American Governors Now Seek to Control American Foreign Policy Through Fuel Pipeline Permitting

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The absurdity of the current United States pipeline permitting process was on full display last week in two nearby states in the Upper Midwest.

On Thursday, Enbridge, the Canadian pipeline company, received notice from the Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency that these state agencies had approved key permits allowing Enbridge to modernize its Line 3 Pipeline, which brings oil from the northern Alberta tar sands to Minnesota. The very next day in neighboring Michigan, Governor Gretchen Whitmer ordered Enbridge to cease operations on its Line 5 Pipeline, which has been bringing oil and natural gas liquids from Canada to Michigan since 1953. The juxtaposition of these two events so close in time and location illustrates an often overlooked but incontrovertible point: Not only do state Governors now determine national energy policy, but through the pipeline permitting process and related controls, they are capable of impacting American foreign policy as well.

Not surprisingly, the Minnesota decisions - which included granting the ubiquitous Section 301 Clean Streams Certification about which I have written so often - were derided immediately by the environmental movement. Andy Pearson, a spokesman for the Minnesota "climate justice" group MN350, threatened that they "will still stop the pipeline, but the Governor has made that unnecessarily harder." And in truth, Thursday's decisions are not the same as confirmation that the modernized Line 3 Pipeline will ever be built. Governor Tim Walz's administration announced in August that the State's Commerce Department was actually appealing to court a prior grant by the State's Public Utility Commission of a certificate of need for the project, "because Enbridge didn't introduce, and so the commission could not evaluate the accuracy of, a long-term demand forecast."

The recent Minnesota and Michigan examples of "Permit by Gubernatorial Fiat and Public Pressure" directly impact international trade and American relations with Canada, by far the USA's largest and most important trading partner (nearly twice as large as China).

Since becoming Canada's Prime Minister in 2015, Justin Trudeau has made environmentalism a key element of his Liberal Party platform. However, Trudeau has walked a fine line on the issue, also supporting continued energy development and pipelines such as Trans Mountain, in which he ordered the Canadian federal government to buy out Kinder Morgan's interest for $4.5 billion in 2018 when the American company said, due to continuing delays caused by environmental groups, it no longer could continue with the project. While not entirely trusted by many Western Canadian officials on this subject, Trudeau has been careful not to totally break with the energy producing provinces of Alberta and Saskatchewan.

Directly after the Whitmer announcement Alberta Premier Jason Kenney showed his exasperation and threw down the rhetorical gauntlet. "We are in a war for our economic future," Kenney declared, directly challenging environmentalists and American political officials.

The Whitmer move is hard to understand from any other viewpoint than purely political. Citing multiple alleged violations, the Governor claimed that Enbridge had violated its easement agreement with Michigan that dates back to 1953.

However, in 2018, Enbridge in fact reached an agreement with then Governor Rick Snyder to replace the old pipe that goes under Lake Huron and Lake Superior in the Straights of Mackinac for four miles with a new pipe to be drilled in the bedrock. The old pipe has never leaked, but clearly was aging and in danger of eventually failing. Two years later, while Enbridge was seeking permits for the very work needed to carry out the agreement, Governor Whitmer ordered the pipeline, which carries 23 million gallons daily of oil and natural gas liquids from Alberta to Michigan, shut down in 180 days.

Ever since New York Governor Andrew Cuomo blocked the Constitution Pipeline in April 2016, US governors have been seizing ever expanding control from the federal government on interstate oil and gas pipelines. Through this easement agreement, Governor Whitmer now has found a new way to disrupt international pipelines. In discussing this topic, most commentators have mainly addressed the domestic economic and environmental implications of this expanding state assertiveness with regard to pipelines. Now, Michigan Governor Whitmer has added another element to the debate – that of foreign affairs.

With Alberta Premier Kenney declaring that he would send a message to special interest groups seeking to block these pipelines that "resistance is futile," and "Alberta is determined to take control of our own destiny," it might be wiser for the party actually authorized to conduct foreign affairs, the Executive Branch, to reassert its predominance under the United States Constitution.

ATTORNEYS MENTIONED

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