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OVERVIEW: RADICAL ENVIRONMENTAL CHANGE IN THE POLAR REGIONS

IS THE GLOBE'S WAKE-UP CALL

By William J. Snape, III*

One need only to look at a comparison of summer Arctic ice extent from 1979 to 2007 to understand something significant is happening. In the span of a generation, the millennia-old Arctic has shrunk by roughly two-thirds and could easily be ice free in the summer within a decade. Or if that is not enough, consider that in the winter of 2008, a massive chunk of ice broke off from the Antarctic Peninsula, and another ice sheet the size of Northern Ireland (or Connecticut, if you prefer) hangs on by a thread. Over the past fifty years, the Arctic and Antarctic have warmed by around 3 degrees Celsius, roughly double the rest of the world. The goal, simply put, is to prevent this harbinger.

While there are still a few oil industry funded naysayers, all scientific experts now agree that global warming is here and

impacting our planet. The impacts are occurring far faster than we thought just over a decade ago, when the Kyoto Protocol to the Framework Climate Convention was ratified by most world governments except those such as the United States, Iraq, Afghanistan, and Zimbabwe. Coastal communities, island nation-states, high-altitude ecosystems, and arid regions are already feeling the impacts of global warming. But it is on and near our globe's two poles that change is occurring most acutely.

Why should we care? There are many reasons. While much of the polar ice that has melted thus far has rested upon the ocean already, an increasing proportion of melting ice will come from land (e.g., Greenland ice caps or the Antarctic continent), meaning that ocean levels could soon rapidly rise to disastrous levels; this would impact at least hundreds of millions of coastal-dwelling human beings throughout the world. Flooding, erosion, and contamination of freshwater drinking supplies would vastly increase from Miami to Shanghai and many places in between. Further, invasive pests are now proliferating due to global warming and global warming's causes, negatively affecting forests, farms, rangelands, and pollination cycles across the globe. Canada's great boreal forest, the lungs of North America that includes part of the Arctic, is in clear decline.

The poles' snow and ice also form a protective cooling layer for the rest of the Earth. When the poles melt, particularly in the Arctic, the rest of the planet absorbs more sunlight and gets hotter. This warming trend, in turn, increases the intense weather variability events that the entire globe has already experienced over the past decade or so. Aside from the direct destruction these storms engender, sectors as diverse as agriculture, transportation, and services suffer billions, if not trillions, of dollars of losses annually from nature's increased unpredictability. As just one of many examples, a recent study on a warming Arctic predicted that wheat farming in Kansas would be devastated as winter planting that needs freezing temperatures and summer soil that needs moisture would both dissipate without Arctic ice.

Biological diversity in the wild is also taking a potentially permanent hit around our poles. Despite unconscionable foot dragging by the Bush Administration that has forced repeated litigation in federal courts, the United States will eventually list the polar bear under the Endangered Species Act ("ESA") because of accelerated global warming, triggering a concerted effort to save this great iconic beast. However, even the ESA apparently cannot stop the proliferation of oil and gas projects

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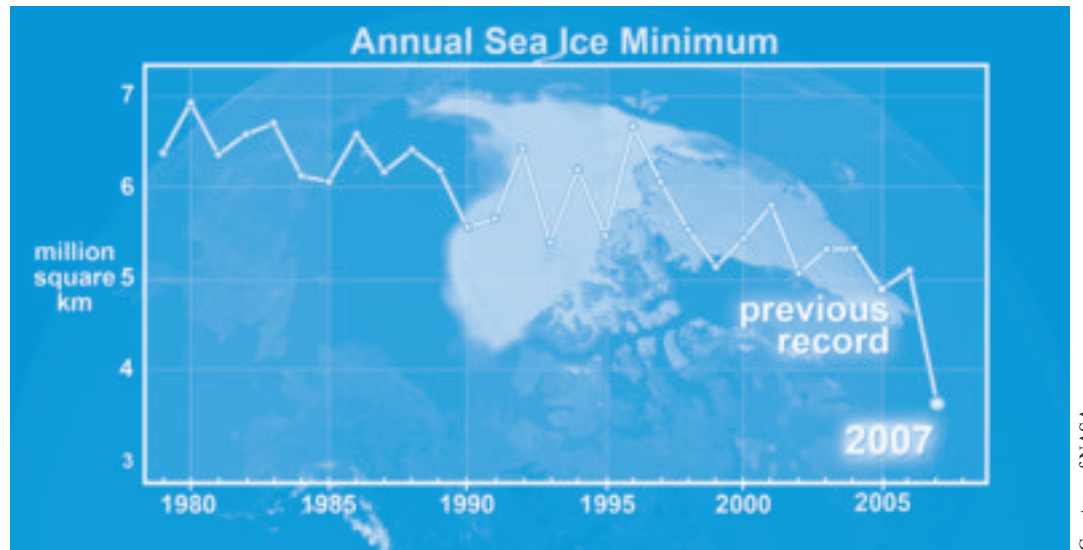
pending or ongoing throughout the Arctic. Unfortunately, the polar bear is not alone. Many other species, from whales and walrus to seals and migratory birds, are losing their homes, prey, or breeding grounds to global warming. In the Antarctic, as a result of a petition by the Center for Biological Diversity, federal scientists acknowledge the perilous plight of many species of penguin but this Administration, again, does nothing. As the now cliché goes, the patter of “happy feet” grows dimmer.

Our polar ecosystems are in literal collapse.

The good news is that all three remaining U.S. presidential candidates (from both major parties) acknowledge the threat and challenge of global warming. The Arctic Council—made up of the United States, Canada, Russia, Iceland, native groups, and the Scandinavian countries—is beginning to focus on the myriad threats facing the North Pole and its surrounding ecosystem. To the south, the Antarctic Treaty, an effective relic of the Cold War, could become a basis to address global warming. Yet, we are really only at the starting line of our effort.

The bevy of articles in this edition of SDLP recognizes the legal and policy opportunities for positive change. This is exciting. Today’s law students, particularly those with a public interest bent like many at the Washington College of Law, have a true chance to “save the world.” Thus, the varied international and domestic legal strategies available to combat global warming and its impacts are far more than an academic exercise. For many, the ideas contained in this edition are quite directly about life and death.

How, then, to summarize the road map available to us in our complex and inter-connected world? First, most clearly, we need a binding multi-lateral agreement on reducing greenhouse gas emissions that includes all nations, including the United States, China, and India. The capital and technologies exist to make our energy transition a smooth and constructive one, but we lack political will. Second, to the extent recalcitrant governments and corporations do want to play ball on global warming, lawyers should and will do what they have done for years: sue them. And this is happening in the United States under novel statutory and common law theories that will grace future legal text books.¹ Finally, we need creative lawyers to use existing international



Courtesy of NASA.

tools under agreements such as the Convention on the Law of the Sea, the Convention on Biological Diversity, various human rights conventions, the Polar Bear Treaty, and even the World Trade Organization (historically a bit hostile toward the environment) to tilt the playing field back in favor of conservation, equity, and the sustainable use of our limited natural resources.

As I tell my athletes before a big competition, the choice is ours: we can prepare diligently and rise to the challenge, or we can take the easy way out through apathy or fear. The difference, of course, is that amateur athletic competition is but practice for the real world. If the Arctic and Antarctic are indeed the “canaries in the coal mine” for the rest of the world that scientific experts tell us they are, we may soon lose luxuries we have deluded ourselves into thinking are necessities. Clean air, available water, healthy landscapes and public health are all diminishing from many factors, and global warming is the most powerful common denominator.²

We can do better. We need political conservatives to remember that Biblical (or Koran-like) change to our natural heritage is not conservative but mere cow-towing to Big Oil. We need political liberals to more aggressively identify the available solutions without fear of appearing “regulatory” (ending massive subsidies to carbon pollution activities would be a great start). We need independent entrepreneurs to be empowered to find energy solutions that work in the short term market-place, as well as the long-term sustainable health of the planet. We need the developing world to recognize there are real opportunities to think in new ways that do not repeat past mistakes. We need the developed world to pony up its wealth, if not for altruism then because it will maintain prosperity in the long term. No one is left off Team Planet. We are truly all in this together.

Endnotes: Radical Environmental Change in the Polar Regions Is the Globe’s Wake-up Call

¹ See, e.g., David Hunter & James Salzman, *Negligence in the Air: The Duty of Care in Climate Change Litigation*, 155 U. Pa. L. Rev. 1741 (2007).

² See, e.g., Donald Burke, et al., *Under the Weather: Climate, Ecosystems, and Infectious Disease*, National Research Council (Washington, DC), June 2001.