizens, under the threat of the state of exception. With the decline of the nation as a form of social organization, the whittling away of civil liberties and, with them, the state’s promise of “the good life” (or “the good death”) even in the most developed nations, with the weakening of labor as the bearer of resistance to exploitation, how are we to envision the future of politics and society?

### Solvency

**Lack of sufficient science, vulnerability to storms and cost all impede OTEC – private companies do not want to invest**

**Rick ‘14** (‘Examining the Future of Ocean Thermal Energy Conversion’, 3/14, http://www.oceanenergycouncil.com/examining-future-ocean-thermal-energy-conversion/, *wcp*)

Despite the sound science, a fully functioning OTEC prototype has yet to be developed. The high costs of building even a model pose the main barrier. Although piecemeal experiments have proven the effectiveness of the individual components, a large-scale plant has never been built. Luis Vega of the Pacific International Center for High Technology Research estimated in an OTEC summary presentation that a commercial-size five-megawatt OTEC plant could cost from 80 to 100 million dollars over five years. According to Terry Penney, the Technology Manager at the National Renewable Energy Laboratory, the combination of cost and risk is OTEC’s main liability. “We’ve talked to inventors and other constituents over the years, and it’s still a matter of huge capital investment and a huge risk, and there are many [alternate forms of energy] that are less risky that could produce power with the same certainty,” Penney told the HPR.¶ Moreover, OTEC is highly vulnerable to the elements in the marine environment. Big storms or a hurricane like Katrina could completely disrupt energy production by mangling the OTEC plants. Were a country completely dependent on oceanic energy, severe weather could be debilitating. In addition, there is a risk that the salt water surrounding an OTEC plant would cause the machinery to “rust or corrode” or “fill up with seaweed or mud,” according to a National Renewable Energy Laboratory spokesman.¶Even environmentalists have impeded OTEC’s development. According to Penney, people do not want to see OTEC plants when they look at the ocean. When they see a disruption of the pristine marine landscape, they think pollution.

### Fish f/l

#### Supply and demand means farmers will make more food – empirically true

Zubrin ‘11

Dr. Robert Zubrin Fellow with the Center for Security Policy B.A. in Mathematics from the University of Rochester (1974), and a masters degree in Aeronautics and Astronautics, a masters degree in Nuclear Engineering, and a Ph.D. in Nuclear Engineering “WHY IT’S WRONG TO AGREE WITH THE MALTHUSIANS ABOUT ETHANOL” <http://www.ilcorn.org/daily-update/182-why-it-rsquo-s-wrong-to-agree-with-the-malthusians-about-ethanol/>

In fact, Lester Brown is wrong about the alleged famine-inducing potential of the ethanol program for exactly the same reason he has been repeatedly wrong about the alleged famine-inducing potential of population growth. There is not a fixed amount of grain in the world. Farmers produce in response to demand. The more customers, the more grain. Not only that, but the larger the potential market, the greater the motivation for investment in improved techniques. This is why, despite the fact that the world population has indeed doubled since Lester Brown, Paul Ehrlich, and the other population control zealots first published their manifestos during the 1960s, people worldwide are eating much better today than they were then. In the case of America’s corn growing industry, the beneficial effect of a growing market has been especially pronounced, with corn yields per acre in 2010 (165 bushels per acre) being 37 percent higher than they were in 2002 (120 bushels per acres) and more than four times as great as they were in 1960 (40 bushels per acre.)

#### Food shortages inevitable

Dawson ‘6

Thomas, January 5. American Chronicle, “Food for Thought and the Price of Food,” <http://www.americanchronicle.com/articles/viewArticle.asp?articleID=4533>

It may seem to many that we are living in a period in which there are potentially insurmountable problems facing us on every side. Certainly the world is on the precipice of a population explosion that we will be unable to sustain. The consumption of our natural resources and the destruction of our environment continue on a scale never imagined by the majority of us. However, nearly every generation of mankind has seen periods of hard times and some of us have experienced some very good times as well. The very nature of life on earth has been a history of turmoil and upheaval, from subsistence and mere survival to prosperity and a degree of security, and sometimes, back again. Don’t expect things to change for the better in the very near future regardless of our sophisticated economy. Consider the single aspect of food prices in the western world. Food has been relatively inexpensive in the western world, except in war-torn areas for the entire lifetime of our generation. This will probably not be the case for the next generation. It was only a few years ago that the population explosion was in the news all the time, almost to the same extent that we are currently preoccupied with the energy crunch usually referred to as “peak oil”, and the erosion of the western standard of living by “globalization”. The media let up on the problems of population growth because people got tired of hearing about it. After all, the western world didn’t appear to be particularly affected by it. The population explosion has since been generally ignored in the news until recently. That is not to infer that the problem went away. It took thousands of years of human history to produce and sustain a population of a billion people by the early nineteenth century. In the past 200 years, we have multiplied that population by six. There are now over six billion people in the world and we will add the next billion people in only about a dozen years. With the advent of the industrial revolution, the western world became trade oriented over the last couple of centuries. Since the cold war has ended, our international companies have seized opportunities to sharply increase their profits by arbitraging the labor markets of Asia while selling products at home; sometimes referred to as globalization. This employment of large numbers of people has given impetus and acceleration to the already rising prosperity of a small percentage of the population in various parts of Asia. This small increase in prosperity affecting such large numbers of people has spawned a demand for resources and commodities around the world. Suddenly, a few people in the more populated parts of the world have the monetary wherewithal to improve their standard of living and have hopes for a better life for their children. They have needs of infrastructure, electricity and transportation as well as food. Now the western world finds itself competing for limited resources, especially energy. The most efficient forms of energy are oil and gas. The owners of oil and gas find themselves in an enviable position where they have an asset worthy of preservation. They will probably never again allow the prices to fall very much for any extended period of time. The cost of energy and fertilizer (usually made from natural gas) are substantial costs in food production, not to mention the cost of transporting that food. The 2006 crops will be affected by the recent increase of prices in oil and gas. Expect food prices to accelerate their rise in the next year and continue to rise thereafter. To exacerbate the problem, many farmers around the world can now make more money raising crops for bio-diesel fuels than they can make raising food. Across South Asia, in the Amazon and elsewhere, farmers are razing the forests to plant crops capable of making biofuels. Even in this country, laws will be enacted to require some percentage of ethanol or the addition of some kind of bio-fuels to gasoline and diesel fuels to further subsidize and satisfy the farm lobby.

### phyto f/l

#### Biodiversity loss is irrelevant- species will adapt

Willis ‘9

[Kathy J. Willis, Long-Term Ecology Laboratory, Oxford University Centre for the Environment and Department of Biology, University of Bergen. Shonil A. Bhagwat, Long-Term Ecology Laboratory, Oxford University Centre for the Environment. “Biodiversity and Climate Change.” Science 6 November 2009: Vol. 326 no. 5954 pp. 806-807. ETB]

Another complexity, however, is the impact of climate change on already highly altered fragmented landscapes outside of protected areas. Over 75% of the Earth's terrestrial biomes now show evidence of alteration as a result of human residence and land use ([10](http://www.sciencemag.org.proxy.lib.uiowa.edu/content/326/5954/806.full?sid=9a26dd19-f70d-4840-b971-26e78917d71a#ref-10)). Yet, recent case studies suggest that even in a highly fragmented landscape, all is not lost for biodiversity. ¶ It has long been assumed that in a fragmented landscape, the fragment size and its isolation are important factors in determining species persistence; the smaller and more isolated the fragment, the lower its occupancy. Yet few worldwide studies have attempted to quantify this relation. Prugh et al. ([11](http://www.sciencemag.org.proxy.lib.uiowa.edu/content/326/5954/806.full?sid=9a26dd19-f70d-4840-b971-26e78917d71a#ref-11)) compiled and analyzed raw data from previous research on the occurrence of 785 animal species in >12,000 discrete habitat fragments on six continents. In many cases, fragment size and isolation were poor predictors of occupancy. The quality of the matrix surrounding the fragment had a greater influence on persistence: When the matrix provided conditions suitable to live and reproduce, fragment size and isolation were less important and species were able to persist. ¶ This ability of species to persist in what would appear to be a highly undesirable and fragmented landscape has also been recently demonstrated in West Africa. In a census on the presence of 972 forest butterflies over the past 16 years, Larsen found that despite an 87% reduction in forest cover, 97% of all species ever recorded in the area are still present ([12](http://www.sciencemag.org.proxy.lib.uiowa.edu/content/326/5954/806.full?sid=9a26dd19-f70d-4840-b971-26e78917d71a#ref-12)). For reasons that are not entirely clear, these butterfly species appear to be able to survive in the remaining primary and secondary forest fragments and disturbed lands in the West African rainforest. However, presence or absence does not take into account lag effects of declining populations; a more worrying interpretation is therefore that the full effects of fragmentation will only be seen in future years.

#### Species loss won’t snowball or threaten human life

Moore ‘98

(Senior Fellow – Hoover Institute, Climate of Fear, Pg. 99)

Nevertheless, the loss of a class of living being does not typically threaten other species. Most animals and plants can derive their nutrients or receive the other benefits provided by a particular species from more than a single source. If it were true that the extinction of a single species would produce a cascade of losses, then the massive extinctions of the past should have wiped out all life. Evolution forces various life forms to adjust to change. A few may not make the adaptation but others will mutate to meet the new conditions. Although a particular chain of DNA may be eliminated through the loss of a species, other animals or plants adapting to the same environment often produce similar genetic solutions with like proteins. It is almost impossible to imagine a single species that, if eliminated, would threaten us humans.

### warming f/l

**OTEC destroys biod and more GHG emissions**

**Etemadi 11**

(Ahmad Etemadi is a Professor at Urmia University. He specializes in environmental engineering, wastewater treatment, and waste and wastewater management. Etemadi, A. Emdadi, A. AsefAfshar, O. Emami, Y. “Electricity Generation by Ocean Thermal Energy,” *Energy Procedia,* Volume 12. 936-943. September, 2011. Ghs-kw)

Though fairly benign in environmental impact compared to traditional power plants, OTEC poses some potential environmental threats, especially if implemented on a large scale. Data from existing electric generating stations on the coast provide insight into possible impacts of OTEC plants. These stations impact the surrounding marine environment mainly through heating the water, the release of toxic chemicals, impingement of organisms on intake screens, and entrainment of small organisms by intake pipes, all of which are concerns for OTEC. Large discharges of mixed warm and cold water would be released near the surface, creating a plume of sinking cool water. The continual use of warm surface water and cold deep water may, over long periods of time, lead to slight warming at depth and cooling at the surface [6].Thermal effects may be signiﬁcant, as local temperature changes of only 3-4C are known to cause high mortality among corals and ﬁshes. Aside from mortality, other effects such as reduced hatching success of eggs and developmental inhibition of larvae, which lower reproductive success, may result

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from thermal changes [14]. Increased nutrient loading resulting from the discharge of upwelled water could also negatively impact naturally low-nutrient ecosystems typical of tropical seas. Toxic chemicals, such as ammonia and chlorine, may enter the environment from an OTEC plant and kill local marine organisms. Ammonia in closed-cycle systems would be designed not to contact the environment and a dangerous release would be expected to result only from serious malfunction such as a major breakdown, collision with a ship, a greater than 100-yr storm, terrorism, or major human error [6].The impact of chlorine will likely be minimal, as it would be used at a concentration of approximately 0.02 ppm daily average, while the EPA standard for marine water requires levels lower than 0.1 ppm [6] Impingement of large organisms and entrainment of small organisms has been responsible for the greatest mortality of marine organisms at coastal power plants thus far [14].The magnitude of this problem depends on the location and size of the plant; however, if marine life is attracted to OTEC plants by the higher nutrient concentrations in the upwelled cold water, large numbers of organisms, including larvae or juveniles, could be killed by impingement or entrainment. For ﬂoating plants, victims of impingement would be mainly small ﬁsh, jellyﬁsh, and pelagic invertebrates, while for land-based plants crustaceans would be the most affected [6]. Finally, a small amount of CO2 is released to the atmosphere by OTEC power generation. Bringing deep water to the surface where pressure is lower allows some of the sequestered CO2 in this deep water to outgas, especially as the water is warmed, reducing the solubility of CO2. However, this carbon emission is very minute compared to the emissions of fossil fuel plants. OTEC could significantly improve quality of life in SIDS, where the current cost of power is at a premium and the benefits of desalinated water, mariculture and air conditioning would have a major impact. Further research into environmental impacts is necessary, but if the technology is shown to be benign, the development of OTEC for SIDS should be a priority. Plants in developed tropical sites that face high power prices should also be encouraged, if appropriate sites at which environmental damage will be negligible can be found. Because the governments of the SIDS that would benefit most from OTEC cannot afford such a high capital investment, governments of developed states should contribute to the research effort and investment for OTEC in developing countries.[6] Appropriate measures should be taken to control environmental impacts including:

# 2nc

# Anthro K

### 2NC – Framework

#### The role of the ballot is to use the debate site as a space for the practice of post humanities as an operative displacement of anthropocentrism inherent to the 1AC.

DOMANSKA 2K10 [ewa, adam mickiewicz university, poznon Poland, Stanford, beyond anthropocentrism in historical sciences]

It seems that in contemporary intellectual practice scholars are not connected by methods or theories but by the problems on which they focus their intellectual efforts, primarily because those problems are directly or indirectly related to controlling the life and death (biopolitics, necropolitics) of humans, on the one hand, and protecting “life” on earth, on the other. Protecting life is a “paternalistic” project and we have to be very aware of its results. Some scholars would call it “enlightened anthropocentrism” insomuch as it takes under consideration nature and nonhumans and presupposes that our ethical care for nature and nonhumans comes from our care of and responsibility to humans. This idea would be rejected by scholars working in the paradigm of “deep ecology” or the Gaia theory, who claim that nature or the earth will take care of itself. 14 Also, we should not forget that life (and the survival of species) is not necessarily the highest value for everybody. 15 Obviously, during the process of evolution, some specia become extinct and new ones appear and we should not desperately seek to preserve them. So, the survival paradigm is not by any means an unquestionable absolute. Historians themselves also express their awareness of this problem while asking: “How often do we consider the unwelcome but ineluctable ecological fact that, while life on earth could survive just fine without humans (indeed it would no doubt flourish in our absence), without ants the entire foundation would crumble?” 16 Keeping in mind the limitations of the survival paradigm, let us make the following assumption: the challenge for today’s research is not so much in asking new questions and proposing new theories or methods of analysis, which would spring from current research trends in humanities, but to place the research itself in the context of the emerging paradigm of nonanthropocentric knowledge, or posthumanities. Andrew Pickering called this strategy a “posthumanist displacement of our interpretative frameworks”. 17 Of course, the point is not to eliminate the human being from our studies (of the past) but – as I mentioned above – to displace the human subject from the centre of historical, archaeological and anthropological studies.

### AT: Cede the Political

#### Only a radical form of politics can regain the political from transnational companies and political technophiles.

Best 6 (Steven, Professor of Philosophy at the University of Texas El Paso, “Revolutionary Environmentalism: An Emerging New Struggle for Total Liberation” 2006) JB

George W. Bush’s feel-good talk of progress and democracy, given an endless and uncritical airing by mainstream corporate media, masks the fact that we live in an unprecedented era of social and ecological crisis. Predatory transnational corporations such as ExxonMobil and Maxxam are pillaging the planet, destroying ecosystems, pushing species into extinction, and annihilating indigenous peoples and traditional ways of life. War, globalization, and destruction of peoples, species, and ecosystems march in lockstep: militarization supports the worldwide imposition of the "free market" system, and its growth and profit imperatives thrive though the exploitation of humans, animals, and the earth (see Kovel 2002; Tokar 1997; Bannon and Collier 2003). Against the mindless optimism of technophiles, the denials of skeptics, and complacency of the general public, we depart from the premise that there is a global environmental crisis which is the most urgent issue facing us today. If humanity does not address ecological problems immediately and with radical measures that target causes not symptoms, severe, world-altering consequences will play out over a long-term period and will plague future generations. Signs of major stress of the world’s eco-systems are everywhere, from shrinking forests and depleted fisheries to vanishing wilderness and global climate change. Ours is an era of global warming, rainforest destruction, species extinction, and chronic resource shortages that provoke wars and conflicts such as in Iraq. While five great extinction crises have already transpired on this planet, the last one occurring 65 million years ago in the age of the dinosaurs, we are now living amidst the sixth extinction crisis, this time caused by human not natural causes. Human populations have always devastated their environment and thereby their societies, but they have never intervened in the planet’s ecosystem to the extent they have altered climate. We now confront the “end of nature” where no natural force, no breeze or ripple of water, has not been affected by the human presence (McKribben 2006). This is especially true with nanotechnology and biotechnology. Rather than confronting this crisis and scaling back human presence and aggravating actions, humans are making it worse. Human population rates continue to swell, as awakening giants such as India and China move toward western consumer lifestyles, exchanging rice bowls for burgers and bicycles for SUVs. The human presence on this planet is like a meteor plummeting to the earth, but it has already struck and the reverberations are rippling everywhere. Despite the proliferating amount of solid, internationally assembled scientific data supporting the reality of global climate change and ecological crisis, there are still so-called environmental “skeptics,” “realists,” and “optimists” who deny the problems, often compiling or citing data paid for by ExxonMobil. Senator James Inhofe has declared global warming to be a “myth” that is damaging to the US economy. He and others revile environmentalists as “alarmists,” “extremists,” and “eco-terrorists” who threaten the American way of life. There is a direct and profound relationship between global capitalism and ecological destruction. The capitalist economy lives or dies on constant growth, accumulation, and consumption of resources. The environmental crisis is inseparable from the social crisis, whereby centuries ago a market economy disengaged from society and ruled over it with its alien and destructive imperatives. The crisis in ecology is ultimately a crisis in democracy, as transnational corporations arise and thrive through the destruction of popular sovereignty. The western environment movement has advanced its cause for over three decades now, but we are nonetheless losing ground in the battle to preserve species, ecosystems, and wilderness (Dowie 1995; Speth 2004). Increasingly, calls for moderation, compromise, and the slow march through institutions can be seen as treacherous and grotesquely inadequate. In the midst of predatory global capitalism and biological meltdown, “reasonableness” and “moderation” seem to be entirely unreasonable and immoderate, as “extreme” and “radical” actions appear simply as necessary and appropriate. As eco-primitivist Derrick Jensen observes, “We must eliminate false hopes, which blind us to real possibilities.” The current world system is inherently destructive and unsustainable; if it cannot be reformed, it must be transcended through revolution at all levels—economic, political, legal, cultural, technological, and, most fundamentally, conceptual. The struggles and changes must be as deep, varied, and far-reaching as the root of the problems.

#### Radical environmental movements are more effective at creating change than legislative reform – our evidence is comparative.

Best 6 (Steven, Professor of Philosophy at the University of Texas El Paso, “Revolutionary Environmentalism: An Emerging New Struggle for Total Liberation” 2006) JB

Revolutionary environmentalism is based on the realization that politics as usual just won’t cut it anymore. We will always lose if we play by their rules rather than invent new forms of struggle, new social movements, and new sensibilities. The defense of the earth requires immediate and decisive: logging roads need to be blocked, driftnets need to be cut, and cages need to be emptied. But these are defensive actions, and in addition to these tactics, radical movements and alliances must be built from the perspective total liberation. A new revolutionary politics will build on the achievements of democratic, libertarian socialist, and anarchist traditions. It will incorporate radical green, feminist, and indigenous struggles. It will merge animal, earth, and human standpoints in a total liberation struggle against global capitalism and its omnicidal grow-or-die logic. Radical politics must reverse the growing power of the state, mass media, and corporations to promote egalitarianism and participatory democratization at all levels of society – political, cultural, and economic. It must dismantle all asymmetrical power relations and structures of hierarchy, including that of humans over animals and the earth. Radical politics is impossible without the revitalization of citizenship and the re-politicization of life, which begins with forms of education, communication, culture, and art that anger, awaken, inspire, and empower people toward action and change.

#### The political is already ceded—the alternative is the last hope for radical change in the face of environmental destruction.

Best 4 (Steven, professor of philosophy at Texas El Paso, “From Earth Day to Ecological Society” http://www.drstevebest.org/Essays/FromEarthDay.htm, date accessed: 7/27/11) JB

Homo sapiens have embarked on an insane, destructive, and unsustainable path of existence. The human species is driving off a cliff at 100 miles an hour without brakes, and yet people live is if the most urgent issue of the day is Janet Jackson’s “wardrobe malfunction” or who will win American Idol. There is much talk about “national security” but nothing is said about the basis of all security – environmental security. Problems like global warming, desertification, and food and water shortages will wreak havoc throughout the planet. As Homeland Security turns ever-more fascist, environmentalists are vilified as eco-terrorists and legal forms of activism are criminalized under the Patriot Act. While Ashcroft prosecutes activists working to help the planet, corporate eco-terrorists continue to pillage and plunder. Meanwhile, Americans, who make up less than 5% of the world’s population, consume 30% of its resources and produce 25% of total greenhouse gas emissions. Whatever forces striving to save the environment are doing, it is not to ward off corporate and state Pac-men greedily devouring the planet. National environmental organizations such as the Sierra Club are tepid, compromise-based, reform-oriented bureaucracies unable to challenge corporate and state power, and grass-roots forces are not great enough in force and numbers. We are in the midst of a major ecological crisis that stems from a social crisis rooted in corporate power and erosion of democracy. In Greek, the word “crisis” means decision, suggesting that humanity, currently poised at a critical crossroads in its evolution, has crucial decisions and choices to make concerning its existence on the planet. Human identity, values, ethics, worldviews, and mode of social organization need major rethinking and reconstruction. In Chinese, “crisis” means both calamity and opportunity. In a diseased individual, cancer often provides the catalyst for personal growth. As a diseased species, human beings can perish, survive in dystopian futures prefigured by films like Mad Max and Waterworld, or seize their opportunity to learn from egregious errors and rise to far higher levels of social and moral evolution. **The Human Plague** The crisis in human existence is dramatically reflected in the 1996 film, Independence Day. The movie is about hostile aliens with no respect for life; they come to earth to kill its peoples, devour its natural resources, and then move onto other planets in a mad quest to find more fuel for their mega-machines and growth-oriented culture. The film is a veiled projection of our own destructive habits onto monstrous beings from another world. We are the aliens; we are the parasites who live off the death of other life forms; we are the captains of the mega-machines that are sustainable only through violence and ecological destruction. We do to the animals and the earth what the aliens do to human life -- the only difference is, we have no other planet to move on to, and no superheroes to save us. We are trapped in a Dawn of the Dead living nightmare where armies of hideous corpses, people thought long dead and buried, walk again with a will to destroy us. The dead represent all the waste, pollution, and ecological debts accrued to our growth culture that we thought we could walk away from unscathed and never again face. But we are waking up to the fact that the “dead” are storming our neighborhoods, crashing through our doors and windows, and hell-bent on devouring us. In his article entitled “A Plague of Human Proportions,” Mark Lynas frames the crisis this way: “Within the earth's biosphere, a single species has come to dominate virtually all living systems. For the past two centuries this species has been reproducing at bacterial levels, almost as an infectious plague envelops its host. Three hundred thousand new individuals are added to its numbers every day. Its population of bodies now exceeds by a hundred times the biomass of any large animal species that has ever existed on land since the beginning of geological time. The species is us. Now numbering more than six billion souls, the human population has doubled since 1950. Nothing like this has happened before in the earth's history. Even the dinosaurs, which dominated for tens of millions of years, were thinly spread compared to the hairless primate Homo sapiens.” Thus, a single biological type has wreaked havoc on the estimated ten million other species in habiting the planet. Lynas suggests that because Homo sapiens dominates the planet today as dinosaurs did one hundred million years ago, “We are entering a new geological era: the Anthropocene.” According to a March 2004 Earth Policy Institute report, “Humans have transformed nearly half of the planet's ice-free land areas, with serious effects on the rest of nature … Each year the earth's forest cover shrinks by 16 million hectares (40 million acres), with most of the loss occurring in tropical forests, where levels of biodiversity are high … A recent study of 173 species of mammals from around the world showed that their collective geographical ranges have been halved over the past several decades, signifying a loss of breeding and foraging area.” While insipid ideologues like Tibor Machan still publish books such as Putting Humans First: Why we are Nature’s Favorite (2004), it is more accurate to see Homo sapiens as the invasive species and agent of mass extinction par excellence -- not “nature’s favorite” but rather nature’s bete noir.

### AT: Death Bad

#### Turn: willingness to sacrifice the form of the human gives the gift of life to all other life forms.

KOCHI & ORDAN 2K8 [tarik and noam, queen’s university and bar llan university, “an argument for the global suicide of humanity”, vol 7. no. 4., bourderlands e-journal] JB

While we are not interested in the discussion of the ‘method’ of the global suicide of humanity per se, one method that would be the least violent is that of humans choosing to no longer reproduce. [10] The case at point here is that the global suicide of humanity would be a moral act; it would take humanity out of the equation of life on this earth and remake the calculation for the benefit of everything nonhuman. While suicide in certain forms of religious thinking is normally condemned as something which is selfish and inflicts harm upon loved ones, the global suicide of humanity would be the highest act of altruism. That is, global suicide would involve the taking of responsibility for the destructive actions of the human species. By eradicating ourselves we end the long process of inflicting harm upon other species and offer a human-free world. If there is a form of divine intelligence then surely the human act of global suicide will be seen for what it is: a profound moral gesture aimed at redeeming humanity. Such an act is an offer of sacrifice to pay for past wrongs that would usher in a new future. Through the death of our species we will give the gift of life to others

### AT: Nuclear War

#### And, nuclear war will be on par with previous mass extinctions – radiation only risks rapid mutation enabling evolution for populations who survive.

Phillips 2k1 [alan, peace magazine, v17, n1,p13, nuclear winter revisited, <http://archive.peacemagazine.org/v17n1p13.htm>] JB

Altogether, nuclear winter would be an ecological disaster of the same sort of magnitude as the major extinctions of species that have occurred in the past, the most famous one being 65 million years ago at the Cretaceous extinction. Of all the species living at the time, about half became extinct. The theory is that a large meteor made a great crater in the Gulf of Mexico, putting a trillion tons of rock debris into the atmosphere. That is a thousand times as much rock as is predicted for a nuclear war, but the soot from fires blocks sunlight more effectively than rock debris. In nuclear winter there would also be radioactive contamination giving worldwide background radiation doses many times larger than has ever happened during the three billion years of evolution. The radiation would notably worsen things for existing species, though it might, by increasing mutations, allow quicker evolution of new species (perhaps mainly insects and grasses) that could tolerate the post-war conditions. (I should just mention that there is no way the radioactivity from a nuclear war would destroy "all life on earth." People must stop saying that. There will be evolution after a war, but it may not include us).

### Biodiversity

#### Calls for biodiversity rely upon divisions in forms of life and ensures continued exploitation by humans.

ROWE 2K0 [Stan, Professor of Plant Ecology at the University of Saskatchewan. “Natur und Kultur: Transdisciplinare Zeitschrift fur okologische Nachhaltigkeit. It has been translated into German and published in Volume 1(2): 106-120. 2000. <http://www.ecospherics.net/pages/RoweEarthEthics.html>] JB

Many human attitudes to the planet hinge on the idea that only organisms are imbued with life. Traditionally Earth has been thought to consist of relatively unimportant "dead" elements, collectively called "environment," and very important entities: organisms, living beings, things like us. From this misconception the conclusion follows that only biodiversity is valuable and worthy of conservation. And of all the diversity of organisms, by human consensus, humans are the most important. Meanwhile air, sea and land, with their misnamed "raw materials" and "natural resources," are open for business, exploited without restraint. But if Earth = Life, the foolishness of such ideas is exposed.

#### Preservation of biodiversity only sustains human economic growth – your motive will be conflated production and growth

Aton 97, (Donald K. Aton, Anton Director of Policy and International Law University of Melbourn, Columbia Journal of Transnational Law, 1997.)

In order to appreciate the need for new international law to provide greater protection to marine biological diversity beyond the continental shelf and Exclusive Economic Zone (EEZ), it is necessary to appreciate the value of such diversity, why we care about conserving it, and why threats to it arc a matter of concern. From some ethical points of view all forms of life, and the habitats that support them, can be considered as intrinsically valuable to their own sake. - Under this premise, it follows that protection and preservation ought to follow as a matter of course. However, excepting certain philosophical, religious or cultural [\*347] systems, the value of biological diversity’ overwhelmingly has been viewed from the narrow position of economic worth to humans. Of course, this presents problems for the protection of biological diversity, because it has recognized value that cannot be calculated in dollar terms. Further, under current accounting systems. the cost of losing biodiversity is ordinarily shifted to society rather than internalized by private actors responsible for the loss. The problem is even more acute in the case of marine biodiversity found beyond national jurisdiction because of its commons nature. Consequently, systems for valuing biodiversity need to use monetary valuation as one tool among many. The debates surrounding the C.B.D. have suffered from this myopic economic view of the value of biodiversity. Instead of focusing on the wide spread protection and conservation of ecosystems. scies, and genetic variability, the debates have primarily involved access to biological diversify and rights to profits generated through the exploitflon of genejc material.

### Sustainability

#### Sustainable development destroys nature—it relies on the belief that everything was put here so that humans could use it.

Worster 93, (Donald, Hall Distinguished Professor of American History at the [University of Kansas](http://en.wikipedia.org/wiki/University_of_Kansas).  “The Shaky ground of Sustainability”, ” in Deep Ecology for the 21st Century, ed. George Sessions, p. 424-425)

I find the following deep flaws in the sustainable development ideal: First, it is based on the view that the natural world exists primarily to serve the material demands of the human species. Nature is nothing more than a pool of "resources" to be exploited; it has no intrinsic meaning or value apart from the goods and services it furnishes people, rich or poor. The Brundtland Report ,makes., this point clear on every Page: the "our" in its title refers to people. exclusively, and the only moral issue it raises is the need to share what natural resources there are more equitably among our kind, among the present world population and among the generations to come. That is not by any means an unworthy goal, but it is not adequate to the challenge. Second, sustainable development, though it acknowledges some kind of limit on those material demands, depends on the assumption that we can easily determine the carrying capacity of local regional ecosystems. Our knowledge is supposedly adequate to reveal the limits of nature and to exploit resources safely up to that level. In the face of new arguments suggesting how turbulent, complex, and unpredictable nature really is, that assumption seems highly optimistic. Furthermore, in light of the tendency of some leading ecologists to use such arguments to justify a more accommodating stance toward development, any heavy reliance on their ecological expertise seems doubly dangerously they are experts who lack any agreement on what the limits are. Third, the sustainability ideal rests on an uncritical, unexamined acceptance of the traditional worldview of progressive, secular materialism. It regards that worldview as completely benign so long as it can be made sustainable. The institutions associated with that worldview, including those of capitalism, socialism, and industrialism, also escape all criticism, or close scrutiny. We are led to believe that sustainability can be achieved with all those institutions and their values intact.

### AT: Perm

#### Perm links more: it attempts to direct criticism towards politics conducted in the name of a life which excludes bare life in favor of the voice of the citizen, the politically qualified. This excludes bare life and establishes a realm beyond of the markers of the “political” in which to conduct genocidal violence against exceptional beings.

HUDSON 2K4 [Laura, The Political Animal: Species-Being and Bare Life, mediations journal, <http://www.mediationsjournal.org/files/Mediations23_2_04.pdf>] JB

The rise of environmentalism, deep ecology, and animal rights can be seen as effects of this inability of law, or the Law, to distance the “natural world” as a state outside itself. **Natural objects reappear within the political realm not as political actors but as markers of bare life.** **Sovereignty, in seeking to establish a political life separate from the state of nature, produces both political life as the life proper to the citizen (the “good life”) and bare life**, which occupies a space in between bios and zoē, evacuated of meaning. **The state of nature is not separate from political life but a state that exists alongside political life, as a necessary corollary of its existence. Political life is alienation from an imagined state of nature that we cannot access as human beings because it appears only in shadow form as bare life. The state of exception is that which defines which lives lack value, which lives can be killed without being either murdered or sacrificed.** Agamben’s examples of the inextricable link between political and bare life focus on the limit cases of humanity rather than the ideal, providing an analysis of precisely the cases that prove problematic in Ferry’s liberal humanism. The exception, as that which proves the rule, cannot be avoided. It is necessary to look to the figure of the refugee, the body of the “overcomatose” or the severely mentally impaired, and, under the Third Reich, the life of the Jew to see how the law fails in the task Ferry sets for it. **These cases demonstrate the zone of indistinction that Agamben elaborates as the zone of “life that does not deserve to live**.” The refugee demonstrates the necessity of a link between nation and subject; **refugees are no longer citizens and, as such, lack a claim to political rights: “In the system of the nation-state, the so-called sacred and inalienable rights of man show themselves to lack every protection and reality at the moment in which they can no longer take the form of rights belonging to citizens of a state**.”[15] **Confronted with the figure of the refugee, human rights are faced with their hidden ground in national origin, where, as Agamben notes, the key term is birth: men are born free, invoking the natural codes from which law was to separate us. This freedom is, in actuality, a function of citizenship and incorporation in the nation-state rather than a fact of being human: “citizenship names the new status of life as origin and ground of sovereignty and, therefore, literally identifies** … les membres du souverain, **‘the members of the sovereign.’”[16] This makes the link between that which is proper to the nation and that which is proper to the citizen the determinant of the zone of sacred life: those who do not fulfill the role of the citizen are no longer guaranteed protection or participation in political life, their so-called human rights void in the absence of national identity. The refugee or refugees as a group have a claim only to bare life, to being kept alive, but have no political voice with which to demand the rights of the citizen.** Agamben, while noting the same trend toward politicizing natural life that concerns Ferry, demonstrates that this politicization is already contained within the structure of politics itself. **This corresponds to the position of animals in human society: the exemplar of the limit case, they have always existed in the state of exception that founds the political. There is thus a connection between the plight of the refugee and that of the animal: neither participates directly in the political, though both are absolutely subject to political decisions in which they have no voice. The establishment of a realm outside the political, where lives have no value and thus may be killed, is marked by the difference between the human and the animal.**

**Humanism Bad**

**The affirmative’s impact calculus sets aside endless genocides in order to continue faith in reforming their brand of humanism. Instead we must think along utopian anti-humanist calls for species-equality which requires a negation of their humanism.**

**KOCHI & ORDAN 2K8** [tarik and noam, queen’s university and bar llan university, “an argument for the global suicide of humanity”, vol 7. no. 4., bourderlands e-journal] JB

Putting aside the old, false assumptions of a teleological account of history, social-environmental revolution is dependent upon widespread political action which short-circuits and tears apart current legal, political and economic regimes. This action is itself dependent upon a widespread change in awareness, a revolutionary change in consciousness, across enough of the populace to spark radical social and political transformation. Thought of in this sense, however, such a response to environmental destruction is caught by many of the old problems which have troubled the tradition of revolutionary socialism. Namely, 3how might a significant number of human individuals come to obtain such a radically enlightened perspective or awareness of human social reality (i.e. a dialectical, utopian anti-humanist ‘revolutionary consciousnesse’) so that they might bring about with minimal violence the overthrow of the practices and institutions of late capitalism and colonial-speciesism? Further, how might an individual attain such a radical perspective when their life, behaviours and attitudes (or their subjectivity itself) are so moulded and shaped by the individual’s immersion within and active self-realisation through, the networks, systems and habits constitutive of global capitalism? (Hardt & Negri, 2001). While the demand for social-environmental revolution grows stronger, both theoretical and practical answers to these pressing questions remain unanswered. Both liberal and social revolutionary models thus seem to run into the same problems that surround the notion of progress; each play out a modern discourse of sacrifice in which some forms of life and modes of living are set aside in favour of the promise of a future good. Caught between social hopes and political myths, the challenge of responding to environmental destruction confronts, starkly, the core of a discourse of modernity characterised by reflection, responsibility and action. Given the increasing pressures upon the human habitat, this modern discourse will either deliver or it will fail. **There is little room for an existence in between: either the Enlightenment fulfils its potentiality or it shows its hand as the bearer of impossibility. If the possibilities of the Enlightenment are to be fulfilled then this can only happen if the old idea of the progress of the human species**, exemplified by Hawking’s cosmic colonisation, **is fundamentally rethought and replaced by a new form of self-comprehension. This self-comprehension would need to negate and limit the old modern humanism by a radical anti-humanism.**

### 2NC Alt Solves Warming

#### Anthropocentrism shapes our framework of solutions for warming, species extinction, pollution, and land destruction.

KORTENKAMP 2k [Katherine and Colleen Moore, ecocentrism and anthropocenrism: moral reasoning about ecological commons dilemmas, journal of environmental psychology, 21 ,aug] JB

Aldo Leopold, sometimes called the father of environmental ethics, expressed these ideas over 50 years ago in his revolutionary essay ‘‘The Land Ethic.’’ Today we have clearly not accomplished the ‘‘ecological necessity’’ he called for. Environmental crises, such as species extinction, global warming, air and water pollution, and wild land destruction, are some of the most important problems currently facing our society. How we deal with these problems largely depends on how we perceive our relationship with the land. Do we view nature as property for us to use however we wish for our own benefit, or does nature have intrinsic value, value aside from its usefulness to humans? A half-century after Leopold gave us his land ethic, just how far and in what ways have our land ethics developed? The purpose of this project is to examine some issues in how people extend ethics to the natural environment. Environmental ethics was given a central place in debate among scientists by Hardin (1968) who argued that the human race is faced with the dilemma of how to prevent overuse and depletion of natural resources when individuals desire to maximize their gains. As noted by Dawes (1980), many environmental issues can be construed as social dilemmas: a) each individual receives a higher payo¡ for a socially defecting choice (e.g., having additional children, using all the energy available, polluting his or her neighbors) than for a socially cooperativ choice, no matter what the other individuals in the society do, but b) all individuals are better off if all cooperate than if all defect (p. 169). In the present research we examine moral reasoning about social dilemmas centered on environmental issues. Environmental ethics is based on the idea that morality ought to be extended to include the relationship between humans and nature. Although the field has its roots in the early writings of John Muir, Albert Schweitzer, and Aldo Leopold, environmental ethics only more recently began to gain support in the 1960s with the growing popularity of the environmental movement. The journal Environmental Ethics was founded in 1979 and is devoted entirely to the topic. There are a number of different ways to understand an extension of moral consideration to nature (Nash, 1989). For example, is the extension individualistic or holistic? In other words are individual plants and animals given moral consideration, or is morality only extended to whole species or ecosystems? Another distinction is whether the extension is rights based or responsibility based; in other words does nature have the right to be protected or do humans simply have a responsibility to protect nature? Perhaps the most important distinction is whether the moral extension is anthropocentric or ecocentric because this determines what is the focus of the environmental ethics - humans or nature.

# 1nr

### At: incentives

**No clear consensus on what constitutes an incentive, over forty possibilities**

**Moran, 86** (Theodore, Investing in Development: New Roles for Private Capital?, p. 28)

Guisinger finds that if “incentives”are broadly defined to include tariffs and trade controls along with tax holidays, subsidized loans, cash grants, and other fiscal measures, they comprise more than forty separate kinds of measures. Moreover, the author emphasizes, the value of an incentive package is just one of several means that governments use to lure foreign investors. Other methods—for example, promotional activities (advertising, representative offices) and subsidized government services—also influence investors’ location decisions. The author points out that empirical research so far has been unable to distinguish the relative importance of fundamental economic factors and of government policies in decisions concerning the location of foreign investment—let alone to determine the effectiveness of individual government instrucments.

### At: overlimiting

#### Case list functions as terminal defense to overlimiting claims

1. **Offshore wind requires a federal demonstration project**

**DoE\* and DoI\*\* 2011** – \*U.S. Department of Energy, \*\*U.S. Department of the Interior

[U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Wind & Water Power Program U.S. Department of the Interior, Bureau of Ocean Energy Management, Regulation, and Enforcement“A National Offshore Wind Strategy: Creating an Offshore Wind Energy Industry in the United States.”, <http://www1.eere.energy.gov/wind/pdfs/national_offshore_wind_strategy.pdf>]

The **OSWInD initiative will undertake Advanced Technology Demonstration projects to impact the speed and scale of offshore wind development.** **The primary goal** of this activity **will be to support the installation of offshore wind turbines in U.S. waters** in the most rapid and responsible manner possible. Successful deployment of advanced technology demonstration projects will help make offshore wind cost‐competitive with other generation through reduction of uncertainties and refinement of technology. **By providing funding, technical assistance and government coordination to accelerate deployment of these demonstration projects, DOE can help mitigate risks and facilitate the development of the domestic offshore wind industry.** Specific objectives of the program include establishing a network of installations providing performance validation data; familiarizing the public with offshore wind installations; and testing and refining infrastructure for offshore wind plant construction, operations, and maintenance. To carry out the demonstration program, DOE will form cost‐sharing partnerships with broad consortia, chosen through a competitive process, to support the development of individual offshore wind power projects. Such consortia are likely to include offshore wind power project developers, research institutions, electric utilities, equipment manufacturers, marine engineering and construction specialists, and state and local governments. Through these partnerships, DOE will fund technical research, engineering, and planning activities that enhance timely project deployment and result in documented and publically disseminated technical experience and data. Examples of potential demonstration projects include, but are not limited to: • Several offshore wind systems that make up the initial phase of a larger commercial project. • A large grid‐connected demonstration project (~100 MW) that has the capacity to install and test multiple systems from multiple manufacturers. • A smaller grid‐connected demonstration project or research center that will address specific technical challenges and/or regional conditions. Use of DOE funds will include, but is not limited to: • Innovative engineering activities, such as for foundations and electrical systems, facility infrastructure, and installation systems and methods. • Facilitating field testing through the use of instrumented towers, turbines, and foundation structures within a project to gather performance or research and development data. • Addressing research gaps related to the marine environment and stakeholder factors including resource assessment, environmental and socio‐economic research, and efficiency in permitting, planning and siting processes. **DOE will seek** to partner in **demonstration projects that are diversified by geographical region, water depths, and innovative technologies**. Consideration will be given to regions or states in which either wind research or commercial leases already have been proposed or have commenced, those in which federal or state agencies have issued public Requests for Information, and/or those where initial environmental studies have been commenced or completed. Other key criteria that DOE will consider when evaluating potential partnerships will include cost share; strength of collaborative partnerships; demonstrated technical expertise; progress to date toward project deployment, particularly in siting and permitting; justification for how DOE funds would accelerate realization of project goals; explanation of how the project success would advance the national knowledge base on offshore wind; ability of the project to support innovative research; support from state and local communities; and feasibility of proposed deployment timeline.

1. **Desalination needs a demonstration project**

**NRC 2008**

(National Research Council - Committee on Advancing Desalination Technology Water Science and Technology Board Division on Earth and Life Studies. AMY K. ZANDER, Chair, Clarkson University, Potsdam, New York MENACHEM ELIMELECH, Yale University, New Haven, Connecticut DAVID H. FURUKAWA, Separation Consultants Inc., Poway, California PETER GLEICK, Pacific Institute for Studies in Development, Environment, and Security, Oakland, California KENNETH HERD, Southwest Florida Water Management District, Brooksville, Florida KIMBERLY L. JONES, Howard University, Washington, DC PHILIP ROLCHIGO, Pentair, Inc., Golden Valley, Minnesota SANDEEP SETHI, Carollo Engineers, Sarasota, Florida JOHN TONNER, Water Consultants International, Mequon, Wisconsin HENRY J. VAUX, University of California, Berkeley JUDITH S. WEIS, Rutgers University, Newark, New Jersey, WARREN W. WOOD, Michigan State University, East Lansing. “Desalination: A National Perspective” <http://www.nap.edu/catalog.php?record_id=12184>)

**Public health** protection **and reliability are high priorities for public water supply facilities**; therefore, **utilities tend to be conservative, creating challenges in the implementation of new technologies that are unfamiliar or unproven. Although desalination has been developed successfully in other parts of the world, large-scale development of seawater desalination has not occurred in the United States with the exception of the Tampa Bay Seawater Desalination Plant. Technical problems with the Tampa Bay project have created some reluctance in other utilities to pursue seawater desalination technology. Until** the Tampa Bay project or **another large-scale desalination project is considered complete and operating on a sustained basis, this reluctance will likely remain. Coastal water providers can**, however, take advantage of the opportunities to learn from successful large-scale seawater desalination projects that have been developed outside of the United States. Project-specific variations (e.g., salinity, temperature, scope of work, local regulations and business practices) ensure that no two projects are identical. However, on a technical basis there are many international projects operating with more challenging feedwaters and ambient conditions and in much larger capacities than even the largest under consideration for the United States. International references and experience should be recognized as a potential resource from which domestic projects may draw. **Even with a large body of international experience, pilot or demonstration projects remain essential in desalination project planning to assess the interactions of various processes within the treatment train. Pilot testing is an iterative process, during which tests are performed and data collected to optimize the system design and operations for project-specific conditions.** Pilot testing is also common for surface and wastewater treatment systems for exactly the same reasons. **Pilot testing may be used to optimize only the pretreatment steps or it may model the full treatment train including the desalination process**. In membrane desalination projects, the selection and integration of pretreatment processes are key to efficient and effective operation of the treatment system. In certain cases **for seawater plants, pilot studies are used to test new membranes with specific characteristics, such as greater boron or bromide removal, to meet local requirements. These pilot studies should lead to more accurate cost estimates and should greatly reduce the risks associated with the project. Pilot testing is a necessary part of the planning and implementation process and is often considered a requirement during the regulatory approval process in states where the process is considered unproven**. While bench-scale testing is typically performed in the laboratory under controlled conditions, pilot testing is often performed with small-scale skid-mounted systems that allow field testing under typical hydraulic operating conditions. Pilot testing serves to fine-tune the pretreatment scheme, the specific membrane desalination process, and the post-treatment for the planned project at conditions equivalent to those of the full-scale plant. A pilot-scale facility is usually sized for flows that are much smaller than a full-scale facility and may or may not include all post-treatment steps or configurations representative of a full-scale facility (e.g., 4- inch membrane elements typically used at pilot scale versus 8-inch membrane elements used at large full-scale desalination plants). In typical pilot studies, **small-scale pilot plants use the same feedwater being considered for the desalination plant; and to ensure that the proposed design will operate properly under seasonal variations in source water quality,** it is also important that pilot testing be performed for an entire year. In areas where subsurface intakes are being considered, it is desirable for the pilot plant to use appropriately representative water (e.g., water from a nearby well) because the groundwater will likely have different characteristics than surface waters. For optimizing the desalination membrane process design, parameters such as critical flux and the presence and consequences of viable but nonculturable organisms are determined during the pilot testing period (Winters, 2001; Winters et al., 2007). Pilot plants typically take in minimal volumes of feedwater and recombine their product water and reject stream, so that the discharge is not elevated in salinity; thus, **pilot plants themselves do not typically pose threats to the environment. A larger-scale test facility, also called a demonstration project, can be built to confirm final treated water quality and process reliability. A demonstration-scale facility serves as a larger-scaled, more representative test of the full-scale facility and typically employs configurations and all treatment steps that are planned to be included in the full-scale facility. Due to the larger scale, a demonstration testing could also be used to perform an assessment of environmental impacts or to provide better estimates of treatment costs.**

1. **OTEC needs it too**

**Vega ’10** (Luis A. PhD, National Marine Renewable Energy Center at the University of Hawaii, ‘Economics of Ocean Thermal Energy Conversion (OTEC): An Update[’, http://hinmrec.hnei.hawaii.edu/wp-content/uploads/2010/01/OTEC-Economics-2010.pdf](file:///C:\Users\eforslund\Dropbox\2015%20Stuff\Camp%20Work\'%20http:\hinmrec.hnei.hawaii.edu\wp-content\uploads\2010\01\OTEC-Economics-2010.pdf), *wcp*)

The major conclusion reached in the earlier report continues to be applicable: **there is a market for OTEC plants that produce electricity and desalinated water, however, operational data must be obtained by building and operating demonstration plants** scaled down from sizes identified as cost effective. OTEC systems are in the pre-commercial phase with several experimental projects having already demonstrated that the technology works but lacking the operational records required to proceeding into commercialization. **Adequately sized pilot projects must be operated in situ and for at least one continuous year to obtain these records**. Our analysis indicates that a pre-commercial or demonstration plants sized at about 5 MW must be operated prior implementation of 50 to 100 MW commercial plants.¶ **Accounting for externalities in the production and consumption of electricity and desalinated water might eventually help the development and expand the applicability of OTEC.** Unfortunately**, it is futile to use these arguments to convince the financial community to invest in OTEC plants without an operational record.**¶ The major challenge continues to be the requirement to finance relatively high capital investments that must be balanced by the expected but yet to be demonstrated low operational costs. Perhaps **a lesson can be learned from the successful commercialization of wind energy due to consistent government funding of pilot or pre-commercial projects** that led to appropriate and realistic determination of technical requirements and operational costs in Germany, Denmark and Spain. In this context, by commercialization we mean that equipment can be financed under terms that yield cost competitive electricity. This of course depends on specific conditions at each site. Presently, for example, in Hawai’i cost competitiveness requires electricity produced at less than about 0.20 $/kWh. Our analysis indicates that, without subsidies or environmental credits, plants would have to be 50 MW or bigger to be cost competitive in Hawai’i.¶ In discussing OTEC’s potential it is important to remember that implementation of the first plant would take about 5-years after order is placed. This is illustrated with the baseline schedule shown in Table 7. The time required for each major activity also applies to the pre-commercial or demonstration plant. Completion of the engineering design with specifications and shop drawings would take one-year. Presently it is estimated that the licensing and permitting process through NOAA (in accordance with the OTEC Act) would take longer than 2-years for commercial plants with the provision of exemptions from the licensing process for plants considered to be demonstration plants because of the limited duration of the operational phase.¶ A survey of factories that can supply all equipment required for the OTEC systems discussed above shows that no technical breakthroughs are required but that some components would require as long as 3-years to be delivered after the order is placed. The solicitation of equipment quotes based on technical specifications, as it was done in preparation of this report, indicates that long-lead items would require from 18-months to 36-months to be delivered. Based on experience with offshore projects of similar size it is expected that one-year would be required to complete the deployment with a second year set aside for commissioning.¶ As stated above, there are sufficient petroleum resources to meet demand for at most 50 years and with production peaking we will face a steadily diminishing petroleum supply. This situation justifies re-evaluating OTEC for the production of electricity as well as energy intensive products. The US should begin to implement the first generation of OTEC plantships providing electricity, via submarine power cables, to shore stations. **This would be followed**, in about 20 years, **with OTEC factories deployed along equatorial waters producing, for example, ammonia and hydrogen as the fuels** that would support the post-petroleum era.¶ The following Development Schedule can be used as an outline of the activities required to implement ocean thermal resources as a major source of energy for our post-petroleum future. A pre-commercial plant would be implemented with US government funding. **The plant would be operational (supplying electricity to the distribution grid) within 5-years and would be operated for a few years to gather technical as well as environmental impact information.** Some of the valid questions regarding potential environmental impacts to the marine environment **can only be answered** by operating plants that are large enough to represent the commercial-size plants of the future.¶ The design of the first commercial plant sized at 50 to 100 MW would be completed and optimized after the first year of operations with the pre-commercial plant. This would be followed with the installation of numerous plants in Hawai’i and US Insular Territories for a cumulative total of about 2,000 MW over 15-years. As indicated in Table 8, **the design of the grazing factory plantships that will produce the fuels of the future** (e.g., hydrogen and ammonia) **could be initiated as early as 15-years after the development program is implemented**.

**Plenty of direct federal exploration affs**

**McNutt, 13 -** chair of the Ocean Exploration 2020 group (Marcia, “The Report of Ocean Exploration 2020” <http://oceanexplorer.noaa.gov/oceanexploration2020/oe2020_report.pdf>)

toward a national program of ocean exploration **Ocean Exploration 2020 participants agreed that there is a critical need for effective coordination among the federal agencies in all aspects of ocean exploration** and research. **Likely federal budget ocean exploration allocations for these agencies are too small** for independent approaches. **The community** noted that a national program must be flexible, responsive, and inclusive, and **called for NOAA to act as a coordinator and facilitator of all exploration activities**. The program must have the means to grow partnerships of all kinds to seize the opportunity—and respond to the urgent need to understand the global ocean. Finally, Ocean Exploration 2020 participants noted the value of this National Forum and the need for regular opportunities for the community of ocean explorers to come together. Maintaining the momentum from Ocean Exploration 2020 is critical, and NOAA and its partners need to take advantage of all opportunities to capture the energy and maintain the commitment of the ocean exploration community.

### At: funds

**Ownership is key – provision of federal funds doesn’t make it “its” project**

**Paget 7** – JD, long and widely recognized as one of this country's leading practitioners of environmental law and litigation

(David, ALI-ABA COURSE OF STUDY MATERIALS Environmental Impact Assessment: NEPA and Related Requirements Cosponsored by the Environmental Law Institute, Lexis)//BB

1. Issue¶ - **At what point does federal participation in a project contemplated by a nonfederal entity, such as a private entity** or a state or local government, **federalize the action** and render the entire project subject to the requirements of the National Environmental Policy Act ("NEPA")?¶ - The way in which an action is defined determines the scope of the project for federal purposes.¶ - Nonfederal actions are not subject to NEPA requirements. Save the Bay, Inc. v. U.S. Army Corps of Engineers, 610 F.2d 322, 326 (5th Cir. 1980); Gettysburg Battlefield Preservation Assoc. v. Gettysburg College, 799 F. Supp. 1571, 1577 (M.D. Pa. 1992).¶ - Federal agencies are subject to NEPA requirements if a proposed project involves a "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2) (C).¶ - If subject to NEPA requirements, the federal agency must conduct an Environmental Assessment ("EA") and issue a Finding of No Significant Impact ("FONSI") or an Environmental Impact Statement ("EIS").¶ - The NEPA scope of analysis is significant because:¶ - It is frequently determinative of the need for an EIS.¶ - Because NEPA applies to at least the federal component of a proposal, the greater the "federalization" of the action the greater the likelihood of significant environmental impacts.¶ - Inclusion of the nonfederal portion of a proposed project as part of the NEPA scope of analysis often converts a typical FONSI into an EIS.¶ - Federal agencies must comply with the alternatives analysis in Section 102(2) (E) even if they do not have to prepare an EIS. 42 U.S.C. § 4332(2) (E); Hanly v. Kleindienst (II), 471 F.2d 823 (2d Cir. 1972), cert. denied, 412 U.S. 908 (1973).¶ - Inclusion of the nonfederal portion of a proposed project as part of the NEPA scope of analysis increases the scope of the alternatives analysis because the federal agency must consider alternatives to the entire project, not just alternatives to the federal portion of the proposed project.¶ - Inclusion of the nonfederal component of a proposal as part of the overall federal action may trigger other additional provisions of federal law, such as¶ - § 106 of the National Historic Preservation Act, 16 U.S.C. § 470f.¶ - Floodplain Management, Executive Order No. 11988.¶ - Protection of Wetlands, Executive Order No. 11990 (does not apply to issuance by federal agencies of permits to private parties for activities involving wetlands on nonfederal property).¶ - If more than one federal agency is involved in a project proposed by a nonfederal entity, the federal agencies must consider the cumulative federal involvement in determining the scope of the NEPA analysis. See 40 C.F.R. §§ 1508.7 & 1508.25(a) & (c).¶ II. Common Situations Involving the "Small Handle" Issue¶ - Nonfederal actions that require federal permits or approvals.¶ - Army Corps of Engineers' (the "Corps") issuance of a permit pursuant to Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, for work in navigable waters of the United States and/or pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, for discharges of fill or dredged material into waters of the United States (including federal wetlands).¶ - Construction of marina associated with upland development (e.g., commercial or residential).¶ - Construction of marina associated with entertainment facilities.¶ - Components of a residential or commercial development are in both upland and regulated waters.¶ - Other combinations of in-water activity and upland activity:¶ - Utility lines.¶ - River or wetlands crossing or filling as part of a larger development or transportation project.¶ - Discharge outfalls from upland industrial plant.¶ - Secretary of the Interior approval of Indian contracts.¶ - Local road improvements associated with highway improvements requiring Federal Highway Administration ("FHWA") approvals or funding.¶ - Nonfederal actions eligible for federal assistance.¶ - Mass transit systems.¶ - Highway construction.¶ - Housing developments.¶ - HUD mortgage insurance.¶ - HUD funding for a portion of a project.¶ III. How To Determine When A Nonfederal Action Has Been Federalized¶ - There are no clear standards for determining the point at which federal involvement transforms a nonfederal project into federal action. United States v. Southern Florida Water Management District, 28 F.3d 1563, 1572 (11th Cir. 1994). "The touchstone of major federal activity constitutes a federal agency's authority to influence nonfederal activity." Id.; Sierra Club v. Hodel, 848 F.2d 1068, 1089 (10th Cir. 1988); see 40 C.F.R. § 1508.18. Put another way, does the federal agency's involvement provide it with the ability to influence materially the environmental impacts of the planned non-federal activity?¶ - The Corps follows its own NEPA regulations. In 1980, the Corps published a version of regulations that did not specify how it should determine the scope of its NEPA analysis when issuing permits for actions combining both federal and nonfederal components. In the same year, the Fifth and Eighth Circuits decided to limit this scope to the federally controlled or regulated aspects of such projects. These immediately following Fifth and Eighth Circuit seminal cases addressed the "small handle" issue and provide the essential historical antecedents for the promulgation of the Corps' Scope of Analysis regulations, 33 C.F.R. § 325, App. B(7)(b) (1994).¶ - Winnebago Tribe of Nebraska v. Ray ("Winnebago"), 621 F.2d 269 (8th Cir. 1980). A nonfederal proposal was made to construct a 67-mile power line. Approximately 1.25 miles of the 67-mile power line would cross the Missouri River, triggering the need for a Corps Section 10 permit, pursuant to 33 U.S.C. § 403. Before issuing the permit, the Corps prepared an EA on the impact of the 1.25 mile river crossing. The EA concluded that there were no significant environmental impacts associated with the river crossing; thus, an EIS was not required.¶ Plaintiff then commenced a lawsuit, alleging noncompliance with NEPA because the Corps did not assess the environmental effects of the entire 67-mile power line. Plaintiff argued that without the Section 10 permit, the power line would not be built; therefore, the Corps had sufficient control over the proposal to require an environmental analysis of the entire transmission line project, which would undoubtedly require an EIS.¶ The District Court denied the plaintiff's request for a permanent injunction to bar the construction of the proposed power line. The plaintiff appealed from that decision, arguing, inter alia, that the District Court had erred in holding that the issuance of a Corps permit to cross the Missouri River was not a "major federal action" within the meaning of NEPA.¶ In reviewing the District Court decision, the United States Court of Appeals for the Eighth Circuit ("Court") employed both an "enablement" (or legal control) and a factual (or veto control) test in determining whether the Corps should have considered the environmental impacts of the entire project. The Court stated that in "enablement" cases, "federal action is a legal condition precedent to accomplishment of an entire nonfederal project." Id. at 272. The Court found that 33 U.S.C. § 403 was too narrow to be construed as a grant of legal control over the entire project.¶ The Court then looked to the Corps' factual, or veto control, over the project. In applying this test, it articulated three factors to aid in determining whether the Corps' factual control required an environmental assessment of the entire project:¶ (1) the degree of discretion exercised by the agency over the federal portion of the project;¶ (2) whether the federal government has given any direct financial aid to the project; and¶ (3) whether "the overall federal involvement with the project [is] sufficient to turn essentially private action into federal action."¶ Id. The Court stated that, although the Corps had broad discretion to assess environmental impacts, the discretion had to be exercised within the scope of the agency's authority. Under Section 10, the Corps had authority to consider the environmental impacts regarding only areas in and affecting navigable waters. Thus, the Corps had no authority to consider the environmental impacts of the entire proposed 67-mile power line. The Court also found that the federal government was not providing any direct or indirect funding for the project. Therefore, the Court of Appeals concluded that the Corps did not have sufficient control or responsibility to require an environmental assessment of the entire project.¶ - Save the Bay, Inc. v. United States Army Corps of Engineers ("Save the Bay"), 610 F.2d 322 (5th Cir. 1980). A nonfederal proposal to construct and operate a massive titanium dioxide manufacturing facility involved issuance of a Corps permit for the construction of a 2200-foot, 24" pipeline to discharge 2 million gallons per day of industrial wastewater into the Bay of St. Louis. The Corps prepared an EA, issued a Statement of Findings with the conclusion that there would be no adverse effects on air quality and only temporary effects on water quality, and issued the permit authorizing building the outfall pipeline.¶ Plaintiffs initiated a lawsuit, arguing that the grant of the pipeline construction permit was a "major federal action significantly affecting the quality of the human environment" and required preparation of an EIS. The District Court, however, concluded that the EA was reasonable and based on substantial evidence and that the Corps was not required to consider the environmental consequences of the entire project, but only the effects of the construction and maintenance of the outfall pipe. Thus, the District Court found that the activity was not a major federal action significantly affecting the quality of the human environment. Plaintiffs then appealed the district court decision. The United States Court of Appeals for the Fifth Circuit ("Court") held that issuance of the Corps permit for the outfall pipe was not a sufficient nexus between the Corps and the construction of the plant to make the agency a partner in such construction and thereby "federalize" its construction, i.e., the grant of the pipeline construction permit was not a "major federal action" within the meaning of NEPA. The Court found that, in granting the permit, the Corps was limited to considering the environmental effects of the construction and operation of the pipeline itself. The environmental consequences of the effluent were a factor to be excluded from the Corps consideration.¶ The Court also noted that the pipeline was not necessary to operate the plant; another method of discharge, not requiring a Corps permit, was available. Although disclaiming the adoption of a "but for" text, the Court found that there was insufficient federal involvement to "federalize" construction of the industrial plant.¶ - In 1984, the Corps proposed an amendment to its NEPA regulations that would have codified Winnebago and Save the Bay. The Administrator of the Environmental Protection Agency ("EPA"), pursuant to the Clean Air Act, 42 U.S.C. § 7609(a) (1982) must review proposed NEPA compliance regulations. The Administrator did not approve the Corps' amendment, and, therefore, the proposed regulation was referred to the Council on Environmental Quality ("CEQ"). 42 U.S.C. § 7609(b) (1982). On June 8, 1987, the CEQ approved the amendment subject to a few proposed modifications. 52 Fed. Reg. 225120-22 (1987). On February 3, 1988, the Corps revised and published the amendment; the revision adopted the CEQ's proposals. 53 Fed. Reg. 3120, 3121 (1988). This Corps regulation, set forth in pertinent part below, represents the most systematic effort to address the "small handle" issue:¶ - Corps Scope of Analysis: (1) In some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army (DA) permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project (e.g., construction of an oil refinery on an upland area). The district engineer should establish the scope of the NEPA document (e.g., the EA or EIS) to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.¶ (2) The district engineer is considered to have control and responsibility for portions of the project beyond the limits of Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action.¶ Typical factors to be considered in determining whether sufficient "control and responsibility" exists include:¶ (i) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).¶ (ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.¶ (iii)The extent to which the entire project will be within Corps jurisdiction.¶ (iv) The extent of cumulative Federal control and responsibility.¶ A. Federal control and responsibility will include the portions of the project beyond the limits of Corps jurisdiction where the cumulative Federal involvement of the Corps and other Federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of Federal financing, assistance, direction, regulation, or approval (not including funding assistance solely in the form of general revenue sharing funds, with no Federal agency control over the subsequent use of such funds, and not including judicial or administrative civil or criminal enforcement actions).¶ B . . . .¶ C . . . .¶ (3) . . . . In any case, once the scope of analysis has been defined, the NEPA analysis for that action should include direct, indirect and cumulative impacts on all Federal interests within the purview of the NEPA statute. The district engineer should, whenever practicable, incorporate by reference and rely upon the review of other Federal and State agencies.¶ 33 C.F.R. § 325, App. B, § (7) (b) (1994).¶ The Corps regulations also provide certain examples of common permitting actions that may implicate the "small handle" issue. In Montrose Parkway Alternatives Coalition v. U.S. Army Corps of Engineers, 405 F.Supp.2d 587 (D. Md. 2005), the plaintiffs challenged the Corps' failure to prepare an EIS for a locally planned and financed highway project, for which a Corps permit was needed to fill 0.94 acres of federal wetlands. The Corps limited the scope of its Environmental Assessment to the area of filling and the area of roadway immediately on either side of it. In doing so the Corps relied on one of the examples in its regulations, which provide:¶ For those regulated activities that comprise merely a link in a transportation or utility transmission project, the scope of analysis should address the Federal action, i.e., the specific activity requiring a DA permit and any other portion of the project that is within the control or responsibility of the Corps of Engineers (or other Federal agencies).¶ For example, a 50-mile electrical transmission cable crossing a 1 1/4 mile wide river that is a navigable water of the United States requires a DA permit. Neither the origin and destination of the cable nor its route to and from the navigable water, except as the route applies to the location and configuration of the crossing, are within the control or responsibility of the Corps of Engineers. Those matters would not be included in the scope of analysis which, in this case, would address the impacts of the specific cable crossing.¶ 325 C.F.R. § 325, App. B, § 7(b)(3). The court held that the Corps' regulations were entitled to deference, and found that the case at issue resembled the example quoted. On the plaintiffs' motion for preliminary injunction, the court held that the Corps' regulations "expressly contemplate the appropriate scope of the Corps' environmental review for this type of construction and state that projects such as [this] are not federalized." 405 F.Supp.2d at 599. Thus, it held that the plaintiffs were unlikely to succeed on the merits of the action and denied the motion.¶ Judicial reliance on the Corps' regulations has also had the contrary result: nullification of the Corps' determination of the appropriate scope of analysis where it does not comport with the regulations. Ohio Valley Environmental Coalition v. United States Army Corps of Engineers ("Ohio Valley Environmental Coalition"), 479 F.Supp.2d 607 (S.D. W. Va. 2007), involved a mountaintop removal coal mining operation for which Corps approval was needed to fill streams in the adjacent valleys with mining overburden. The Corps limited the scope of its NEPA analysis to effects on the jurisdictional waters. The court held that while the actual mining portion of the project was properly excluded from the analysis, the Corps improperly failed to examine effects on the wooded valleys that were being filled along with the streams. The Court based its holding on one of the examples provided in the Corps regulations, which provides: "[i]f an applicant seeks a DA permit to fill waters or wetlands on which other construction or work is proposed, the control and responsibility of the Corps, as well as its overall Federal involvement would extend to the portions of the project to be located on the permitted fill." 33 CFR § 325, App. B § 7(b)(3).¶ Similarly, in Baykeeper v. U.S. Army Corps of Engineers, 2006 WL 2711547 (E.D. Cal. Sept. 20, 2006), the court invoked another example from the Corps' regulations in holding that the agency's NEPA analysis for a dredging project was inappropriately circumscribed. In that case, the Port of Stockton sought a Section 10 permit to dredge the berthing areas for two docks, which the Corps characterized as a "demonstration project" to help gauge the potential ecological impacts of dredging several other berthing areas, for the ultimate purpose of greatly expanding the Port's operations. In its NEPA assessment, the Corps only examined the effects of this initial phase of dredging. The court granted a preliminary injunction enjoining the dredging on the basis that the plaintiffs had shown a likelihood of success on the merits of their claim that the Corps should have assessed the impacts of the entire port expansion project.¶ One critical basis for the court's decision was another example in the Corps' regulations, providing:¶ [A] shipping terminal normally requires dredging, wharves, bulkheads, berthing areas and disposal of dredged material in order to function. Permits for such activities are normally considered sufficient Federal control and responsibility to warrant extending the scope of analysis to include the upland portions of the facility.¶ 33 C.F.R. § 325, App. B § 7(b)(3). The court additionally noted that EPA and the National Marine Fisheries Service, in commenting on the application, had requested that the Corps look at the entire project in one integrated analysis and that the Corps' own statements reflected the fact that the initial round of dredging was for the purpose of enabling the larger project (thus refuting the Corps' "post-hoc" assertion that the dredging activities had an independent utility).¶ The Ohio Valley Environmental Coalition court distinguished, on the basis of the magnitude of the fill involved, a case in which the court refused to hold the Corps to the "construction over filled areas" example, Sierra Club v. U.S. Army Corps of Engineers, 450 F.Supp.2d 503 (D.N.J. 2006). That case involved a large commercial development which would require filling of a total of 7.69 acres of dispersed wetlands (8% of the total project area). The Corps limited its NEPA analysis to impacts on the wetlands from the filling, and did not analyze the effects of the overall project or even those portions of the project that would be constructed on filled areas. The court upheld the Corps' FONSI against the plaintiff's argument that the Corps regulations themselves required such an analysis, holding:¶ Contrary to the Army Corps's interpretation and application of its own regulations, under Plaintiffs' interpretation a provision that is plainly set forth merely as an "example" would control the outcome in effectively all cases where a permit applicant proposes to conduct activities requiring a permit as a component of a larger project. Such an interpretation is contrary to the plain language of the regulations [which] require "careful analysis of all facts and circumstances surrounding the relationship."¶ Id., 450 F.Supp.2d at 518. While not relying on it as a factor in its decision, the court did note the fact that the project had already been subject to an extensive state EIS.¶ - The CEQ regulations afford only limited guidance for determining the appropriate scope of analysis. They define "major Federal action" to include:¶ actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.¶ (a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds.¶ 40 C.F.R. § 1508.18 (1994). This definition has been found to be entitled to substantial deference. Save Barton Creek Ass'n v. Federal Highway Admin., 950 F.2d 1129, 1134 (5th Cir. 1992).¶ IV. Judicial Application Of Scope of Analysis Factors¶ - "Reasonably close causal relationship"¶ - Only environmental effects that have a "reasonably close causal relationship", akin to proximate cause in tort law, with the federal agency's determination need be considered in determining whether an EIS is needed. Those effects which the federal agency has no power to prevent are not "effects" of the federal action that would enter this analysis. Department of Transportation v. Public Citizen ("Public Citizen"), 541 U.S. 752, 124 S.Ct. 2204 (2004).¶ - "Enablement" or Legal Control v. Veto or Factual Control¶ - Enablement or legal control occurs when the federal action is a legal precedent to accomplishing the nonfederal project. Landmark West! v. United States Postal Service ("Landmark West!"), 840 F. Supp. 994 (S.D.N.Y. 1993), aff'd, 41 F.3d 1500 (2d Cir. 1994); Goos v. Interstate Commerce Commission, 911 F.2d 1283, 1294 (8th Cir. 1990); Natural Resource Defense Council, Inc. v. U.S. Environmental Protection Agency, 822 F.2d 104 (D. D.C. 1987). See also Ringsred v. Duluth, 828 F.2d 1305 (8th Cir. 1987) (no federal action was a legal condition precedent to construction of parking ramp next to Indian bingo facility).¶ - In cases involving issuance of a permit by the Corps pursuant to Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, n1 the issuance of the permit cannot be construed to provide legal control over the entire project. Save Our Wetlands, Inc. v. Sands, 711 F.2d 634, 644 n.9 (5th Cir. 1983).¶ - The same analysis applies to cases involving issuance of a Corps permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344. Macht v. Skinner, 916 F.2d 13 (D.C. Cir. 1990) (where state light rail project required Section 404 permit to cross wetlands, Corps' ability to prevent the proposed route insufficient to federalize project, even coupled with additional federal funding for preliminary engineering studies and state EIS's).¶ - To determine whether the federal agency has veto or factual control over the nonfederal project, the judiciary has identified four somewhat overlapping factors:¶ - the degree of discretion exercised by the agency over the nonfederal portion of the project, Save Barton Creek Assoc. v. Federal Highway Admin., 950 F.2d 1129, 1134 (5th Cir. 1992);¶ - whether the federal government has given any direct financial aid to the nonfederal project, Save Barton Creek Assoc. v. Federal Highway Admin., 950 F.2d 1129, 1135 (5th Cir. 1992);¶ - where federal funding of a non-federal project is "active," or "programmatic," and provided in furtherance of a funding agency's goals, it is more likely to be accompanied by indicia of control sufficient to federalize, the project. Landmark West! ("Landmark West"), 840 F. Supp. 994, 1007 (S.D.N.Y. 1993), aff'd, 41 F.3d 1500 (2d Cir. 1994); San Francisco Tomorrow v. Romney, 472 F.2d 1021, 1022 (9th Cir. 1973) (HUD urban renewal loans and grants); Named Individual Members of San Antonio Conservation Society v. Texas Highway Dep't, 446 F.2d 1013, 1024-25 (5th Cir. 1971), cert. denied, 406 U.S. 933 (1972) (federal funding of over half the cost of a state highway project).¶ - **The mere possibility of** future federal financial **assistance does not enhance a funding agency's degree of control over the non-federal project for which it is providing funds**. Save Barton Creek Ass'n v. Federal Highway Administration, 950 F.2d 1129, 1135 (5th Cir. 1992), cert. denied, 505 U.S. 1220 (1992); Chick v. Hills, 528 F.2d 445, 448 (1st Cir. 1976) (HUD not required to evaluate future phases of project where there was no evidence it would participate further in the development); Touret v. National Aeronautics and Space Administration ("Touret"), 485 F.Supp.2d 38 (D.R.I. 2007) (even in combination with federal funding of 11% of the costs of construction of laboratory building, potential to attract **federal** research **grants did not federalize the project). This has been held to be the case even where the project has been designed, under the advice of a federal agency**, to preserve the option of federal funding. Village of Lincolnshire v. Illinois Department of Transportation, 2002 WL 276127 (N.D. Ill. Feb. 27, 2002). Cf. Maryland Conservation Council, Inc. v. Gilchrist ("Gilchrist"), 808 F.2d 1039 (4th Cir. 1986) (possibility of federal funding for highway project one element leading court to hold that project was federal action).¶ - An additional indicia of the extent of federal involvement is the proportion of federal funding to the overall cost of the project. Ka Makani 'Okohala Ohana Inc. v. Water Supply, 295 F.3d 955, 960 (9th Cir. 2002); see Touret, supra. chua¶ - whether the overall federal involvement with the project is sufficient to turn an essentially nonfederal action into a federal action. Landmark West!, 840 F. Supp. 994 (S.D.N.Y. 1993), aff'd, 41 F.3d 1500 (2d Cir. 1994); Goos v. Interstate Commerce Commission, 911 F.2d 1283, 1296 (8th Cir. 1990); Ringsred v. Duluth, 828 F.2d 1305 (8th Cir. 1987); Winnebago Tribe of Nebraska v. Ray, 621 F.2d 269, 272 (8th Cir. 1980); see 40 C.F.R. § 1500.6(c) (CEQ guidance indicates that a nonfederal project does not become a major federal action merely because there is some incidental federal involvement (52 Fed. Reg. 22517 (June 12, 1987)).¶ - whether the larger non-federal project will go forward even if the federal action does not occur. Sugarloaf Citizens Ass'n v. FERC, 959 F.2d 508 (4th Cir. 1992) (no federal "control" where the state authority could have "lawfully disregarded" certain FERC criteria and constructed its facility, albeit without obtaining certain FERC benefits); Sylvester v. United States Army Corps of Engineers, 884 F.2d 394, 400-401 (9th Cir. 1989) (although resort complex could not have been built as planned without federal wetlands permit for its golf course, because the resort could have gone forward without a golf course, need for the permit provided insufficient control to federalize the entire complex); Save the Bay, Inc. v. United States Army Corps of Engineers, 610 F.2d 322 (5th Cir.), cert. denied, 449 U.S. 900, 101 S. Ct. 269 (1980) (where alternative method of effluent discharge available which did not require Corps permit, the entire plant did not require federal environment review); Proetta v. Dent, 484 F.2d 1146, 1148 (2d Cir. 1973) (project not federalized where alternative non-federal funding available); Touret v. National Aeronautics and Space Administration, 485 F.Supp.2d 38 (D.R.I. 2007) (**new** research **building was not a federal project despite federal funding used for its construction** where university had planned to construct building before applying for federal funds).

### At: approval

**Approval doesn’t make it federal – private industry retains control**

United States District Court for the **Northern District of California 9**

(Opinion by William Alsup, District Judge, “Save Strawberry Canyon v. DOE,” 613 F. Supp. 2d 1177)

There are no clear standards for defining the point at which federal participation transforms a state or local project into a major federal action for purposes of 42 U.S.C.S. § 4332(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C.S. § 4321 et seq. The matter is simply one of degree. Marginal federal action will not render otherwise local action federal. To make this determination, courts look to the nature of the federal funds used and the extent of federal involvement. While significant federal funding can turn what would otherwise be a state or local project into a major federal action, consideration must be given to a great disparity in the expenditures forecast for the state and county and federal portions of the entire program. Moreover, **a local plan does not become** a major **federal** action subject to the NEPA regulations **merely upon its approval by a federal agency**. **The United States must maintain decision-making authority over the** local **plan in order for it to become a** major **federal action**. This is because the purpose of the NEPA is to bring environmental considerations to the attention of federal decision-makers. This pre-supposes that the federal agency has judgment to exercise. In sum, **courts look to** the degree of federal funding and to indicia of **federal** involvement and **control**.