Bill Koch: The Dirty Money Behind Cape Wind Opposition

GREENPEACE

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I. BILL KOCH BACKGROUND

Koch Family Feud

Bill Koch hails from a family rooted in the fossil fuels business. Koch Industries is the second-largest privately-held company in the United States, a conglomerate of more than twenty companies with $100 billion in annual sales, operations in nearly 60 countries, and 70,000 employees. The industry areas span petroleum refining, fuel pipelines, coal supply and trading, oil and gas exploration, chemicals and polymers, fertilizer production, ranching and forestry products.[1]

The family business dates back to the 1920s, when Fred Koch, father to four sons including Bill, developed a process to refine more gasoline from crude oil. When the major oil companies sued him for patent infringement, Fred went to the Soviet Union to build oil refineries in 1929. Koch eventually grew disenchanted with Stalinism and returned to the United States where he launched his company, Rock Island Oil & Refining in the 1940s. Bill Koch's older brother, Charles, renamed the company Koch Industries and took over as CEO after his father's death in 1967. Today, Charles and David (Bill's fraternal twin brother) control the vast majority of Koch Industries assets. Charles and David Koch each own 42% of the company stock and are tied for the 19th richest person in the world, worth between $14 and $16 billion according to Forbes 2009 rankings.[2]

The Koch Industries family business has been a major battleground for a decades-long family feud. According to their mother, Mary Koch, the trouble began at dinner during the 1979 Christmas holidays. ''Bill sat opposite from me at the table and all he did was make unkind remarks about Charles. I got up and left the table crying.'' Attempted coups of the Board, lawsuits with counter-lawsuits, and settlements involving hundreds of millions of dollars characterized the conflict between the four sons of Fred Koch

As a boy, Bill Koch was often jealously aspiring to be like his older brother, Charles. He was much less athletic than both Charles and David, recalling that he was "the baby, the family nerd." The parents sent Charles to boarding school at the age of 11. ''We had to get Charles away because of the terrible jealousy that was consuming Billy,'' says Mary Koch. ''Billy has always been too emotional.'' Charles, David, and Bill were reunited at M.I.T. in 1958 where David was the basketball star and team captain. Bill only made the second string. As Charles remembers: ''There would be David out on the court starring, and Bill would be sitting on the bench.''[3]

The relationships of the brothers during their youth seem to have held steady through adulthood. Bill began his career at Koch Industries as a consultant in 1971. He first managed a family venture-capital fund that eventually failed. Later, as President of Corporate Development, he made endless and unproductive project proposals according to other Koch executives.

Bill's main criticism of Charles' leadership was the reinvestment of company's profits back into the business instead of paying dividends to shareholders (which almost entirely consisted of Koch family members). ''Here I am, one of the wealthiest men in America,'' Bill says, ''and I had to borrow money to buy a house. What's the point of building a company if you are not able to take out the assets and do what you want with them?''.[4]

In the early 1980s, Bill unsuccessfully attempted to seize control of the Koch Industries board, and was fired from his vice-president job. Charles wanted Bill and their eldest brother Fred, Jr. to sell their shares to the company. Resulting lawsuits and counter-lawsuits continued until June 1983 when a settlement was reached. Bill Koch reportedly received $620 million from Koch Industries for his 21 percent stake, which he used to launch his own energy business. Fred Koch Jr, the eldest brother, joined Bill in the lawsuit and received $400 million. After a two-year hiatus on court battles, Bill Koch sued Charles and Koch Industries again and demanded more money, claiming his stock had been undervalued.[5] The lawsuit and appeals dragged on for nearly two decades, until a Kansas federal court upheld the decision of the district court in favor of Charles Koch.[6]

The legal battles were not confined to disputes over the price of Bill Koch's shares. Bill sued Charles and Koch Industries again in 1989, after accusing them of stealing oil from Native American reservations and public lands. Koch Industries was the middleman, buying oil at the well, then selling it to refineries. Bill Koch said the company cheated on measurements and paid for less oil than they took. The jury found that Koch Industries did steal oil from the public and lied about its purchases 24,000 times. In May 2001, a settlement was announced calling for Koch Industries to pay $25 million in penalties to the US government. About a third of that money went to Bill Koch for bringing the suit.[7] Bill, Charles, and David also agreed never to take any legal action against each other or their companies again, including penalties against each party if they resume a legal battle.[8]

Tax Loopholes for the Wealthiest Americans

Bill Koch has a knack for exploiting tax loopholes. He was determined to win the America's Cup yacht race, and obtained tax-exempt status for the America3 Foundation, his racing syndicate. This drew severe criticism from both tax experts and yachting enthusiasts when Koch donated $10 million of his own money to the foundation. Because of this action, U.S. taxpayers in effect subsidized Koch's 1992 America's Cup victory. Koch said in an interview that the contribution from his personal funds could save him "a couple million bucks" on his taxes. He's also angrily complained about the costs of competing in the America's Cup race. "It's dissipating assets that could be better used elsewhere in society," said Koch. "The amount of money is obscene and wasteful." Asked why taxpayers should subsidize a wealthy American's yachting hobby, America3 Vice President M. Brad Robinson replied, "You want an answer why, you'd have to ask the guys in Congress" who wrote the tax law.[9]

Bill Koch moved to Palm Beach, Florida in order to take advantage of exemptions from corporate income tax, originally designed as tax breaks for mom-and-pop small businesses. Koch's business, Oxbow, currently employs 1200 people and makes $3.7 billion in annual sales.[10] "That's the reason I came here — it's tax friendly," said Koch. "I've done a lot of sailing and, well, the rules aren't fair," said Bill Koch, the oil man. "Life ain't fair. You play according to the rules that are given to you." When Massachusetts denied him an abatement on taxes he paid in his 1983 stock transaction, Koch sued. The courts ruled in favor of Koch after a 10-year battle, and he received $46-million. He made the move to Florida after Massachusetts attempted to raise his taxes. He said, "If they're going to treat me that way, screw 'em."[11]

Big Spender

Bill Koch is known for expensive hobbies. His extensive art collection is often loaned to museums as a temporary exhibit. When the Koch collection was displayed at the Museum of Contemporary Art, San Diego, it underwent a biting review in the Los Angeles Times: "[The Koch collection] is…assembled in the fashion of many a millionaire who wants some bang for his buck."[12] At Boston's Museum of Fine Arts, the exhibit "Things I Love: The Many Collections of William I. Koch" also drew criticism in local newspapers. Koch demanded a written apology and retraction from the Boston Globe and hinted at legal action, stating "if they back you in a corner…I'm going to come out like a snarling badger."[13]

Koch's hobby of wine-collecting has made recent headlines as well. He has filed multiple lawsuits after his expensive global investigation revealed he was scammed. He paid $500,000 for four bottles of 200-year-old Jeffersonian Bordeaux, which turned out to be fake. He sued the German wine merchant who said he "discovered" a cache of Jefferson wine in a Paris cellar. Koch has also sued multiple other parties claiming they sold him fake wine, including Zachys Wine Auctions, California Internet entrepreneur Edward Greenberg, the Chicago Wine Co., Chicago- based Julienne Importing Co. and New York auction house Acker Merrall & Condit.[14]

II. OXBOW CORPORATION

Oxbow Overview:

Bill Koch founded the Oxbow Group in 1983 with settlement money from legal disputes over his shares of the family's business, Koch Industries. Oxbow is a privately-held energy corporation currently based in West Palm Beach, Florida. A conglomerate of two dozen companies, the Oxbow Corporation makes over $3.7 billion in sales annually, operates in nearly 20 countries, and employs more than 1200 people.[15] The business is primarily centered on petroleum coke sales and coal mining, selling 10 million metric tons of petroleum coke and 8 million metric tons of steam coal each year. The company is also active in natural gas production and in sales of industrial products such as gypsum and bauxite.[16]

Oxbow Mining's Elk Creek Mine, located in western Colorado, produces 6 million tons of bituminous coal annually. Oxbow claims that Elk Creek's production is on pace to make it one of the top five producing underground coal mines in the United States, expected to produce more than 60 million tons of coal from privately held and federally leased tracts over the next 10 years.[17]

Environmental Violations:

Oxbow's Elk Creek Mine has been cited with over 2000 violations by the Mine Safety and Health Administration. Oxbow has paid over $960,000 in fines since beginning the operation of the mine ten years ago. Of the 2000 violations, over 400 were deemed "significant and substantial," meaning they could result in injury or death. One single violation of mine ventilation regulations in March 2010 cost Oxbow a penalty of $45,000.[18] Explosive coal-dust buildup, excessive methane, inadequate ventilation, and poor maintenance including fire extinguishers, were among the violations, according to MSHA's database. Such "significant and substantial" violations can lead to injuries and tragic fatalities. Though the MSHA investigation has not been completed, excessive methane and improper ventilation were recurring problems at Massey Coal's Upper Big Branch mine in West Virginia, where 29 miners were killed in an explosion in April 2010.[19]

In the last decade, the only two fatalities in Colorado coal mines occurred at Oxbow operations.[20] The Associated Press reported the death of a 37-year old miner in December 2000 at Oxbow Mining's Sanborn Creek Mine, likely due to a faulty fitting on a high-pressure hose.[21] At the Elk Creek Mine, a 26-year-old miner died in January 2007 when a bundle of materials fell on him.[22]

The manager at Elk Creek Mine, Jim Cooper, told the Denver Post in 2007 that "citations don't have anything to do with safety records…I think a lot of citations hinder safety conditions at a mine… If [managers] have to deal with answering citations, it's a waste of time."

A former MSHA official and the United Mine Workers of America disagreed with Cooper, asserting that citations are one of the clearest signs of safety problems at a given mine. "You have enough to suggest in Elk Creek that this is a mine you should look at," said Davitt McAteer, former assistant secretary of MSHA.[23]

Colorado Forest Fights:

In 2009, a subsidiary of the Oxbow Group requested to expand the Elk Creek Mine into a federally protected roadless area of the Gunnison National Forest. Oxbow requested permission to build into the roadless area in order to drill methane vents for their underground coal mine expansion. Secretary of Agriculture, Tom Vilsack, eventually approved the roadless rule exemption for Oxbow's Elk Creek mine in May 2010.[24] Environmental groups and sportsmen groups protested the decision. "Sportsmen support responsible development of public-lands minerals," said a spokesperson from Trout Unlimited. "Yet Secretary Vilsack's inability to regulate such development – even on lands with outstanding value for fish, wildlife and activities such as fishing and hunting – cries out for the need to effect reasonable reform."[25]

Oxbow isn't new to opposing forest protections in Colorado. In 2005, Colorado's national forest plan went under revisions in the wake of the Forest Service announcement about the adoption of an Environmental Management System (EMS).[26] The EMS allows states to have some input over the use of designated national forest and grassland areas. Despite widespread environmental opposition to the EMS announcement[27], Oxbow placed full-page ads in local Colorado newspapers claiming the Forest Service was only listening to environmental groups. [28] The ad reads: "If the U.S. Forest Service continues to be influenced only by environmental special interest groups, our future could be more like this picture," and includes a photograph of a man in a cowboy hat walking a deserted street of empty store fronts. Oxbow's ad claims the Forest Service "didn't hear from you," and only heard from "environmental special interest groups." Forest Service officials refuted the ads, saying the new plan would not hamper existing rights and that current and pending leases would be honored. In addition, the Forest Service held over 70 public meetings and received over 500 public comments, which predominantly called for preserving the forest landscape.[29]

Coalbed Methane:

Oxbow requested permits for exploratory coalbed methane wells in Colorado in 2002. Hundreds of residents were vehemently opposed to the drilling of methane wells in the underground coal seams. Western Slope Environmental Resource Council named numerous environmental impacts including polluted water, water well depletion, wildlife disruption, habitat fragmentation, and noxious flares. Grand Mesa Citizens Alliance also protested the methane wells, and said the test drilling could devastate water supplies, and may negatively affect tourism, ranching, and agriculture. The water from drilling would have been harmful to humans, cattle, and crops if allowed to run off, due to the sodium bicarbonate content. Delta County, Colorado ended up rejecting proposals for the exploratory methane wells.

(Cite: Rock Mountain News 2002, Reuters 2002)

Petroleum Coke

Oxbow's website asserts that the company has become "the world's largest marketer of petroleum coke." Petroleum coke (also known as "pet coke") is the solid by-product of contaminants from the oil refining process, and can be burned for generating electricty, firing cement kilns, and manufacturing aluminum.[30]

According to the International Energy Agency, petcoke contains high levels of sulfur and heavy metals including vanadium and nickel. The combustion of the oil-refining byproduct creates significant environmental and public health risks. The sulfur levels would result in considerably higher sulfur emissions from a plant burning pet coke than from one burning typical bituminous coal.[31] Due to its carbon content, petroleum coke is also one of the highest emitters of carbon dioxide, per unit burned.

Oxbow Corporation was recently implicated in a local fight regarding a power generation plant in the Virgin Islands. The Alpine Energy Group proposed power plants for the islands of St. Thomas and St. Croix in 2009, that would generate electricity from the combustion of garbage and petroleum coke. The plants would have used pet coke purchased from a St. Croix terminal controlled by Bill Koch's Oxbow Group. After widespread public opposition, the proposal was revised and (as of June 2010) now calls for one plant, which would burn pet coke only in emergency situations.[32] The new plan is significantly different from the original proposal for two plants generating 80% of energy from pet coke combustion.[33]

III. OPPOSING CLEAN ENERGY

Funding Cape Wind Protests

Bill Koch has a nearly five-year history of opposing one of largest renewable energy initiatives in America. Cape Wind, a project to develop the country's first offshore wind farm, has received a significant amount of media attention, not only for its prominence as the first major proposal of it's kind, but also for the manufactured opposition from wealthy individuals like Bill Koch.

According to the project's developer Jim Gordon and his company Energy Management Inc., Cape Wind calls for the construction of 130 wind turbines off of Horseshœ Shoal in Nantucket Sound.[34] While the project is expected to produce 420 megawatts of energy, providing Cape Cod and the surrounding islands with three fourths of the area's total electricity needs, Koch has been vehemently against Cape Wind. Koch has a home overlooking the Sound in Osterville, Massachusetts, and has been quoted in a variety of publications stating that Cape Wind would ruin the beauty and hinder his sailing in the area. "Who would want to sail in a forest of windmills?" said Koch, in a 2006 Forbes article.[35] "I don't want this in my backyard."

According to capewind.org, the turbines will be visible 440 feet above the water. Point Gammon is the closest land area to the development, at a distance of 5.2 miles and Nantucket is the furthest away at 13.8 miles. The Web site also adds however that Cape Wind is "farther away from the nearest home than any other electricity generation facility in Massachusetts."[36]

Koch's opposition to Cape Wind surpasses his verbal protest and manifests in his role as chairman for a front group that he also supports financially. He has been one of the largest donors to The Alliance to Protect Nantucket Sound, one of the most recognized adversaries of Cape Wind. Formed in 2001, the group collects donations in efforts to lobby against the building of the wind turbines, and in 2006 had raised $11 million, 90 percent of which has been donated by Koch and other wealthy opponents of the project.[37] Koch, who serves as the group's co-chairman, has given at least $1.5 million to support the cause.[38] Other donations have come from extremely wealthy individuals like Paul Fireman of Reebok, who gave $250,000 and Michæl Egan, son to the founder of EMC Corp., who gave $150,000.[39]

Evidence shows that the Alliance is particularly strategic in how they solicit such donations. In 2006, the Boston Globe reported that an internal fundraising guide from the Alliance shows that the organization has specific steps for wooing a donor. The 35-page guide teaches fund-raisers how to meet a donor, court them at home and engage them with a follow-up call. According to the Globe, the guide makes statements such as, "Don't be afraid if there is silence, allow them to think about their response," and "Highlight fund-raising successes to date, but our success will depend on major donors at the six-figure level." The guide explains that small donations, such as $5,000, are frowned upon and viewed as "token gifts."[40]

Oxbow Lobbyists Against Cape Wind

In addition to being the largest identified funder of the Alliance to Protect Nantucket Sound, Bill Koch has also funneled $1 Million dollars to lobbyists to fight Cape Wind through his company, Oxbow Energy.[41] By using his company as the conduit for these lobbying payments from 2005 to 2007, Koch helped the Alliance not exceed their limits for lobbying expenditures as a tax-deductable not-for-profit charitable organization. [42]

Koch's use of Oxbow to funnel money to lobbyists against Cape Wind started surreptitiously, with payments from Oxbow to the lobbying firm U.S. Strategies. That firm then paid other lobbyists to work against Cape Wind, including Kessler & Associates.[43] This lobbying activity coincided with a widely criticized move by members of the Alaskan delegation in Congress working with opponents to Cape Wind. The delegation attempted to attach language to a Coast Guard Reauthorization Act in Conference Committee that would have singled out Cape Wind and prohibited it from being permitted.

It was a lobbyist being funded through Koch's company Oxbow that set up the first meeting between Alaskan Congressman Don Young and the Alliance to Protect Nantucket Sound. Young inserted anti-Cape Wind language into the conference bill shortly thereafter.[44] Due to a strong bipartisan outcry, the anti-Cape Wind provision was later significantly modified so that Cape Wind could continue forward in its permitting process.

Koch's role in lobbying efforts against Cape Wind were revealed again in a 2008 Boston Globe article that described a lobbying disclosure form showing Oxbow along with the Alliance as the funders of yet another lobbying firm, BKSH & Associates, against Cape Wind.[45] This was the first time that Oxbow Energy and the Alliance were listed on the same lobbying disclosure form for anti-Cape Wind lobbying which the Alliance and Oxbow would later claim was a 'mistake.'

The efforts of Koch and the Alliance were defeated this past April when U.S. Interior Secretary Ken Salazar approved the project, making it America's first offshore wind facility.[46]

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43 The lobbying disclosure forms from Oxbow to U.S. Strategies did not appear to mention subjects related to Cape Wind, it was only in other lobbying disclosure forms where U.S. Strategies is listed as the client and other lobbying firms are listed as the agents that the anti-Cape Wind lobbying activities were reported. This was first unearthed in an article in Cape Cod Today, see:

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