



HOLDING THE LINE

The Environmental Record of the 107th Congress

Principal Authors

Alyssandra Campaigne
Tyler Dillavou
John Grant
Wesley Warren
Faith Weiss

Natural Resources Defense Council
December 2002



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ABOUT NRDC

The Natural Resources Defense Council is a national nonprofit environmental organization with more than 500,000 members. Since 1970, our lawyers, scientists, and other environmental specialists have been working to protect the world's natural resources and improve the quality of the human environment. NRDC has offices in New York City, Washington, D.C., Los Angeles, and San Francisco. Visit us on the World Wide Web at www.nrdc.org.

ACKNOWLEDGMENTS

The Natural Resources Defense Council (NRDC) would like to acknowledge our more than 500,000 members, without whom our work would not be possible.

The authors would like to thank the many talented and dedicated people at NRDC who provided input and analysis on environmental legislation throughout the year. Special thanks for this report go to Ron Cogswell, Geoff Fettus, Deron Lovaas, Amy Mall, Cindy Mutombo, Barry Nelson, Rob Perks, Melanie Shepherdson, Lisa Speer, Johanna Wald, and Gregory Wetstone. We also gratefully acknowledge the assistance of Rita Barol, Lisa Catapano, Julia Cheung, and Bonnie Greenfield.

NRDC Reports Manager

Emily Cousins

NRDC President

John Adams

Editors

Faith Weiss and Alyssandra Campaigne

NRDC Executive Director

Frances Beinecke

Production

Tyler Dillavou

NRDC Director of Communications

Alan Metrick

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Natural Resources Defense Council

December 2002

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EXECUTIVE SUMMARY

The spirit of the 107th Congress can be captured in one word: gridlock. The story of this Congress lies less in laws passed than in those that fell by the wayside. On environmental matters, the biggest focus was energy policy. For nearly two years, Congress ground out thousands of pages of proposals, concept papers, and talking points. The end result? Nothing, as the House and Senate could not resolve their differences. Nor could they come to terms on the budget. In the second session, the two houses couldn't even agree on its rough outlines, and by October 2002, when Congress was scheduled to adjourn, the process had ground to a complete halt with only two of the 13 annual spending bills completed.

The reason for this legislative stalemate: Capitol Hill was fairly evenly divided between senators and representatives ready to continue Congress's decades-long history of enacting legislation to protect the environment and preserve the American landscape, and those whose interests lie, together with the Bush administration, in reversing past advances to offer big giveaways to big industries. The Bush administration and like-minded members of Congress put forth proposal after proposal to dismantle environmental protections, intensifying their efforts post-September 11, 2001.

The deadlock in Congress in many cases worked to environmental advantage. Few environmentally damaging bills—including the energy bill—gained enough support to pass through Congress to the president's desk. Yet neither were pro-environment members of Congress able to pass new protections or strengthen existing ones.

The 107th Congress did hold a few bright spots for environmental policy. Most notably, Congress passed brownfields legislation that will help revitalize abandoned industrial sites in communities around the country. And both the House and Senate voted to preserve special places: the Senate voted in 2002 to protect the Arctic National Wildlife Refuge from oil drilling; both houses voted to protect national monuments and sensitive coastal areas from oil and gas development.

One of the biggest accomplishments of the 107th Congress, the new campaign finance law, while not directly environmental in nature, holds promise for protection of public health and natural resources. If the law is implemented properly, it will help reduce the disproportionate influence of big-money special interests, and empower American citizens to become more active in the political process.

But too often successes in the 107th Congress came in the form of congressional maneuvers simply to hold the line against environmental assaults. Early in 2001, congressional leaders began to push back against the administration's anti-environment agenda. In June of that year the House voted to block the Interior Department from issuing permits for coal mining and oil and gas drilling in national monuments. Congress then voted to stop the Army Corps of Engineers from spending federal money on drilling projects off the coast of Florida and in the Great Lakes. And in July came a vote requiring the EPA to issue a new standard for arsenic in drinking water, rebuking the administration's delay of and attempt to weaken the new standard.

But this environmental momentum in Congress reversed following the events of September 11. Not stopping or even slowing their assault on environmental and health



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protections, Bush administration officials instead used the terrorist attacks as a justification for systematically dismantling environmental protections. They argued that drilling for oil in America's last wild places should be expedited as a response to the war in Afghanistan. They sought to exempt the Department of Defense from cornerstone environmental laws such as the Clean Air Act, the Endangered Species Act, and Superfund, which funds cleanup of abandoned toxic waste sites. And they won an extremely damaging victory when they successfully pressured Congress into granting corporations broad new exemptions from public disclosure as part of the Homeland Security bill. These exemptions could allow companies to hide information about spills, leaks, pollution releases or workplace hazards.

Meanwhile, the White House and Congress opposed raising fuel economy standards, a very basic and achievable policy that would greatly increase our national security by reducing our dependence on foreign oil.

MID-TERM ELECTIONS: WHAT THEY MEAN FOR ENVIRONMENTAL ISSUES

Republicans rode the president's coattails on Election Day 2002, taking back the Senate and widening their margin in the House of Representatives. With control of the House, the Senate, and the White House, Republicans will set the legislative agenda for the next two years. Senator Daschle, who stood strong on environmental issues, will no longer run the Senate floor. Rather, Senator Lott, who supports drilling in the Arctic National Wildlife Refuge and regularly fights for the interests of corporate polluters, will be in charge.

The shift in power also results in chairmanships of the two most important environmental committees in the Senate moving to senators whose records indicate little if any support for environmental protections. On the Environment and Public Works Committee, Senator Jeffords (I-VT), long a champion of clean air and renewable energy, cedes control to oil-patch Senator Inhofe (R-OK) who has earned a score of zero from the League of Conservation Voters for several years running. And Senator Bingaman (D-NM) most likely will hand the gavel of the Energy and Natural Resources Committee to Senator Domenici (R-NM), who supports big subsidies for oil and gas companies and expansion of nuclear power, but opposes incentives for renewable energy sources.

At the subcommittee level, the National Parks Subcommittee gavel moves from Senator Akaka (D-HI) to Senator Thomas (R-WY), who regularly leads the charge to open our national forests and other public lands to more logging. On the Public Lands and Forests Subcommittee, Senator Wyden (D-OR) hands over the gavel to Senator Craig (R-ID), who often does the bidding of the mining industry. And the Clean Air, Wetlands, and Climate Change Subcommittee chair moves from Senator Lieberman (D-CT) to Senator Voinovich (R-OH).

In early 2002, the Bush administration provoked a high profile fight over public health issues by approving the Yucca Mountain nuclear storage facility in Nevada for long-term

storage of high-level nuclear waste from nuclear power plants. Governor Kenny Guinn (R) of Nevada and the state's congressional delegation tried to block this decision but lost when Congress passed a resolution (H.J. Res. 87) backing the administration's decision. Harry Reid (D), the senior senator from Nevada, used his considerable clout as Senate majority whip to prevent passage of this resolution and still fell short of support, as other senators voted to transport their nuclear waste problems to his state. In this case, gridlock would have provided a better outcome.

The administration launched another congressional fight, which is expected to continue into the next session, by failing to include in its budget reauthorization of the taxes that fund federal cleanup of abandoned toxic waste sites. Senators Boxer (D-CA) and Chafee (R-RI) led an effort to reinstate the tax.

Congressional gridlock benefited ocean management policy when a bill by Representative Wayne Gilchrest (R-MD) that threatened to weaken the landmark fisheries law, the Magnuson-Stevens Act, didn't gain enough support to make it to the House floor. Reauthorization of the Marine Mammal Protection Act also stalled in the House, after Representative Gilchrest offered a solid bill but one that likely would have been gutted in the House Resources Committee by chairman James Hansen (R-UT), who wanted to drastically reduce the scope of the law.

One of the final debates of the session hinged on forest policy and wildfires. After years of poor forest management and a summer of heat and drought, wildfires raged throughout the West, and many in Congress were under pressure to respond. Senate Majority Leader Tom Daschle (D-SD) set the wrong example, however, by waiving a South Dakota fire management proposal from standard environmental reviews required under the National Environmental Policy Act and by restricting judicial review of the plan. This opened the floodgates, with several senators from western states and the Bush administration using Senator Daschle's action as an excuse to try to green-light logging on public lands in their own states. Senator Larry Craig's (R-ID) proposal to prohibit appeals and judicial review for logging projects nationwide created such a rift in the Senate that it halted progress on the Interior Department funding bill for weeks. In the House, Republican allies of the timber industry passed legislation through the Resources Committee that would not only have restricted opportunities for public input and challenges to logging decisions, but also would have rolled back core environmental protections.

Gridlock, clearly, is not progress. But in the 107th Congress, the ability of determined members of Congress to block environmentally damaging legislation, in the face of concerted efforts by the administration to advance its anti-environment agenda, was indeed an achievement. With Senate leadership shifting in the next Congress, maintaining existing levels of environmental protections will prove difficult; adding or strengthening protections even more so.

THE 108TH CONGRESS WILL HAVE A HUGE INFLUENCE ON THE MAKEUP OF THE FEDERAL JUDICIARY

New Senate Judiciary Committee chair Orrin Hatch (R-UT) intends to act quickly to clear a number of President Bush's controversial judicial nominees, several of whom are ideologically opposed to governmental regulation of industry behavior. These nominees could have profound implications for the future interpretation of environmental laws.

Rumors of several possible retirements have generated much speculation concerning the future shape of the U.S. Supreme Court. Less publicized, but just as important, is the potential effect of a Republican-controlled Senate on the federal appeals courts, most notably the U.S. Court of Appeals for the D.C. Circuit. Next to the Supreme Court, the D.C. Circuit Court is the most powerful court in the nation with regard to environmental protections because of its jurisdiction over a number of regulatory decisions made by the EPA, the Interior Department, and other federal agencies. Currently, this court is evenly split but nominations for four vacancies could tilt the balance in favor of anti-environment forces. For more on this situation, see NRDC's report "Hostile Environment: How Activist Judges Threaten Our Air, Water and Land" at: <http://www.nrdc.org/legislation/hostile/hostinx.asp>

CHAPTER 1

ENERGY, AIR AND CLIMATE

Energy policy was the central focus of environmental policymaking in the 107th Congress. NRDC jump-started the energy debate in March 2001 by issuing a detailed proposal for a responsible national energy policy that would reduce U.S. dependence on coal, oil, and other fossil fuels by encouraging energy efficiency and increased use of new technologies and renewable energy resources. But the national energy plan the White House proposed in May 2001, which was the basis for the energy bill introduced soon thereafter in the House of Representatives, was loaded with special favors for the oil, gas, coal, and nuclear energy industries, which had lobbied heavily for more tax breaks and fewer restrictions. (NRDC went to court to obtain information about industry's participation in Vice President Cheney's energy task force, which formulated the administration's energy policy. The task force records revealed that industry executives played a key role in developing the plan and, in fact, wrote much of it themselves.)

An energy bill was pushed hastily through the House in August of 2001. Action then turned to the Senate, where industry influence steadily chipped away at legislation that initially contained a number of positive measures. On the Senate floor, a requirement that electric utilities generate a portion of their electricity from renewable resources was weakened significantly, though attempts to strip it outright were rejected. New stronger fuel economy standards were struck from the bill, and pick-up trucks were exempted from future increases in fuel economy standards. The EPA's authority to protect drinking water from contamination associated with oil and gas development was also dealt a blow. And a provision designed to counter the Bush administration's efforts to weaken new efficiency standards for air conditioners was eliminated.

Environmental groups scored their biggest victory in the energy debate with the Senate's vote to keep oil and gas rigs out of Alaska's Arctic National Wildlife Refuge. Although the final Senate energy bill had lost its environmental teeth, the differences between it and the House version proved significant enough that conference negotiators were unsuccessful in reconciling the two. During the post-election lame duck session Representative Billy Tauzin (R-LA), who chaired the energy conference committee, tried and failed to assemble a much smaller package that consisted solely of provisions to address gas pipeline safety and provide liability protection for nuclear power plants. Derisively labeled "energy bill lite," the measure gained little support from Senate Republicans or Democrats. Ultimately, only the pipeline safety bill became law.



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ISSUES TO WATCH IN THE 108TH CONGRESS:

Clean Air: On November 22, 2002, the Bush administration announced new rules to weaken existing Clean Air Act protections designed to clean up old, dirty power plants and industrial facilities. Defense of this critical provision will likely emerge as an early fight in Congress and the courts.

Energy Bill Redux: An early effort to revive the House “dirty energy” bill (H.R. 4) is expected. That bill closely followed the Bush administration’s energy plan, which was crafted in secret consultation with oil, gas, nuclear, and mining industry representatives, and was loaded with incentives for those industries.

ENERGY

The legislative debate on energy began in earnest with the passage of the House’s comprehensive energy bill, **H.R. 4, Securing America’s Future Energy Act of 2001**, introduced by Representative Billy Tauzin (R-LA). On August 2, 2001, after a mere 12 hours of debate, the House approved its energy bill by a vote of 240-189. The 500-plus-page bill was a compilation of four bills that contained tens of billions of dollars in tax breaks for the fossil fuel and nuclear industries. It provided incentives to increase oil and gas drilling on public lands and in wild and undisturbed places such as the Arctic National Wildlife Refuge. It also failed to improve fuel economy standards or promote renewable energy and energy efficiency programs.

In February 2001, the first Senate energy bill (**S. 388 and S. 389, National Energy Security Act of 2001**) was introduced by Senator Frank Murkowski (R-AK), then the chairman of the Energy and Natural Resources Committee. The bill contained the pro-oil and gas policies included in the House bill and in the administration energy plan. It also would have exempted coal power plants from clean air requirements and turned over federal oil and gas leasing to the states. After the Republicans lost control of the Senate, Senator Murkowski ceded the chairmanship of the Senate Energy Committee to Senator Bingaman (D-NM), who began to develop his own comprehensive energy bill. This bill was introduced as **S. 1766, the Energy Policy Act of 2002**, by Senator Tom Daschle (D-SD). Under the leadership of new Senate Majority Leader Tom Daschle and Majority Whip Harry Reid (D-NV), the Senate bill initially embraced a vision of an energy future filled with more sustainable options including conservation, renewable energy, and energy efficiency technologies.

Members of Congress from oil and gas states—including Senators Murkowski (R-AK), Don Nickles (R-OK), and Phil Gramm (R-TX)—soon tried to attach the original Murkowski energy legislation, or the equally bad House energy bill (H.R. 4), to every bill considered by the Senate, including legislation responding to the attacks of September 11 and supporting our military. This tactic generated animosity and delayed a number of

bills at the end of the first session because Senate Democratic leaders were forced to repeatedly oppose the same amendment on different bills.

The first big blow to the bill that Senator Daschle introduced came on March 14 when Senator Carl Levin (D-MI) led the effort to strip the bill of its requirement to raise fuel economy standards. He prevailed by a vote of 62-38. That same day, the Senate adopted an amendment by Senator Zell Miller (D-GA) to weaken the underlying fuel economy law by exempting pickup trucks from future fuel economy increases. Additional amendments to the energy bill exempted certain oil and gas industry operations from federal drinking water protections, extended government protection against liability to the nuclear industry, removed a strong energy efficiency standard for air conditioners, allowed incineration of garbage to qualify as a renewable energy source, and shielded renewable fuel (ethanol) producers from legal challenges if their gasoline additives are later found to be harmful to public health or the environment.

On April 24, the Senate dealt an additional blow to efforts to increase vehicle fuel efficiency when it rejected, by a vote of 57-42, an amendment by Senators Thomas Carper (D-DE) and Arlen Specter (R-PA) that would have directed the Department of Transportation to cut the amount of oil passenger cars and light trucks consume by one million barrels per day by 2015.

And on April 18, Senate supporters of drilling in the Arctic National Wildlife Refuge failed to garner enough votes to prevail, failing by margins of 64-36 and 54-46. Attempts by the two Alaska Republicans, Senators Frank Murkowski and Ted Stevens, to sweeten the measure with unrelated provisions appealing to pro-Israel senators and steel caucus members failed to win additional support and, in fact, lost some conservative votes. These two Arctic votes were a direct repudiation of a centerpiece of the Bush administration's drill-first energy policy.

Despite often-frustrating obstruction by the oil state senators, after months of committee work and weeks of debate on the Senate floor, the Senate finally passed its 976-page energy bill on April 25, 2002, by a vote of 88-11. The Senate bill had been watered down on the floor, but it still reflected more sensible energy policies. It differed from the House bill so significantly that it was clear that the conference committee had its work cut out for it. Most notably, the House bill (H.R. 4) would allow oil drilling in the Arctic refuge.

Unlike the House bill, the Senate included the first federal requirement that electricity providers produce 4-5 percent of their energy from new, renewable resources. The Senate bill required companies to report their emissions of greenhouse gases, and included a provision to ban MTBE (a gasoline additive that has contaminated drinking water) and to increase the use of renewable fuels—mostly ethanol—in gasoline by five billion gallons by 2012.

The House bill included over \$36 billion in tax incentives largely for the oil, coal, and nuclear energy industries. The Senate bill included \$15-20 billion in incentives, about half of which would be available to improve energy efficiency in vehicles, appliances, and buildings, as well as to increase the use of solar, wind, and other cleaner alternative energy sources. Unfortunately, some of these renewable energy incentives would go toward logging in our national forests by encouraging the use of trees as biomass fuel.

Under the chairmanship of Representative Billy Tauzin (R-LA), the energy conference committee met from July through October 2002. House leadership stacked the conference committee with members with strong ties to the oil, gas, electric, nuclear, and automotive industries. The only two vocal members on the House side arguing for a cleaner sustainable energy future were Representatives Henry Waxman (D-CA) and Edward Markey (D-MA). Although the Senate conferees represented a far more balanced perspective, they generally were not as committed to the energy conference as their House counterparts.

By the time that Congress recessed for the mid-term elections in late October 2002, the energy conference had failed to reach consensus on key issues, such as whether to deregulate the electricity industry, drill in the Arctic Refuge, include a renewable requirement for electric power plants, provide liability relief for companies responsible for MTBE and ETBE contamination, or include provisions related to climate change. Conferees agreed to 51 relatively non-controversial provisions related to energy efficiency, energy development on Native American reservations, and low-income energy assistance before they left in October. But they reached consensus on only one relatively controversial provision: by September, conferees had agreed to include provisions to weaken fuel efficiency provisions by allowing a modification of the House fuel economy provisions that included a dual fuel exemption that amounts to a net increase in oil consumption. House conferees Henry Waxman and Edward Markey opposed the new language, which would achieve only an increase of less than 1 mile per gallon at best. "This compromise does virtually nothing," Representative Markey said.

Given the makeup of the House conferees, it is not surprising that also in September, House conferees rejected efforts by Representative Waxman to adopt the Senate requirement that power plants obtain 10% of their energy from renewable sources by 2020. House conferees also rejected Representative Markey's proposal to eliminate provisions in the House bill that allow the commercial reprocessing of nuclear waste. This provision, which was not in the Senate bill, would undermine U.S. nuclear nonproliferation policy by expanding the reprocessing industry and could result in less control over weapons grade nuclear material at a dangerous and uncertain time. Representative Markey's amendment was defeated soundly by a vote of 3-13.

By the time they left in October for the elections, the conferees had not even begun to discuss their differences in the energy tax package. H.R. 4 included more than \$36 billion in tax incentives weighted heavily towards the oil, coal, and nuclear energy industries. S. 517 included nearly \$20 billion in incentives, about half of which would be available to improve energy efficiency in vehicles, appliances, and buildings, as well as to increase the use of solar, wind, and other cleaner alternative energy sources.

In the waning moments of the Congress, Representative Tauzin met repeatedly with Senator Bingaman to discuss various deals. But, each different proposal broke down, as the House members dug in their heels over the electricity title, liability relief for MTBE and the Senate climate change provisions. The Senate wouldn't agree to anything unless it included ethanol mandates, climate change reporting requirements, and a strong renewable mandate. In the final analysis, the deal came down to whether the House

would abandon its pro-oil and gas stance or whether the Senate would abandon its vision for a bill with stronger incentives for renewable energy and energy efficiency.

On November 11, in a last ditch effort to pass an energy bill in this session of Congress, Representative Tauzin sent a pared down energy proposal—consisting only of pipeline safety provisions and the reauthorization of the nuclear federal insurance program—to Senate conferees for consideration. Senate Democrats countered with a bigger proposal, and stalemate resulted. An amended pipeline safety bill (H.R. 3609), containing important new safety provisions, passed the Senate on November 13 and the House on November 15, and represents the only energy policy to emerge from two years of debate. Republicans in control of the Senate have already pledged to act early to pass a larger energy bill in 2003 that will be heavily skewed towards fossil fuels and nuclear energy.

For the record, the following environmentally significant bills were incorporated in some form into the final Senate energy bill.

- **Energy Efficient Building Incentives Act (S. 207 and H.R. 778)** sponsored by Senator Bob Smith (R-NH), Senator Dianne Feinstein (D-CA), Representative Randy Cunningham (R-CA) and Representative Ed Markey (D-MA) would provide a six-year tax incentive for commercial and residential buildings that can meet ambitious performance-based energy savings targets for building construction and equipment.
- **Renewable Energy and Energy Efficient Investment Act (S. 1333 and H.R. 3037)** sponsored by Senator Jim Jeffords (I-VT) and Representative Frank Pallone (D-NJ) would create a renewable portfolio standard, requiring an increasing percentage of electricity to come from clean, renewable sources, reaching 20 percent of power consumption by 2020.
- **Resource Efficient Appliance Incentives Act (S. 686 and H.R. 1316)** sponsored by Senator Blanche Lincoln (D-AR) and Representative Jim Nussle (R-IA) would institute a five-year manufacturer tax credit on the production of refrigerators or clothes washers—the two primary energy users in an average household—that meet certain high standards for energy efficiency.
- **Renewable Energy Development Incentives Act (S. 1566)** sponsored by Senator Harry Reid (D-NV) would create new tax incentives for solar, biomass, hydropower, geothermal, and landfill gas energy projects, while at the same time ensuring compliance with pollution laws.
- **Biomass Tax Incentives (S. 188 and H.R. 2000)** sponsored by Senator Susan Collins (R-ME) and Representative Jim Nussle (R-IA) would encourage increased development and use of biomass fuel technologies that are integral to sustainable energy production. However, for biomass to be an effective renewable fuel source, there must be proper restrictions on the type of resource to be used as fuel. S. 188 and H.R. 2000 appropriately exclude old-growth wood from the definition of biomass while including other acceptable forms of organic material such as dedicated biomass energy crops, agricultural residues and byproducts, and wood from crates, pallets and other urban waste.

- **Clean Efficient Automobiles Resulting from Advanced Car Technologies Act of 2001 (CLEAR ACT) (S.760 and H.R. 1864)** sponsored by Senator Orrin Hatch (R-UT) and Senator John Rockefeller (D-WV), Representative Dave Camp (R-MI) would encourage the development of fuel-efficient hybrid gasoline-electric vehicles by making them more affordable.

NUCLEAR

The nuclear industry had a very good year in 2002. First, the Bush administration and the Congress gave their final approval to authorize the permanent storage of high-level nuclear waste at Yucca Mountain in Nevada. Second, Congress indicated a desire to continue to handsomely subsidize nuclear facilities and extend liability indemnification by reauthorizing the Price Anderson Act.

Closing a chapter on the decades long debate over nuclear waste, President Bush signed **Public Law No. 107-200, a resolution designating Yucca Mountain, Nevada**, as the sole repository for the nation's high-level radioactive waste on July 23, 2002. The House and Senate approved the resolution on May 8 and July 9, respectively, overruling Nevada Governor Kenny Guinn's (R) veto of the site designation. Opponents of the selection of Yucca Mountain, located 90 miles from Las Vegas, argued that the proposed facility would not adequately protect the public and the environment from radiation contamination and that the transportation plan would put communities around the country at risk.

Moreover, the House energy bill (H.R. 4) included a provision that would reverse long-standing U.S. policy on non-proliferation of nuclear weapons by authorizing the commercial reprocessing of high-grade uranium. Rogue nations or terrorists can use high-grade uranium to make nuclear weapons. In addition, the House energy bill authorized hundreds of millions of dollars in tax breaks and handouts to the nuclear industry to encourage them to build more nuclear plants and mine more uranium.

As part of the energy bill debate, both the House and the Senate approved different versions of a bill to provide the nuclear industry with limited liability for nuclear accidents. While both chambers did approve the reauthorization of the 1957 Price Anderson Act, the Senate version was much more reasonable. The House also rejected efforts by Representative Ed Markey (D-MA) to make nuclear plants safer in this time of terrorism. His proposal would have increased the security of transported nuclear materials and required the president to commission a study on the security of the nation's nuclear facilities.

CLEAN AIR

Under the guidance of its chairman, Senator Jim Jeffords (I-VT), the Senate Environment and Public Works Committee approved a potentially landmark law to reduce all four pollutants from power plant emissions. On June 27, 2002, the EPW Committee approved the bipartisan **the Clean Power Act of 2001 (S. 556)**, a bill co-authored by Senator

Jeffords and Senator Joe Lieberman (D-CT), by a vote of 10-8. The bill imposed mandatory cuts in carbon dioxide, sulfur dioxide, nitrogen oxide, and mercury emissions. House Republican leadership blocked action Representatives Henry Waxman's (D-CA) and Sherwood Boehlert's (R-NY) bipartisan bill, **the Clean Smokestacks Act (H.R. 1256)**, the House companion to S. 556. Over 133 other House members have sponsored this legislation.

Rather than adopting the more comprehensive approach offered by the Clean Power Act, the House leadership supported the Bush administration's plan for regulating pollution from power plants, known as the **Clear Skies Initiative**. This bill was introduced in the House as **H.R. 5266** by Representatives Joe Barton (R-TX) and Billy Tauzin (R-LA), and in the Senate as **S. 2815** by Senator Bob Smith (R-NH). It would set significantly weaker limits for several key pollutants than the Clean Power Act. Unlike S. 556, the administration's bill ignored carbon dioxide emissions, which are largely responsible for global warming. The Bush bill also would have repealed or weakened current safeguards for meeting public health standards, protecting local air quality, curbing pollution from upwind to downwind states, and protecting national parks.

At the end of the 107th Congress, Senators Thomas Carper (D-DE) and John Breaux (D-LA) introduced **the Clean Air Planning Act of 2002 (S. 3135)** that would mandate cuts in the pollutants that cause smog, haze, toxic contamination, and global warming. Although the bill's introduction demonstrates growing agreement in Congress, and within the power industry, on the need for comprehensive power plant pollution control legislation, this bill would allow power companies to meet their obligations without actually cutting their carbon dioxide emissions. The bill also would seriously weaken existing Clean Air Act protections for local air quality, and is substantially weaker than a similar bill (S. 556) introduced by Senator Jeffords (I-VT).

The Bush administration's repeated efforts to weaken air protection, roll back existing public health safeguards, and ignore the hazards of global warming led to increased oversight and objection in the Senate. Adding fuel to the fire, the Bush administration failed to comply with a Senate deadline to hand over documents related to its plans to ease requirements on power plants under the Clean Air Act's new source review program. Senator Jeffords wanted to examine the administration's documents concerning the public health and environmental impacts of the rule changes. Administration officials pledged to provide the requested documents by October 24, 2002. By missing this deadline, the administration delayed in providing these documents long enough for the elections to bring about a change in leadership in the Senate. Now, this Senate investigation will likely be abandoned as the new chair of the Senate Environment and Public Works Committee, Sen. James Inhofe (R-OK), favors weakening air protections.

Senator John Edwards (D-NC) also led an effort to oppose the administration's plans to weaken existing controls on power plant pollution. Senator Edwards has indicated that he intends to take legislative action in the next congress to block the administration's proposal to weaken the "new source review" protections of the Clean Air Act.

FUELS AND PIPELINE SAFETY

Early in 2001, Congress began to consider whether to ban methyl tertiary-butyl ether (MTBE). MTBE, a reformulated gasoline additive used to help prevent air pollution, has been leaking from underground storage tanks and contaminating groundwater across the country. Members of Congress called for a ban of MTBE and many of them introduced bills in both the House and the Senate. Environmentalists and public health groups supported a ban, but wanted to ensure that air quality benefits achieved using MTBE were not sacrificed. Ethanol producers battled for a mandate to use ethanol as a replacement. Numerous hearings were held in the House and Senate and while the House couldn't agree on legislation, the Senate Environment and Public Works Committee reported a consensus bill out of committee.

The two main Senate bills in 2001 that addressed MTBE were **the Federal Reformulated Fuels Act of 2001 (S.950)**, sponsored by Senator Bob Smith (R-NH), that eliminated the use of MTBE by 2004, and **the Renewable Fuels Act of 2001 (S.670)**, sponsored by Senate Majority Leader Tom Daschle (D-SD), which required significant new ethanol use. Compromise legislation was ultimately included in the Senate energy bill. The Senate-passed provisions ban MTBE, protect air quality, and mandate the use of 5 billion gallons of ethanol. Environmentalists supported some of the provisions but sought stronger incentives for ethanol produced from agricultural wastes and strongly opposed language that would have granted companies "safe harbor" on liability relief if fuel additives contaminate drinking water. In conference, House Republicans sought to extend this liability relief to MTBE.

Another public safety crisis provoking legislation arose in the West as several gas pipeline explosions caused deaths in the state of Washington. This tragedy resulted in a pipeline safety bill that passed both the House and the Senate. The **Pipeline Safety Improvement Act of 2001 (S. 235)**, sponsored by John McCain, was approved by a 98-0 vote, and contains new safety requirements for pipelines that were added by Senators Jon Corzine (D-NJ), Robert Torricelli (D-NJ), Maria Cantwell (D-WA) and Patty Murray (D-WA) to require pipeline inspections at five-year intervals. Senator John Kerry (D-MA) amended the bill to strengthen enforcement of pipeline safety laws. The House passed the **Pipeline Infrastructure Protection To Enhance Security and Safety Act (H.R. 3609)**, sponsored by Representative Don Young (R-AK), by a margin of 423-4. The bill was incorporated into the pending energy legislation. Although environmentalists sought even stronger pipeline protection and right-to-know requirements, this bill did help move pipeline safety protections forward. The final amended version of the pipeline safety bill, which passed both chambers in November 2002, represents the only energy policy to emerge from two years of debate.

CLIMATE CHANGE

Despite ever-increasing evidence of the urgency of global warming, Congress failed to take any significant action to reduce greenhouse gas pollution. Fuel economy standards were weakened—not strengthened—during debate on the energy bill. And while strong

bills have been introduced to require that electric power plants reduce their emissions of carbon dioxide, neither the House nor the Senate approved such a measure.

As discussed earlier in the Clean Air section, important progress was made on climate change when the Senate Environment and Public Works Committee approved the Clean Power Act, which would reduce emissions of carbon dioxide by 75 percent by 2007. Also as mentioned earlier, Senators Carper and Breaux now officially recognize the need to combat global warming pollution as part of any new power plant regulation.

Further progress was made in the House, when Representative Robert Menendez (D-NJ) successfully added a provision in the funding bill for the State Department urging the United States to reduce the emission of greenhouse gases and continue to participate in Kyoto Protocol negotiations. Senator John Kerry (D-MA) led a similarly successful effort in the Senate. This legislative initiative signaled Congressional opposition to the Bush administration's rejection of the Kyoto treaty to reduce heat trapping greenhouse gases.

Global warming also played a significant role in shaping the outcome of the energy bill. Even though both House and Senate energy bills included provisions to encourage the construction and use of highly energy efficient buildings, equipment, and new hybrid cars—all necessary measures to reduce the need for fossil fuels that contribute to global warming—the Senate Democratic leadership demanded an express title linking climate change with energy policies. The Senate Democratic leadership that wanted to require monitoring of global warming pollution, and struggled with the House Republican leadership that did not.

The Senate energy bill did include a requirement to monitor and report emissions of global warming pollution. The **Climate Change Strategy and Technology Innovation Act of 2000 (S. 1008)**, sponsored by Senators Robert Byrd (D-WV) and Ted Stevens (R-AK) would create a mandatory registry to track carbon dioxide and other global warming pollution that is currently unmonitored. This bill was largely modeled on two earlier bills: the **Global Climate Change Act of 2001 (S. 1716)** by Senators Ted Stevens (R-AK) and John Kerry (D-MA), and the **National Greenhouse Gas Emissions Inventory and Registry Act of 2001 (S. 1870)** by Senators John Corzine (D-NJ), James Jeffords (I-VT), and Joe Lieberman (D-CT). These bills would require companies to report their annual emissions of carbon dioxide and other global warming pollutants, much as firms must now report toxic releases under right-to-know legislation.

Although these reporting bills would not require the reduction of global warming pollution, emissions reporting by all sectors would be a modest step towards developing domestic policy on climate change. To be effective, however, these bills must provide for efficient and accurate accounting. For example, they should follow the lead of the S. 1870 by sending emission reports to the EPA, which already collects CO₂ data from power plants and fuel economy data from automobiles. In contrast, S. 1716 gives the job to the Commerce Department, which has no expertise in emissions accounting.

Furthermore, voluntary reporting of ill-specified emission reduction projects allowed by these bills is merely a prelude to giving firms inappropriate “credit” for these projects. Under the current system for reporting on CO₂ reduction projects, run by the Energy Department, companies routinely claim big project reductions even though their overall

emissions keep going up. If companies are required to report their total emissions, and not their claims of reductions, real emission trends will be properly recognized.

In May 2002, Representative John Olver (D-MA) introduced the **National Greenhouse Gas Emissions Inventory Act of 2002 (H.R. 4611)**, a bill to require companies to report emissions of pollutants that contribute to global warming to a federal database.

A few other bills were introduced in the Senate in the 107th Congress to set up a governmental framework to develop global warming policy and to fund research and development. Some of these bills also required a registry for greenhouse gas emissions. None of them reached the Senate floor for consideration. They were:

- **Climate Change Risk Management Act of 2001 (S. 1294)** by Senator Frank Murkowski (R-AK). Although this bill would provide for a national climate change strategy, funding for research and development of new technologies to reduce greenhouse gas emissions, and creation of a national registry of voluntary actions on domestic greenhouse gas emissions, it fails to mention specific targets or timetables for emissions reductions, require specific reductions, or even make carbon dioxide registry reporting mandatory.
- **Carbon Sequestration and Reporting Act (S. 1255)** by Senator Ron Wyden (D-OR). While this bill would try to encourage private forestry and agricultural companies to invest in carbon sequestration and would create monitoring and verification systems for carbon reporting in forests and soil, this is unlikely to be a viable strategy for ensuring carbon dioxide reduction and likely would not have much impact domestically because there is no market for trading carbon dioxide sequestration credits and much uncertainty about how effective such a system could be.
- **International Carbon Conservation Act (S. 769) and Carbon Sequestration Investment Tax Credit Act (S. 765)** by Senator Sam Brownback (R-KS). These two bills attempt to stimulate national and international efforts on “carbon sequestration” to reduce U.S. carbon dioxide emissions. S. 769 would create a program at the Department of Commerce for international and local carbon dioxide sequestration projects. S. 765 also would create tax incentives for U.S. citizens to initiate sequestration projects. Although the theoretical basis for sequestration is sound, the accounting, data, and analysis required for implementation of even the simplest incentive program is currently lacking. As a result, companies can all too easily avoid pollution-reduction requirements by investing in sequestration schemes that don’t produce greenhouse gas emissions reduction.

CHAPTER 2

PUBLIC LANDS

The highest profile legislative battle over public lands was the successful fight to keep oil and gas development out of the Arctic National Wildlife Refuge in Alaska. This issue was much in the headlines during the 107th Congress, as the Alaska delegation, particularly Senator Frank Murkowski and Representative Don Young, and allies from oil and gas states, such as Senators Don Nickles (R-OK) and Phil Gramm (R-TX), fought to open the refuge—with strong backing from President Bush and Interior Secretary Gale Norton.

In the House, Representatives Ed Markey (D-MA) and Nancy Johnson (R-CT) spearheaded the opposition to drilling in the refuge but were unable to overcome intense pressure from the White House and other pro-drilling forces. Strong bipartisan support for protecting the refuge ultimately prevailed in the Senate, where Senators Joe Lieberman (D-CT), Susan Collins (R-ME), and the late Paul Wellstone (D-MN) helped lead the successful fight. The unwavering commitment of the Senate Democratic leadership and the filibuster threat by Senators Lieberman and John Kerry (D-MA) ultimately prevented the refuge's wilderness from being sacrificed to oil and gas companies. But Congress failed to pass final energy legislation and so will resume the debate next session, putting the refuge again at risk.

Other key legislative battles in the 107th Congress involved oil and gas development in other special places, including national monuments, national forests, the Great Lakes, and sensitive coastal areas off Florida and California. In 2001, the House overwhelmingly approved by a vote of 242-173 an amendment by Representative Nick Rahall (D-WV), prohibiting new energy leasing and related activities within the boundaries of national monuments, including those recently designated by President Clinton.

In August 2001, the House approved H.R. 4, a broad energy bill that included legislation introduced by Representative James Hansen (R-UT) that threatened wildlands in the West with oil and gas development. Representative Hansen's bill would have undermined protections in Rocky Mountain National Park, national forests, and other public lands by elevating oil and gas production to one of the government's top priorities for these lands, and would have allowed the oil and gas industry to force the Interior Secretary to revisit administrative decisions protecting wild places, wildlife, and sensitive resources, including drinking water supplies and archeological sites, from energy development.

The House energy bill also would have stripped local Forest Service managers of their ability to prevent oil, gas, and geothermal development in national forests. If this provision had been in effect in 1997, it would have blocked the Forest Service decision to prohibit future oil and gas leasing in the spectacular Rocky Mountain Front of the Lewis



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and Clark National Forest in Montana. And it would have prevented a similar outcome for the equally magnificent Bridger-Teton National Forest in Wyoming, where a Forest Service decision is pending. The bill also encouraged additional development of wild places by giving taxpayer money to companies to help them comply with environmental reviews and by reducing the royalties collected by the U.S. government from marginal oil and gas wells and geothermal development. Led by Representative Rahall, House Democrats vigorously opposed these provisions, but without success.

While the Senate version of the energy bill was free of such provisions to weaken public lands protections, it did provide tax breaks to encourage coal-bed methane extraction and other oil and gas activities, and contained a provision to prevent the EPA from regulating hydraulic drilling that pollutes drinking water supplies. It also included a provision from Senator Larry Craig (R-ID) that would have encouraged logging of trees that are 12 inches or less in diameter for use as fuel.

ISSUES TO WATCH IN THE 108TH CONGRESS:

Forest Management: Forest protections came under attack at the end of the 107th Congress in the guise of reducing the risk of wildfires like those that ravaged western states in the summer of 2002. The Bush administration and some members of Congress tried to use those forest fires as an excuse to ignore environmental laws and log some of our most pristine wildlands, but logging forests to reduce fire risks remains scientifically unproven and risky. Congress will likely revisit this issue in both the Interior Department appropriations bill and in separate forest fire legislation.

NATIONAL ENVIRONMENTAL POLICY ACT

One of the constant refrains from industry and its allies in the Bush administration is the need to “streamline” environmental review processes. “Streamlining” is a code word for eliminating public input and limiting the ability of citizens to challenge industry proposals to build, develop and extract public resources from public lands and other special places. A number of legislative proposals were considered by the 107th Congress, from forest policy bills (**H.R. 5214, H.R. 5309, H.R. 5319**) to transportation streamlining bills (**H.R. 5455; S. 3031**) (transportation bills discussed in the Urban Sprawl section).

The administration also is attempting to exempt federal activities in national forests (see Forests and Fire section) and even in the entire Exclusive Economic Zone (EEZ), an area that ranges 200 miles off our coastlines, from NEPA’s reach. Despite a recent legal victory to the contrary, talking points from a meeting at the CEQ in August 2002 reveal that the White House is considering stripping NEPA protection from the oceans. If this major policy change occurs, it would open up a Pandora’s box of potentially harmful environmental consequences such as sonar testing, waste dumping, commercial fishing, oil and gas drilling, and other activities—all without careful review of environmental impacts, assessment of alternatives, and opportunity for public scrutiny that NEPA

currently provides. Indeed, if NEPA no longer applied to the EEZ—which encompasses an area larger than the entire continental U.S. landmass—then this policy would constitute the single greatest rollback of environmental protection ever.

FORESTS AND FIRE

A significant political battle erupted at the end of the second session over wildfire policy. Wildfires raged across the West, and the Bush administration and some members of Congress tried to exploit the situation for political advantage. Though the scientific evidence is unequivocal that saving homes and communities hinges on fire prevention activities in their immediate vicinity, the congressional debate centered on whether to allow increased logging of medium and large trees, far from communities. Senate Majority Leader Tom Daschle (D-SD) spurred this controversy by including a provision in an emergency supplemental funding bill to exempt a local fire proposal in South Dakota from environmental or judicial review under the National Environmental Policy Act (NEPA). Other western senators used Daschle's example to seek national legislation that would block environmental review of damaging logging proposals. This resulted in a massive showdown right before the elections over whether to open a huge loophole in the nation's cornerstone environmental law using the politically volatile issue of fire as a pretext. Senator Larry Craig was the Senate sponsor of legislation that would have rolled back environmental protections and expedited logging of medium and large trees in wild areas—the kind of logging that can actually increase fire risk. Fortunately, Senator Harry Reid led the effort to stop this harmful language, with support from Senators Daschle and Bingaman. The Senate fought to a draw, ultimately stalling the Department of Interior funding bill.

The House took fire policy up in the Resources Committee. Representatives Scott McInnis (R-CO), the chair of its Forest and Forest Health Subcommittee, and Greg Walden (R-OR), introduced the **Healthy Forests Reform Act (H.R. 5319)** that would eliminate application of NEPA to fire policy decision and dramatically limit the ability of the public to challenge logging decisions in court. The bill sponsors attempted to enlist the support of key Democratic allies Peter DeFazio (D-OR) and George Miller (D-CA). Though these two environmental champions balked at the extreme terms of the McInnis approach, the House Resources Committee approved the bill on October 8, 2002 by a vote of 23-14.

While another damaging forest provision was included in the Farm Bill, the conservation community successfully saw to its elimination at the last minute. The bill contained provisions authorizing “forest stewardship” contracts, a warm and fuzzy term for carte blanche license to log without meaningful accountability standards and environmental safeguards. Senators Jeff Bingaman (D-NM) and Tom Harkin (D-IA) were particularly helpful in stopping the very harmful House language.

The Bush administration launched an assault on wild roadless areas in our national forests, and as a result, legislation was introduced in both the House and the Senate that would protect these areas from most logging and roadbuilding. Representative Jay Inslee (D-WA) and Senator Maria Cantwell (D-WA) are the lead sponsors of this legislation.

OFFSHORE OIL AND GAS

Opponents of oil and gas development in sensitive coastal waters had several successes this Congress. First, early in 2001, Senator John Kerry (D-MA) expanded the reach of the annual moratoria on federal funding for pre-leasing activities as part of the Department of Interior appropriations bill for oil and gas development off the coasts of states like Florida and California.

A few months later, on June 21, 2001, the House approved the **Davis-Scarborough amendment to the House Interior bill (H.R. 2217) that stopped the Bush administration's plan to drill for oil and gas in a massive area (the Lease Sale 181 area) of the Eastern Gulf of Mexico**. The proposed drilling area covered almost 6 million acres in the Eastern Gulf of Mexico, extending to within 17 miles of Florida's northwest coast—famed for its white sand beaches. Because of its implications for the environment and tourism, virtually every elected official in Florida opposed the lease sale, including the Republican Governor Jeb Bush.

In response, Interior Secretary Norton announced that the administration would only seek to allow drilling on 1.5 million acres in the Gulf, in an area about one-quarter the size of the original lease sale, located primarily off the coast of Alabama rather than Florida. However, drilling in the new proposed area still poses threats to Florida and other coastal states from routine spills and the potential for major oil spills.

During debate in the Senate, Senator Bill Nelson (D-FL) offered an amendment to the Interior Appropriations bill to block the administration's compromise drilling plan. The amendment would have prohibited the use of funds in the Interior Appropriations bill to execute a final lease agreement for oil and gas development rights in the entire Lease Sale 181 area, effectively stopping the administration from going ahead with its new plan for development. The amendment was rejected on July 11, 2001, however, by a vote of 67-33. This left the door open for the administration to pursue its scaled-back plans for development off the coast of Alabama, and potentially in the rest of Lease Sale 181 in the future.

In a positive development for our coasts, Representative Lois Capps (D-CA) led the effort in the House to protect the California coast from the development of 36 oil and gas leases permanently; Senator Barbara Boxer (D-CA) followed suit in the Senate. Finally, a vigorous debate ensued over oil and gas drilling in the Great Lakes, when Representative David Bonior (D-MI) and Senator Debbie Stabenow (D-MI) led the charge to ban new oil and gas drilling in the Great Lakes for 2 years and require the Army Corps of Engineers to study the environmental impacts of oil and gas drilling, including their potential effects on the lakes' shorelines.

SPECIAL PLACES

A House bill that would undermine the ability of presidents to designate new monuments made it through the partisan House Resources Committee to the House floor, but it proved to be so controversial that its sponsor—Representative Mike Simpson (R-ID) pulled the bill, the **National Monument Fairness Act (H.R. 2114)**, abruptly from floor

debate. Democrats on the committee opposed it because it would restrict quick presidential action to protect significant and environmentally sensitive public lands and resources as national monuments. The bill would require congressional consent within two years after a president designates any national monument over 50,000 acres, something that could be difficult to get depending on the political landscape at the time.

Representative Nick Rahall (D-WV) introduced the **Native American Sacred Lands Act (H.R. 5155)** to ensure that Native American tribes can protect their sacred lands from development. This bill would require that the federal government consult with tribes before creating policies that affect these lands. One such high profile case involves a site sacred to the Quechan Indian Nation of Ft. Yuma California and Arizona, where the Glamis Mining Company wants to build a huge gold mine. The proposed Glamis project would mine and leach 300 million tons of waste rock and 150 million tons of ore to produce a small amount of gold. The Clinton administration denied the request for a mining permit on the grounds that it violated the California Desert Protection Act and the Federal Land Policy and Management Act. Bush's Interior Secretary Gale Norton reconsidered that decision, approving the mine. "Secretary Norton reversed the decision without consultation with our tribe," said the president of the Quechan Indian Nation. "She disrespected our people, our tribal government." In another step to block Interior's go-ahead on this mine, Senator Barbara Boxer (D-CA) obtained agreement in the Senate to attach a provision to the Interior funding bill to prevent the Bush administration from processing that mine permit. Action on the Interior bill stalled completely in the Senate late in 2002.

Another bill offered by Representative Mike Simpson (R-ID), **H.R. 601, which would ensure hunters have access to the Craters of the Moon National Monument**, was approved by the House after it was modified to gain majority support. The original version of this bill would have abolished the new Craters of the Moon National Monument in Idaho. On May 1, 2001 however, the House unanimously passed a substantially improved version of H.R. 601 that, as amended, would redesignate a portion of the Craters of the Moon National Monument in Idaho as a preserve where traditional hunting would be allowed. The final version of this bill reflected an agreement that the Clinton administration had reached with the local community, and it ensured that the Interior Department would retain oversight of hunting in the preserve. On August 1st, 2002, the Senate approved the measure by unanimous consent. The president signed this bill into law on August 21, 2002 (Pub. L. No. 107-213).

There were a few important bills to increase the amount of public lands permanently spared from development and other damaging activities. The Alaska Rainforest Conservation Act, America's Redrock Wilderness Act, and the Arctic Refuge Wilderness Act would each protect crucial public lands—the Tongass National Forest, Utah's Redrock Wilderness, and the Arctic Refuge. All of these bills are citizens' wilderness proposals for millions of acres of public land. While they will not succeed without a multi-year fight, each has already won the support of well over 100 co-sponsors in Congress.

WILDLIFE AND HABITAT

A major theme in the 107th Congress was the attempt to use the specter of war as an excuse to trample environmental laws. Nowhere was it more apparent than in the continual refrain from the military forces that they should not have to comply with environmental laws. At the request of the Department of Defense, House Republicans introduced a provision in the **Defense Authorization bill (H.R. 4546)** that would exempt the Defense Department from complying with the Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), Resource Conservation and Recovery Act, Superfund, Marine Mammal Protection Act, and the Clean Air Act.

The final House bill included only the ESA and MBTA exemptions, along with a provision that would reduce protections for Utah wilderness lands and another that would harm endangered species habitat in southern California by allowing a toll road to be constructed. Environmentalists argued that existing laws already provide adequate flexibility for the Defense Department to seek exemptions on a case-by-case basis. The Senate version of the bill (S. 2514) did not contain these exemptions. In an important victory, Representatives Nick Rahall (D-WV), the ranking Democratic member of the House Resources Committee, and John Dingell (D-MI), the ranking Democratic member of the House Energy and Commerce Committee, joined with Senate Democrats in conference committee to defeat all of the House-passed provisions except the military exemptions to the MBTA.

The ESA also came under attack in the House Resources Committee. On July 10, 2002, along a nearly party line vote, the House Resources Committee approved **Sound Science for Endangered Species Act Planning Act (H.R. 4840)**, a bill introduced by Representative James Hansen (R-UT) that would require additional scrutiny of data when extending extra protection to an endangered species, but not when withholding extra protection. Environmentalists opposed the bill, along with two others ((**Sound Science Saves Species Act of 2002 (H.R. 3705)**) sponsored by Representative Richard Pombo and **Sound Science for Endangered Species Act Planning Act (H.R. 2829)** sponsored by Representative Greg Walden (R-OR)) because they would modify the ESA, making it harder for the government to protect endangered and threatened species. These bills would impose a higher burden on federal agencies to obtain additional scientific information on species and mandate additional review of that data, resulting in delay and additional hurdles before protections could be put in place. Largely due to their controversial nature, these bills never made it to the House floor.

The 107th Congress took very little action on the **Conservation and Reinvestment Act (CARA) (H.R. 701 and S. 1328)**. Senator Mary Landrieu (D-LA) and Representative Don Young (R-AK) introduced identical bills intended to divert nearly \$3 billion of federal revenue from offshore drilling revenue in dedicated funding for conservation purposes such as coastal restoration, state wildlife programs, historic preservation, urban parks and forests, and endangered species. These bills, however, were drafted in such a way that they would allow conservation funding to be used for environmentally damaging infrastructure development projects. Moreover, they encourage offshore oil and gas drilling in coastal Alaska.

Even though the Senate took no action on S. 1328, Senator Mary Landrieu convinced Senator Tom Daschle (D-SD) to include a modified version of this legislation in his energy bill (S. 517). This provision would authorize her state, Louisiana, along with other coastal states that allow oil and gas leasing off their shores, to receive federal offshore oil and gas revenues for projects related to the security of offshore energy, public service, or transportation infrastructure facilities. This provision was drafted so broadly that it failed to ensure that offshore drilling revenues would not be used to fund projects that could damage the environment, such as coastal roads, jetties, and other development infrastructure. Because funding for this program would be diverted from funds reserved for environmental purposes, any use of this money should be for environmentally beneficial projects. As well, this provision would encourage more offshore oil and gas drilling off the coast of Alaska because it ties the allocation of revenues that Alaska and its local coastal governments receive to new outer continental shelf activity. As revenues from OCS activity in the Gulf of Mexico begin to decline, pressure will escalate to open up more areas off Alaska's coastline to maintain a revenue stream.

Two amendments that never got enacted in the Senate farm bill in the Senate would have undermined important protections for wildlife and habitat. Senator Christopher Bond (R-MO) attempted to attach an amendment to the **Farm Security Act (S. 1731)** that would **allow waivers for farming activities from complying with virtually all environmental laws including the Endangered Species Act and the Clean Water Act.** His amendment, which was defeated by a vote of 54-43 on December 13, 2001, would have permitted the president to exempt any action implementing, interpreting or enforcing any federal environmental laws related to farming. The exceedingly broad language of the Bond amendment would have allowed waiver of even the most basic provisions of the Clean Water Act, the Clean Air Act and the Endangered Species Act, and laws regulating hazardous materials management, wetlands protection law enforcement, environmental impact statement preparation, and pesticide registration.

Sen. Gordon Smith (R-OR) considered an amendment to the farm bill that would have **allowed the use of federal crop disaster relief funds to pay farmers for implementing environmental law.** It lacked support, so it was never offered for a vote. This amendment would have created a precedent for paying farmers to comply with federal resource management plans that affect crop production.



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CHAPTER 3

WATER, COASTAL AND MARINE RESOURCES

Some 218 million Americans live within 10 miles of a polluted lake, river, stream, or coastal area. About 45 percent of the nation's assessed waters are unsafe for fishing and swimming or unable to support aquatic life—up from 40 percent in 1998. Despite the stark need to clean up the nation's coasts and waterways, most legislation in the 107th Congress aiming to do that faced such strong opposition that it stalled before floor consideration. Attempts to reauthorize the two main bills that guide agencies charged with protecting U.S. coastal areas and fisheries were blocked by actions taken by a small group of Republicans who tried to weaken current protections.

Even the Water Resources Development Act, which funds large water infrastructure projects in hundreds of congressional districts and usually sails through Congress, wobbled to a halt at the end of the second session. And a bill authorizing additional federal funding for a massive federal and state partnership to restore waterways in northern California and address the statewide allocation of water passed the Senate on the last day of the session but failed to garner enough support in the House. Many of these bills will likely resurface in the next session. Congress may also be under pressure then to consider legislation to reverse a series of administrative efforts to dismantle protections provided under the Clean Water Act, including the EPA's authority to regulate discharges into many wetlands across the country and to prevent the dumping of waste from mountaintop removal mining into streams.

ISSUES TO WATCH IN THE 108TH CONGRESS:

Oceans and Coastal Management: The nation's fisheries management law, the Magnuson-Stevens Act, is up for reauthorization. The debate over the reauthorization will need to address the fact that, under the current law, U.S. fish stocks are collapsing off both coasts, and fishermen are suffering the economic consequences.

Clean Water: The massive water infrastructure bill, the Water Resources Development Act, will likely move in the 108th Congress. The bill could provide important new funding for projects that use natural systems—such as stream buffers, greenways and wetlands—to keep pollution out of waterways, or it could instead continue the business-as-usual approach that contributes to worsening water quality across the country. Supporters of reforming the operations of the Army Corps of Engineers will also try to use this law to ensure that the Corps becomes more financially and environmentally accountable for its massive water projects. The issue of funding the implementation of a California water plan may also resurface, as will concerns that some versions of the bill could undermine the delicately crafted federal and state compromise plan. We may also see direct attacks on the reach of the Clean Water Act.

COASTS, OCEANS, AND MARINE SPECIES

Even though the authorization for several key programs expired, major legislation dealing with oceans, coasts, and marine species went nowhere in the 107th Congress.

For example, Representative Jim Saxton (R-NJ) offered the **Coastal Communities Conservation Act of 2001 (H.R. 897)**. This bill would reauthorize a popular federal grant program to states that helps them better manage their coastal resources. The bill died in the House after Representative Don Young (R-AK), the chairman of the House Transportation and Infrastructure Committee with jurisdiction over the bill's most significant provision: funding to reduce polluted stormwater runoff. Representative Young opposes this program designed to address the biggest water quality problem for shorelines and coastal ecosystems. For instance, the number of shellfish beds that have been closed for harvesting due to coastal pollution increased 40 percent between 1966 and 1990. As a result of Young's objections, the House made no progress, even though the Senate passed its version—the **Coastal Zone Enhancement Reauthorization Act of 2001 (S. 328)** sponsored by Senator Olympia Snowe (R-ME) and Senator John Kerry (D-MA)—several times over the last three years.

Two major fishing and marine mammal laws expired in 2002. But the House Resources Committee could only pass reauthorization bills that would have weakened current environmental protection, and the strong opposition to these changes ultimately blocked these bills. First, in July of 2002, the House committee approved by a vote of 23-17 Representative Gilchrest's bill, the **Magnuson-Stevens Act Amendments of 2002 (H.R. 4749)**, to reauthorize the primary law governing fisheries management in the United States, the Magnuson-Stevens Fishery Conservation and Management Act.

Environmentalists opposed the Gilchrest bill as it emerged from committee because it contained language allowing destruction of important fish habitat, undermining protections for overfished stocks and relaxing rules requiring the reduction of bycatch (the catching, killing, and discarding of non-target ocean wildlife). Additionally, several studies contained in the bill would have blocked efforts to establish fisheries observer programs and efforts to move towards ecosystem-based management. Finally, the bill's legislative standards for individual fishing quota programs failed to ensure that conservation is enhanced and fishermen and fishing communities protected.

The full Resources Committee rejected a strengthening amendment to the Gilchrest/Magnuson bill introduced by Representative Nick Rahall (D-WV) that would have included provisions from Representative Sam Farr's (D-CA), the **Fisheries Recovery Act of 2001 (H.R. 2570)**, a bill that was widely supported by the environmental community. The bill would have required that bycatch be avoided, fish habitat be protected from damaging fishing practices, ecosystem-based management be phased in, fisheries observer programs be established, cooperative fisheries data be collected and a gear development program be implemented.

One of the key issues for legislators related to Magnuson reauthorization is the 2002 expiration of a moratorium banning Individual Fishing Quotas. These quotas divide up the total allowable harvest of fish among fisherman before the fish are caught. Some members of Congress want to extend this moratorium, while others want it to expire. The environmental community generally supports the expiration of the moratorium if environmental standards and criteria are put into place to ensure that, when these allocations are made, environmental impacts are considered. Moreover, these quotas should not be considered a property right—they are merely a license to fish—and they should only be awarded to fishermen who fish in the most sustainable fashion.

Also in July of 2002, a House Resources Subcommittee approved **a bill to reauthorize the Marine Mammal Protection Act (MMPA) (H.R. 4781)**, introduced by Representative Wayne Gilchrest (R-MD). The bill as introduced did not change current legal definitions and standards that protect marine mammals, but House Resources chair James Hansen (R-UT) indicated that he would amend it to allow the Department of Defense to argue its activities should be exempt from the law. The Defense Department proposed to limit the circumstances under which activities potentially harmful to marine mammals could be reviewed or restricted.

The Senate Ocean and Fisheries Subcommittee, led by Senator John Kerry (D-MA), took a more reasoned and slower approach to addressing the reauthorization of both these important laws, and did not take any committee action.

At the end of 2002, a fishing controversy erupted in Massachusetts over a court decision that nearly closed down the New England groundfish fishery. At issue was how much and how fast to cut fishing to restore groundfish populations in New England. In addition, there were allegations that surveys needed to determine the numbers of groundfish may have been faulty because the trawl nets were allegedly uneven, allowing some fish to escape. This may have led to undercounting the population. The New England delegation had a wide range of responses. Senator Kerry (D-MA) pushed NMFS to resolve this issue by taking administrative action to provide more time for the

fishermen to meet the new restrictions. Senator Susan Collins (R-ME) called for legislative action to prevent NMFS from issuing new groundfish regulations for two years the **Fisheries Management Fairness Act (S. 3110)**. Others, such as Representative Barney Frank (D-MA) and Representative Billy Tauzin (R-LA) circulated language that would have extended the current legal deadlines for rebuilding collapsing fisheries across the country—a proposal that would have drastically weakened current protections for fish. Efforts to extend this legal deadline ran out of steam as opposition to a legislative fix, combined with the desire of the members to attach additional problematic provisions, held up its progress.

In another end of session drama, Representative Barbara Cubin's (R-WY) bill to promote the development of ill-considered offshore energy projects (**H.R. 5156, To amend the Outer Continental Shelf Lands Act**) got new life as she was offered a larger role in the energy conference committee. Under the guise of promoting renewable energy resources, the bill would grant unprecedented unilateral jurisdictional authority to the Minerals Management Service (MMS) over all future permitting and rights-of-way for a broad range of industrial activities in our federal waters offshore. The bill lacked the appropriate siting and mitigation measures. It also failed to ensure adequate agency and legislative oversight for proposals such as offshore wind and wave energy projects, and aquaculture farms in coastal waters. And it died quietly with the demise of the larger energy bill.

It is important to note that in 2001, the FY2002 House Departments of **Commerce, Justice, and State appropriations bill (H.R. 2500)** included a legislative rider that **hindered the federal government's ability to develop and better manage federal marine protected areas (MPA) programs**. MPAs are zones where certain activities, such as fishing or resource extraction, are prohibited, either temporarily or permanently to protect marine environments and species. The language could have undermined the government's ability to rebuild fish populations, protect marine wildlife, support scientific research and restore ocean habitats. The House language was replaced by acceptable Senate language in the final version of the bill, and it was not seen in 2002.

A bill to address problems created by invasive, or non-native, species on public lands was considered by the House Resources Fisheries Subcommittee. Representative Nick Rahall's (D-WV) **Species Protection and Conservation of the Environment Act (SPACE) (H.R. 3558)** would establish federal-private partnerships to combat the spread of invasive species, which often crowd out species native to an area.

WATER INFRASTRUCTURE

Although committees in the House and Senate approved biennial water infrastructure legislation, neither body could muster support for enactment. The major sticking point was a dispute over whether to extend labor protections to states that receive federal money. In addition, several lawmakers were hoping to offer amendments to reform the Army Corps of Engineers' management structure in ways to ensure that the projects conducted by the Corps are more fiscally and environmentally sound.

On May 16, the Senate Environment and Public Works Committee approved the **Water Investment Act of 2002 (S. 1961)** by a vote of 13-6. This bill, which was introduced by Senators Bob Graham (D-FL), Jim Jeffords (I-VT), Bob Smith (R-NH), John Warner (R-VA), and Michael Crapo (R-ID), would have authorized \$35 billion in new water infrastructure funding over five years for federal grants to states for their State Revolving Fund (SRF) programs. The states could then make low-cost loans to local communities to repair and improve drinking water, wastewater, and stormwater systems, as well as to protect drinking water sources and prevent polluted runoff at its source.

Environmental groups sought to ensure that the bill provided incentives for states and cities to fund water quality projects that are good for the environment, such as stream buffers, wetlands restoration, and stormwater controls. Environmentalists fought to prevent the funds from supporting sprawl or noncompliance with environmental regulations. The committee approved an amendment from Senator Harry Reid (D-NV) that would create a grant program to help small public drinking water systems comply with new environmental regulations, in addition to an amendment from Senator George Voinovich (R-OH) that would reauthorize a wet-weather grant program to help remedy sewage overflows. The committee also accepted amendments from Senator Ron Wyden (D-OR) to make funding available for water conservation projects and to provide loan-forgiveness for projects that address pollution runoff.

On October 7, Representative Don Young tried to move the House counterpart, his \$3.6 billion bipartisan water projects bill, the **2002 Water Resources Development Act (H.R. 5428)** to the floor for a vote without allowing debate or amendments. Members on both sides of the aisle, led by Representatives Wayne Gilchrest (R-MD), James Oberstar (D-MN), and Earl Blumenauer (D-OR), opposed efforts to limit amendments on this bill, because members who want to reform the management of the Army Corps of Engineers would be prevented from doing so.

Despite an end of the session flurry, another big water bill to reauthorize the massive state and federal program known as CALFED to supply water to California's Bay and Delta region in Northern California and to restore the area's streams for fish also ran out of steam. Water flowing through the delta of the Sacramento and San Joaquin rivers into the San Francisco Bay not only provides drinking water for California's 20 million residents, but also habitat for 120 wildlife species, some of them endangered. For decades, water has been diverted from these rivers for agricultural and residential uses, threatening sensitive ecosystems and numerous species. CALFED was established in 1995 to restore the Bay-Delta ecosystem and develop an environmentally and economically sustainable water policy.

Senator Diane Feinstein (D-CA) led the effort in the Senate to reauthorize the CALFED program with her bill **CALFED Bay-Delta Authorization Act (S. 1768)**, with the active support of—and improvements offered by—Senator Barbara Boxer (D-CA). Environmentalists want to ensure that agricultural water use is not given priority over water needed for environmental restoration. On June 5th, the Senate Energy and Natural Resources Committee approved the bill, after adopting an amendment crafted through negotiations among Senators Feinstein, Jon Kyl (R-AZ), and Frank Murkowski (R-AK) to limit the program's duration and level of funding. On November 20, its last day in session, the Senate passed a different version of S. 1768, one which abandoned the improvements that Senator Boxer had achieved and would undermine the federal-state plan it was trying to fund. As time ran out, the House refused to act on it, or any of the other last minute Senate bills.

The House CALFED bill, the **Western Water Enhancement Security Act (H.R. 3208)** was developed by Representative Ken Calvert (R-CA), who sought to satisfy the demands made by a small group of politically active farmers for more water rights. His bill would have allowed the construction of new dams in California without appropriate review and given certain agricultural water users priority over water for the environment. Calvert's bill ran into strenuous opposition from Representative George Miller (D-CA), the key Democrat on California water, and Representative Hilda Solis (D-CA). Without Miller's support, Calvert's bill failed to generate enough votes to pass the House.

And in 2001, the biggest western water issue to face Congress involved the drought damage sustained by 1,400 Oregon farmers in the Klamath River Basin that spring. The Klamath-Trinity River system is the third largest river system on the West Coast. In April, the Bureau of Reclamation used water from the Klamath Basin to increase river levels—based on an Endangered Species Act (ESA) imperative—to protect the endangered suckerfish and Coho salmon, but refused to release water for irrigation. Fishermen and Native Americans, as well as environmentalists, applauded this decision to save the fish by upholding the ESA. Senator Gordon Smith (R-OR), however, proposed a **riders to the Interior Appropriations bill (H.R. 2217) to roll back fish habitat protections for the Klamath River Basin**. The Senate rejected the Smith amendment by a 52-48 vote on July 12, 2001. In the end, Congress adhered to the ESA and committed to the protected the endangered fish.

But the fight wasn't over. In February 2002, the National Academy of Sciences released a report indicating that the endangered fish did not need all the water that had been withheld for them. As a result, the Bush administration released all the water that the farmers demanded in 2002, resulting in the death of tens of thousands of fish. The Bureau of Reclamation blocked a proposed alternative that would balance the interests of the tribes, irrigated agriculture and six national wildlife refuges touted as the nation's crown jewels by the Department of Interior. And sadly, the summer of 2002 saw an unprecedented die-off of adult chinook and coho salmon in the lower part of the Klamath and Trinity River system, affecting Native Americans and commercial and recreational fishermen.

Of note as well was a provision in **S. 2711, the Indian Programs Reauthorization and Technical Amendments Act of 2002** that would codify an earlier agreement on the

Trinity River flows between the Hoopa and Yurok Indian tribes and then-Interior Secretary Bruce Babbitt. This agreement was blocked in court by litigation initiated by a powerful group of large agricultural interests called the Westlands Irrigation District. If enacted, it would provide more water and pave the way for more flexible operation of the Trinity River.

CLEAN WATER

During the summer of 2002, the Bush administration took several steps to unravel Clean Water Act protections. On May 3, the Bush administration finalized a change to Clean Water Act rules that would expressly allow dumping of waste from mountaintop removal coal mining into streams, rivers, lakes, wetlands, and other waters. Shortly thereafter, the administration appealed a federal court decision that would have blocked the Army Corps of Engineers from issuing any additional permits for disposal of mountaintop removal mining waste in these waters. These actions provoked a strong congressional response. The Senate Environment and Public Works Subcommittee on Clean Air, Wetlands, and Climate Change held an oversight hearing on June 6 to examine the impact of Bush administration changes to the Clean Water Act. And on May 8, Representatives Frank Pallone (D-NJ) and Chris Shays (R-CT) introduced **the Clean Water Protection Act (H.R. 4683)**, which would reverse the administration's water regulation changes.

Wetlands protection was another major water issue that started in the courts, but moved to the hill. On June 24th, Senator Russ Feingold (D-WI) and Representatives James Oberstar (D-MN) and John Dingell (D-MI) introduced the **Clean Water Authority Restoration Act (H.R. 5194 and S. 2780)**, a bill to reassert Army Corps of Engineers authority to regulate all waters of the United States. The bill would override a recent Supreme Court decision that limits the Corps' authority to regulate certain isolated wetlands and waterways. As wetlands continue to be filled and pollution discharges increase, the court's ruling would lead to greater flooding, degraded water quality and massive loss of wildlife habitat.

Another significant threat to the Clean Water Act arose in the form of the **Fishable Waters Act of 2001 (S. 678)** introduced in the House by Representative John Tanner (D-TN) (H.R. 325) and in the Senate by Senator Christopher Bond (R-MO). While protecting and restoring natural fish habitat is the ostensible goal of these bills, as written these bills could undermine Clean Water Act watershed protections for wetlands and other aquatic resources. They focus too narrowly on fish habitat, rather than taking a broader view of biodiversity and ecosystem health, including restoration of habitat for birds, amphibians, wetlands and other plants and animals. One of the most objectionable provisions is an exemption from Clean Water Act permitting requirements for discharges from "treatment" wetlands—wetlands that have received waste from confined animal feedlot operations (CAFOs), silviculture activities, or other pollution sources. Exempting such operations from Clean Water Act permitting requirements would allow increased discharges of animal waste and other pollutants into waters and wetlands, and would degrade water quality and habitat for fish and other aquatic species.

FARM BILL

Another significant clean water debate surrounded the passage of the massive farm bill in the summer of 2002. Agriculture Committee chair Larry Combest (R-TX) introduced the **Farm Security Act of 2001 (H.R. 2646)**, in the House. In the Senate, the farm bill politics were more complicated, with two competing proposals—one from the chair of the Senate Agriculture Committee, Senator Tom Harkin (D-IA) **Agriculture, Conservation, and Rural Enhancement Act of 2001 (S. 1731)** and one from his Republican counterpart, Senator Richard Lugar's (R-IN) **Farm and Ranch Equity Act of 2001 (S. 1571)** that professed different views of commodity and conservation funding. While both held promises of large increases for conservation funding over the final House numbers, the Harkin bill would also have offered improvements in farm conservation policy and significant increases in funding for energy efficiency audits for farms.

The final law (Pub. L. No. 107-171) granted billions of dollars in taxpayer subsidies to major producers of food commodities like wheat, soybean and sugar that are grown in ways that do great damage to the environment and water quality. In conference, environmentalists supported reforms to limit federal payments to farmers to grow these commodities and worked with Senator Richard Lugar (R-IN) to reallocate this money to farmers who will use it to protect rural farmland as wildlife habitat and stream buffers. These efforts were ultimately unsuccessful. On the positive side, the final bill allocated \$13 billion in conservation funding over a six year period and created a new conservation program, Senator Harkin's (D-IA) Conservation Security Program, which will provide incentives in the form of funding to encourage farmers who are already practicing sound conservation practices to continue these practices and to promote holistic approaches to conservation. The final bill also included an energy title that directs \$115 million for energy efficiency and renewable energy programs on farms, \$6 million to fund a federal purchase requirement for bio-based products, and \$75 million for biomass research and development.

Sadly, both the House and the Senate bill relaxed existing eligibility restrictions that prohibited large factory farming operations from using conservation funding from the Environmental Quality Incentives Program (EQIP) to subsidize construction of waste storage lagoons at large animal feedlots. These lagoons impair waterways and drinking water, and threaten public health. On February 6, 2002, Senator Paul Wellstone (D-MN) offered an amendment to keep these conservation funds from being used to encourage and subsidize more and larger factory farms. His amendment would have prohibited new and expanding Confined Animal Feeding Operations (CAFOs) from receiving funding to install animal waste facilities, would set a maximum payment limit. The Wellstone amendment, however, failed by a vote of 44-52 despite support from Senator Harkin.

During the earlier debate in the House, an amendment to the farm bill offered by Representatives Ron Kind (D-WI), Sherwood Boehlert (D-NY), John Dingell (D-MI), and Wayne Gilchrest (D-MD) (largely based on **Working Lands Stewardship Act of 2001 (H.R. 2375)**) to transfer \$1.9 billion a year from wheat, soybean, sugar and other commodity subsidies to farmers for farm conservation activities was rejected. This amendment would have increased farm conservation program funding for the

Environmental Quality Incentives Program (EQIP); increased acreage for the wetlands reserve program; set up a wetlands reserve enhancement program; and established a demonstration program to promote ecosystem- and watershed-based conservation. It also contained a crucial provision to retain the current law's prohibition on granting federal conservation funds to large, confined animal feedlot operations that have poor environmental track records for building waste management lagoons. Although 144 members cosponsored the amendment, it was defeated on the House floor by a 200-226 vote. The House also rejected an amendment by Representatives Dan Miller (R-FL) and George Miller (D-CA) to decrease sugar subsidies and apply the savings to Everglades restoration.

CHAPTER 4

PUBLIC HEALTH, TOXICS, AND URBAN SPRAWL

In the months following September 11, 2001, Congress took action to protect public facilities, ports, airlines, and other infrastructure from terrorism. Environmentalists sought and secured a provision in bioterrorism legislation that requires drinking water systems to assess and reduce their vulnerability to terrorist attack. But as the debate about Homeland Security unfolded, one major vulnerability—chemical facilities—remained unaddressed.

Senator Jon Corzine (D-NJ) authored a bill, the Chemical Security Act, to identify and reduce risks at chemical facilities. The bill passed unanimously out of the Environment and Public Works Committee in July 2002, but bowing to opposition from the chemical industry, the Bush administration and some members of Congress blocked efforts to incorporate chemical safety into the Homeland Security bill. The administration may offer a weaker proposal in the next Congress.

On another front, one of the fundamental underpinnings of the regulatory process—access to information—was weakened by a provision in the **Homeland Security Act of 2002 (H.R. 5005)** that restricts public access to information submitted voluntarily to the government by industry. Despite opposition from a broad coalition including environmental groups, labor, journalists, public health organizations, and trial lawyers to this provision, an amendment offered by Representative Janice Schakowsky (D-IL) to strike it from the House bill was defeated by a vote of 188-240.

This new law not only could block the government from releasing information about spills, fires, toxic releases or other environmental accidents to the public, it also allows companies to conceal this type of information from the courts and the public, prohibits its use in lawsuits seeking to force companies to comply with the law, and makes it a crime for government whistleblowers to disclose the information.

The original Senate version of the Homeland Security bill (S. 2452) offered a significant improvement over the damaging House bill but it was the House version that passed out of Congress. The Senate bill contained a compromise crafted by Senators Patrick Leahy (D-VT), Carl Levin (D-MI), and Robert Bennett (R-UT) that did not, as the final bill does, expand exemptions to the Freedom of Information Act, provide civil immunity or antitrust protection to help corporations evade accountability, preempt state or local public information laws, and criminalize disclosure of information.



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ISSUES TO WATCH IN THE 108TH CONGRESS:

Public Health Protections: The Superfund program is being starved of funds needed to clean up former hazardous waste sites across the country, and a legislative battle could ensue if the Bush administration continues to ignore the situation. In addition, one area that was not addressed in the Homeland Security bill was the vulnerability of chemical facilities to terrorist attacks; a bill addressing this omission is likely to be introduced, although the chemical manufacturing industry is expected to oppose any meaningful reforms.

Transportation: With the fate of nearly \$200 billion in federal funds on the line, the reauthorization of the Transportation Equity Act promises to be one of the most significant pieces of environmental legislation facing the 108th Congress. The transportation investment choices this Congress makes will have profound effects on development patterns, land use, and air and water quality for years to come.

TOXICS

In 2001, Senator Barbara Boxer (D-CA) and Representative David Bonior (D-MI) spearheaded the effort to fight the relaxation of strict arsenic standards in drinking water. Representative Bonior's amendment to the **VA-HUD Appropriations Act (H.R. 2620)**, countered efforts by the Bush administration to weaken the 10 ppb standard for arsenic in drinking water. Senator Boxer later authored a similar amendment (**S.A. 1219**) in the Senate requiring the EPA to adopt arsenic standards that protect the most "at risk" populations, such as children, seniors, and those suffering from chronic illnesses.

The Senate adopted the **Mercury Reduction and Disposal Act of 2001 (S. 351)**. This bill, sponsored by Senator Susan Collins (R-ME), would ban the sale of mercury thermometers and provide grants for a thermometer exchange program. Additionally, the bill would require manufacturers to provide clear instructions on handling of thermometers to avoid breakage and on proper cleanup in the event of breakage. This is significant legislation, as mercury is a persistent and toxic chemical that bioaccumulates in the environment, poisoning fish populations and animals that eat fish. The measure passed the Senate by unanimous consent on September 5, 2002 and was passed on to the House Committee on Energy and Commerce, who failed to act.

On March 21, 2002, Senators Hillary Clinton (D-NY) and Harry Reid (D-NV) introduced the **National Health Tracking Act (S. 2054)**, a bill to protect children's health by tracking data on local, regional, and national causes of chronic health conditions, including environmental hazards. This legislation was introduced to achieve a better understanding of "cancer clusters"—geographical areas that have higher than normal cancer rates due to a common environmental cause. Representative Nancy Pelosi (D-CA) introduced a companion bill, H.R. 4061, in the House. There was no action on this bill, other than hearings in the Senate.

On May 9, 2001, Senator Barbara Boxer (D-CA) sent her bill, **Children's Environmental Protection Act (S. 855)**, to the Senate Environment and Public Works Committee. The purpose of this bill was to protect children and other vulnerable subpopulations from exposure to environmental pollutants, to protect children from exposure to pesticides in schools, and to provide parents with information concerning toxic chemicals that pose risks to children. The bill did not move out of committee.

On the very last day of the Senate session, on November 20, 2002, the Senate approved a bill authored by Senators Jim Jeffords (I-VT) and Michael Crapo (R-ID) that would reauthorize the EPA's ombudsman (**Ombudsman Reauthorization Act of 2002, S. 606**). This position was created to respond to complaints administered by the Office of Solid Waste and Emergency Response, the office responsible for Superfund and brownfields programs. The reinstatement of the ombudsman arises in response to the EPA's attempt to quell voices of dissent from within. The House was not able to pass its version (H.R. 1431) in time so this legislation died.

FOOD SAFETY

In first session of 107th, Representative Richard Burr (R-NC) introduced legislation (**National Uniformity for Food Act of 2001, H.R. (2649)**) that would have nullified dozens of pro-consumer state and local statutes, regulations, and ordinances that regard food safety. For years, consumers have relied on state and local labeling requirements and safety standards to fill regulatory gaps left by the Food and Drug Administration. But the Grocery Manufacturers of America and the dietary supplement industry are pressuring Congress to exempt them from these consumer safeguards. Their goal is to avoid complying with any state and local consumer protections that are stronger than what the FDA requires - even in areas, such as dietary supplements, where the FDA has very limited authority to regulate and few resources to enforce existing protections. Senator Tim Hutchinson (R-AR) attempted to sneak the measure through as an amendment to the **Farm bill (S. 1371)**. The amendment was not adopted.

BROWNFIELDS AND SUPERFUND

One of the only clear environmental victories for the 107th Congress was the passage of **S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001**. President Bush signed it into law on January 11, 2002 (Public Law No. 107-118). This popular bipartisan law authorized \$200 million in federal funding for the rehabilitation of thousands of urban brownfields. The measure passed the Senate by a 99-0 vote, indicative of the overwhelming bipartisan support for this legislation.

On June 4, 2002, the House passed the **Brownfields Redevelopment Enhancement Act (H.R. 2941)** by a voice vote. The bill seeks to finance the cleanup of abandoned industrial sites. There was no Senate action on this bill.

URBAN SPRAWL

Shockingly perhaps, the most significant urban sprawl legislation of the 107th Congress came in the form of the **Farm bill (H.R. 2646 and S. 1731)**. Both the House and Senate farm bills dramatically increased funding for the Farmland Protection Program, which helps protect rural open space from encroaching sprawl, from \$35 million over 6 years to \$597 million over the same period.

In addition, the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee debated companion bills (**Water Quality Financing Act of 2002 (H.R. 3930) and the Water Investment Act of 2002 (S. 1961)**) that would have provided a much-needed boost in spending on water and sewer infrastructure. Many central cities and older communities face overwhelming repair and rehabilitation costs due to decaying water and sewer lines. Financial assistance to mitigate such costs would make activities like infill and brownfield redevelopment more feasible. However, water and sewer infrastructure can also be an incentive - and subsidy - for sprawling development. And urban runoff from the roads and parking lots that come with new sprawl is a huge water quality issue - a one-acre parking lot produces 16 times more runoff than an undeveloped meadow. The increase in paved surfaces leads directly to increased flooding, stream channel degradation, habitat loss, increased water temperature, contamination of water resources, and increased erosion and sedimentation. Neither bill reached the House or Senate floor for consideration.

The **Housing Affordability for America Act of 2002 (H.R. 3995)**, introduced by Representative Marge Roukema (R-NJ), included a provision that would require federal agencies to conduct an affordable housing impact analysis when proposing new rules. Environmentalists argued that the provision would prevent new environmental, labor, and public health rules from moving forward, and would not help low-income families. The bill could also have had a negative impact on smart growth initiatives by undermining emerging alliances between affordable housing and environmental advocates.

Efforts to eviscerate the application of the National Environmental Policy Act (NEPA) to transportation projects will have an adverse effect on efforts to control sprawl. In July 2002, the House quietly passed legislation that sharply curtails the right of citizens and communities to fight construction projects at the nation's largest airports. Under the guise of "streamlining," the House passed the **National Aviation Capacity Expansion Act (H.R. 3479)**, a bill to circumvent critical NEPA requirements for airport construction at America's 31 busiest airports by allowing construction permitting to proceed before consideration of more environmentally-sustainable alternatives to construction occurs. Although the Senate Commerce Committee considered similar legislation, **National Aviation Capacity Expansion Act of 2002 (S. 2039)**, the bill was not approved by the full Senate.

The environmental review process for new transportation projects came under attack as members of both chambers proposed legislation aimed at weakening the implementation of NEPA. Representative Don Young (R-AK) introduced the **Expediting Project Delivery to Improve Transportation and the Environment Act (ExPDITE) (H.R. 5455)** and Senator Max Baucus (D-MT) offered the **Maximum Economic Growth for America Through Environmental Streamlining Act (MEGA Stream) (S.**

3031), both of which would severely limit time periods and subject matters covered in environmental impact statements and environmental assessments required by NEPA. Many opportunities exist to improve the efficiency of the review process for highway projects, however, without sacrificing a thorough analysis of environmental consequences and meaningful public involvement.

In 2003, the Bush administration is expected to include language limiting environmental review requirements and public participation opportunities for highway projects in legislation reauthorizing the Transportation Equity Act for the 21st Century (TEA-21). This statute, which governs how transportation funds are spent, expires next year.



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CHAPTER 5

INTERNATIONAL ISSUES

Controversial actions by the White House contributed to polarizing both houses of Congress on key international environmental issues. During his first 100 days in office, President Bush blocked United States involvement in the Kyoto global warming treaty as part of his full-scale retreat from campaign promises to pursue a proactive agenda to combat climate change. Though both the House and Senate immediately passed legislation opposing the administration's stance on Kyoto, the United States was viewed as obstructionist in most major international environmental activities of the last two years, including the high-profile 2002 World Summit on Sustainable Development.

After several years of failed efforts, Congress passed legislation granting the president broad trade negotiating authority, and President Bush signed it into law. Environmentalists opposed the bill, fearing that it would allow foreign companies to challenge and weaken public health and environmental laws.

ISSUES TO WATCH IN THE 108TH CONGRESS:

Several large trade agreements that will need congressional attention are under negotiation, including the Free Trade for The Americas Agreement. Debate about what constitutes adequate protections for environment and public health laws is expected. Funding for several international environmental programs may be threatened by the president's budget proposal for FY 2004.

INTERNATIONAL TRADE AGREEMENTS

The most controversial legislation on international issues this Congress was the “**Fast-Track**” **presidential trade promotion authority bill (H.R. 3009)**. Unions, environmental and consumer groups joined forces in opposing this bill because the far-reaching legislation failed to adequately shield U.S. environmental law from action by foreign investors and did not provide meaningful protections for workers. Despite hard fought but unsuccessful battles to improve the environmental protections led by Representative Charles Rangel (D-NY) and Representative David Bonior (D-MI) in the House and Senator Kerry (D-MA) in the Senate, the House and the Senate passed slightly different versions of the bill in 2002—both still unacceptable to the environmental community. The president signed the bill on August 6, 2002.

The primary environmental concern with this legislation lies in its implicit promotion of flawed investor provisions contained in Chapter 11 of the North American Free Trade Agreements (NAFTA) that encourage “regulatory takings” claims by foreign companies, and threaten hard-won laws and regulations that protect our natural resources. The failure of NAFTA’s Chapter 11 to protect the sovereignty of national and state law has led to several multi-million, and often multi-billion, dollar lawsuits brought by foreign investors claiming profit loss from regulatory action—undermining the ability of states to promote public health and environmental protection and creating a chilling effect on future lawmaking. This legislation will do little to reduce the secrecy surrounding these claims, which currently take place before closed international tribunals without public input or scrutiny. Moreover, this law will do nothing to prevent countries from lowering their environmental standards to gain unfair trade advantages. It also fails to actively promote meaningful improvement in environmental protection and cooperation. These hard-fought objections made for an extremely close vote in the House on December 6, 2001, and the bill was gavelled through by the majority after attaining a one-vote margin of 215-214.

Passage in the House cleared the way for Senate action. Despite efforts by Senator John Kerry (D-MA) to improve the environmental and labor protections, the Senate approved an amendment by Senators Max Baucus (D-MT) and Charles Grassley (R-IA) (S. Amdt. 3401 to H.R. 3009) that contained the same problems from which the House bill suffered. Kerry’s amendment would have addressed the two biggest failings of the Baucus-Grassley bill by requiring that future trade and investment agreements not provide foreign corporations with greater rights than U.S. citizens have under the U.S. Constitution, and by extending Constitutional requirements to any new trade agreements. By doing so, this amendment would have prevented foreign companies from being able to undermine U.S. environmental laws. Despite these concerns, the Senate approved this bill by a vote of 64-34 in August 2002.

INTERNATIONAL TREATIES

Efforts on the Senate side to pass legislation to implement the international treaty phasing out the use of the 12 most toxic persistent organic pollutants (POPs) fell apart as Environment and Public Works Committee chair. Jim Jeffords (I-VT) was unable to reach agreement with the minority ranking member, Republican Robert Smith (R-NH). Jeffords’ legislation (**POPs Implementation Act of 2002, S. 2118**) would have ensured that any new chemicals added to the POPs treaty in the future would apply domestically without congressional approval, while Senator Smith’s bill (**POPS and PIC Implementation Act of 2002, S. 2507**) reflected the Bush administration’s position that these legislative changes should only apply to the current 12 chemicals. These chemicals included polychlorinated biphenyls (PCBs), DDT, as well as dioxin. Most are already banned in the United States or are in the process of being eliminated, but to implement the treaty, changes must be made to U.S. environmental laws, specifically the Toxic Substances Control Act and Federal Insecticide, Fungicide and Rodenticide Act.

FUNDING FOR INTERNATIONAL PROGRAMS

On the positive side, new funding for renewable power and energy conservation, first included in the FY 2002 foreign operations funding bill (H.R. 2506), was also included in the Senate version of H.R. 5410, the **FY 2003 Foreign Operations Appropriations (S. 2779)**. The Senate committee allocated \$175 million for a new program at the U.S. Agency for International Development (USAID) to promote energy efficiency, renewable energy, energy conservation, and greenhouse gas mitigation programs in developing countries. From the report, it is clear that the Senate appropriators expected “these funds to be used to assist developing countries to measure, monitor, report, verify, and reduce greenhouse gases and related activities. Like last year, the Committee required the president to submit a report detailing U.S. Government support for climate change programs, efforts to promote the transfer and deployment of clean energy and energy efficiency technologies, and other information.”

The Senate bill envisioned an active role for the USAID in promoting environmental progress globally. Noting a trend of increasing global threats to the environment, the Senate committee noted “reports of proposed policy, personnel, programmatic and funding changes which could weaken USAID’s expertise and role in environmental protection.” The Senate appropriators directed the agency to “refrain from such changes until USAID consults with the Committee on future plans concerning environmental protection and a mutually satisfactory approach can be reached.” The Senate also provided \$150 million to protect biodiversity in both terrestrial and marine environments, including activities to deter illegal logging in tropical rainforests. The House funding bill fell short by not sharing the Senate commitment to international environmental work.

Also contained in the foreign operations bill was an increase in the U.S. contribution for the Global Environment Facility, the world’s main funding mechanism for dealing with global environmental threats, from \$430 million to \$500 million over four years. This increase would help the GEF meet an expanding mandate that includes combating land degradation, encouraging energy efficiency, eliminating ozone-depleting chemicals and phasing out the world’s most toxic chemicals, among other environmental challenges.

DEBT FOR NATURE SWAPS

In August 2001, President Bush signed into law the **Tropical Forest Conservation Act Reauthorization (H.R. 2131)** authored by Representative Rob Portman (R-OH) (Pub. L. No. 107-26). This uncontroversial bill reauthorized a 1998 “debt for nature” swap program that allows other countries to apply debt payments to projects aimed at saving tropical forests.

In the first session, the House broke new ground in coral reef protection by passing **Coral Reef and Coastal Marine Conservation Act of 2001 (H.R. 2272)** introduced by Representative Mark Steven Kirk (R-IL). Modeled after the Tropical Forest Conservation Act, the bill would provide debt relief to developing nations that protect coral reefs. Under the bill, the president would have the authority to reduce developing countries’ debts to the United States if the debtor nations help pay for preserving, restoring, and

maintaining coral reefs. Nongovernmental organizations, with boards made up of private and public U.S. officials, would run the facilities funded by the program. The Senate took no action on this bill.



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CHAPTER 6

ASSAULTS ON THE REGULATORY PROCESS

The Bush administration is fundamentally undermining the regulatory process by centralizing administrative power in the White House and instituting a new set of procedures that slant decision-making against environmental protection. One of the principal means for tilting the playing field is the use of biased cost-benefit analyses, which overstate costs while underestimating benefits. Other procedures have trapped administrative rules in an endless review maze. The EPA's proposal to control sewer overflows, for example, was set aside for review at the beginning of the administration and has never been seen since.

Much of the administration's work in this area has been carried out by its political appointees (see the box on page 38 on Dr. John Graham). Congress, however, has also considered legislation to change the regulatory process, often in ways that would further jeopardize both environmental protections and the efficiency, openness and fairness of the process itself. Taken together, these changes threaten some of the most important health and safety safeguards on the books.

EPA CABINET ELEVATION

In 2001, there was a brief flurry of activity surrounding whether to elevate the Environmental Protection Agency to a cabinet level agency. Rep. Steve Horn (R-CA) introduced the **Department of Environmental Protection Act (H.R. 2694)**. Representative Steven Horn's (R-CA) bill, however, contained several objectionable provisions interfering with the agency's ability to protect the environment. Most troublesome was the bill's mandate that the EPA may only propose or finalize a rule if it follows an elaborate set of procedural requirements, including conducting biased risk assessments and comparisons. It further mandated a new legal standard requiring the EPA to make a detailed certification for each action. This certification requirement is burdensome and wasteful, duplicating an existing Executive Order in a way that could create more bureaucracy and less administrative flexibility, while overstating the costs and the underestimating benefits of propose rules.

In contrast to the Horn bill, Representative Sherwood Boehlert (R-NY) offered a bill (**Department of Environmental Protection Act (H.R. 2438)**) that would establish the EPA as a Cabinet agency without the extraneous provisions limiting or modifying existing authority. This "clean" elevation of the EPA could bring greater attention to important environmental issues within the Executive Branch.

Representative Vernon Ehlers (R-MI) proposed yet another approach with his bill to establish the position of **Deputy Administrator for Science and Technology of the Environmental Protection Agency (H.R. 64)**. On April 30, 2002, the House passed this bill to create this new EPA position. The concern with this bill was that the new science and technology deputy position could be used for political reasons to undercut the science conducted at the agency and skew its policies. Worse yet, this bill fails to identify and address the most serious scientific shortcomings at the EPA, including the fact that the agency continues to rely heavily on industry studies and industry-dominated external advisory committees in developing public health regulations.

SMALL BUSINESS “REGULATORY REFORM”

The only “regulatory reform” bill to become law this Congress was the Senate’s version of the **Small Business Paperwork Relief Act of 2001 (S. 1271)**—legislation to help reduce the federal paperwork burden on small businesses. The House bill (H.R. 327), like so many of the “regulatory reform” proposals, was unworkable as originally introduced and designed as much to cripple the regulatory framework as to improve it. The final law (Pub. L. No. 107-198), signed by President Bush on June 28, 2002, was non-controversial and passed both the Senate and the House unanimously - after the Senate eliminated the overly burdensome requirement included by the House that would have required federal agencies to compile annually a list of each piece of information they have requested from businesses. Because this requirement would be incredibly expensive and time-consuming, it could be virtually impossible for federal agencies to comply with it without severely disrupting their operations.

CLASS ACTION LAWSUITS

On March 13, the House passed a bill (the **Class Action Fairness Act of 2001 (H.R. 2341)**) that would shift most class action lawsuits from state to federal courts by a vote of 233-190. Environmental and consumer groups opposed the bill, sponsored by Representative Bob Goodlatte (R-VA), because it would make these lawsuits more difficult and expensive for citizens and consumers. H.R. 2341 has not seen action on the Senate floor.

THE WHITE HOUSE ATTACK ON THE REGULATORY PROCESS:

One of the chief architects of the administration's approach to regulatory policy is Dr. John Graham, the new head of the Office of Information and Regulatory Affairs in the Office of Management and Budget. A coalition of environmental, consumer, and labor groups opposed Graham's confirmation, warning that he would use his position as the gatekeeper for federal regulations to weaken health and safety protections. Graham was confirmed as administrator of the Office of Information and Regulatory Affairs by a 61-37 vote—receiving more votes than any other Bush nominee other than John Ashcroft.

These warnings have proved to be correct, as Graham has used the review process to delay new rules, lower the value ascribed to human life in cost benefit analyses, and draw a “hit list” of major existing rules, including those to clean up old power plants, improve water quality, and protect national forest roadless areas.

CHAPTER 7

THE ENVIRONMENTAL BUDGET AND ANTI- ENVIRONMENT RIDERS

With the adjournment of the 107th Congress, one of the biggest unsettled items of business is the FY 2003 budget. Congress may resolve this impasse in one of two ways; either could jeopardize environmental protections.

In concluding an extraordinary year on the budget, Congress decided to postpone until next year final decisions about FY 2003 appropriations. This postponement takes the form of a continuing resolution that runs until after the new Congress takes over next year. Congress must then decide whether to run the continuing resolution through the rest of the year, with funding remaining at FY 2002 levels or below, or to complete action on the remaining appropriations bills, most likely as a giant omnibus bill.

Each of these choices presents distinct threats to environmental protections. Under a continuing resolution, if the FY 2002 level of funding is extended for a year, any advances in environmental funding for FY 2003 that had been moving through Congress would be wiped out. If Congress decides to move an omnibus bill, however, it could become a vehicle for numerous anti-environment riders, while any funding increases would most likely require an agreement with the Bush administration.

The implications of the budget deadlock for the environment are great:

- Before budget negotiations reached an impasse, the trend in Congress regarding environmental decisions arising from the budget process was positive. Overall funding for the environment was on the rise in bills moving through both the House and Senate. And the number of anti-environment riders enacted into law, which declined by more than half from FY 2001 to FY 2002, was on track to decline even further in FY 2003.
- The budget impasse will increase the pressure on Congress to approve President Bush's proposed budget cuts, which would eliminate more than one billion dollars for pollution control, land conservation, and clean energy. Even a continuing resolution at FY 2002 levels would eliminate funding gains that had been moving through Congress.
- New attacks on the environment could still emerge in the final budget deal next year. Although the total number of anti-environment riders has declined, major controversies still remain, such as the disagreement over the administration's proposal to overcut national forests in the name of fire prevention. Furthermore, major budget packages such as omnibus bills or continuing resolutions have been used in the past as vehicles



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for last-minute riders that weaken environmental protections with little public scrutiny or debate. The next Congress may again rely on this maneuver.

ISSUES TO WATCH IN THE 108TH CONGRESS:

One of the big issues to be considered by the new Congress will be the effect of the continuing federal deficit on domestic spending. President Bush's budget already outlines the cuts he would like to see, reducing over the next five years environmental investments by \$14 billion, or nearly 9 percent, below the projected amount needed to maintain current projects. The chief items on the chopping block include water quality, enforcement of environmental laws, land conservation, and research and development of clean energy technologies. For more information on this issue, see NRDC's analysis "The Bush's Administration's Slash and Burn Budget" at: <http://www.nrdc.org/legislation/abudget03.asp>

OVERALL SPENDING TRENDS

Congressional action earlier this year on the Budget Resolution set the stage for the current budget impasse. After President Bush called for major cuts in domestic programs to help pay for an increase in defense spending and his tax cut, the House followed with a Budget Resolution that largely followed this outline. The Senate Budget Committee countered with a budget blueprint that gave a boost to domestic priorities with explicit support for key environmental priorities, but the plan was never brought to the Senate floor. The House and Senate Appropriations Committees subsequently set to work and, in the absence of binding budget totals, sought a more realistic domestic funding level than contained in the Bush budget.

This section analyzes trends in environmental spending in the budget at the time of the impasse. The purpose of this section is to consider where this Congress might have ended up if it had completed its work on the budget, and to contrast that with what would happen if a continuing resolution at FY 2002 levels were adopted, or worse, if the next Congress were to go back to the Bush budget proposal for FY 2003. In order to make this comparison, an average of the House and Senate level of funding in the bills currently pending will at times be used as a benchmark.

The Bush budget would make significant reductions in overall funding for environmental programs. Total discretionary spending for FY 2003 would be cut by \$1 billion or 3.4% from the FY 2002 level of \$29.3 billion. According to calculations by the White House Office of Management and Budget (OMB), these reductions would grow to a reduction of \$14 billion or nearly nine percent over five years when compared to the level of funding needed just to maintain current activities. (The real reduction is even larger by over \$2 billion when one considers the administration's proposal to make agencies pay certain retirement benefits out of their operating accounts without giving them a comparable increase in their budgets.) The chief items on the chopping block

included water quality funding, enforcement of pollution laws, land conservation to fight sprawl and preserve wildlife, and federal energy efficiency and solar energy.

The Bush administration has pointed to its proposed expansion of conservation programs in the Farm Bill as one of its major environmental accomplishments in the budget. However, even if one adds in mandatory spending such as the Farm Bill into the calculation, total environmental funding under the Bush budget still declines from the FY 2002 level at least by about \$900 million in FY 2003 (from \$30.9 billion to \$30.0 billion) and by \$4.7 billion or nearly five percent over the next five years. For more details on the Farm Bill, see Chapter 3.

One area in which the Bush budget would have made a valuable environmental contribution is its proposal to reduce funding for certain uneconomical and destructive Army Corps of Engineer projects. Unfortunately, Congress was ignoring the recommendation of the Bush administration and moving to increase project funding in both the House and the Senate.

In both the House and Senate versions of their appropriations bills, total FY 2003 funding for environmental programs (Function 300) was slated for an increase over FY 2002. The average of spending contained in the House and Senate bills as they stand to date would be about \$30.0 billion in FY 2003—an increase of nearly \$700 million (+2.3 percent) over last year and \$1.1 billion over FY 2001. Much of the increase is slated for fire prevention, suppression, and restoration on federal lands. (See Table 1)

Part of the increase in environmental funding for FY 2003 over last year would go to the EPA (about an average of \$173 million). Both the House and Senate expanded money for water quality work, in particular the State Revolving Funds for sewage and water purification plants. They both also increased support for cleanup of toxic waste sites under the Superfund program, although the expiration of the Superfund tax on polluters has resulted in an increasing shift of the cost of these cleanups to the taxpayer. The Senate also fully restored funding for EPA enforcement to the FY 2001 level, which the administration has propose for reduction for two straight years, while the House added back less than half of the money required to restore these reductions. (See Table 2)

Within environmental spending, one key priority is implementation of the new, dedicated trust fund for land conservation, the Land Conservation, Preservation, and Infrastructure Improvement fund (LCPII). This dedicated fund represents a five-year commitment by Congress to guarantee a growing stream of money for preserving wildlife, improving parks and other public lands, and fighting the effects of sprawl. For public lands both the House and Senate have largely adhered to the funding blueprint set out in the legislation two years ago, although the fate of funding for coastal programs is less clear. Therefore, the multi-year agreement on LCPII has largely held despite reductions proposed by the Bush administration and some tendency in Congress to erode the dedicated nature of the fund by siphoning off money for other purposes. (See Table 3)

In addition to environmental spending, funding for clean energy is also up in both chambers relative to the administration's request. As a result, combined federal research and development on energy efficiency and renewable energy was set to rise to about \$1,082 million compared to \$1,034 million in FY 2002. Within this amount, the House has passed higher levels for efficiency relative to the Senate, while the Senate has given

greater support to renewable fuels. Both bodies also have boosted conservation grants to the states—a Bush administration priority over FY 2002. (See Tables 4 and 5)

ANTI-ENVIRONMENT RIDERS

Congressional action on legislation this year has been marked by the adoption of fewer objectionable environmental riders in annual appropriations bills, the appropriations supplemental, or the defense authorization bill. In 2000, 70 anti-environment riders were proposed, with a total of 48 being enacted into law. Last year, 37 were proposed and only 23 signed into law—less than half enacted the previous year. This year, a total of 19 riders have been proposed, with two having been enacted so far and five subsequently rejected or corrected.

The Interior bill continues to be the focus of the most damaging riders. The House and Senate versions of the bill repeat in one form or another five objectionable riders from previous years, directed mostly at weakening forest protections. In addition, the Senate was considering on the floor an extremely objectionable proposal to increase the ability of timber companies to gain approval of environmentally destructive logging projects, even if they would increase the risk from fire.

One recurring rider dating back to FY 1991 that affects grazing on federal land would be made worse by expanding its effects. Although the rider would once again mandate grazing permit and lease extensions on Bureau of Land Management lands without environmental reviews being completed, it would for the first time extend this provision to the Forest Service. The Senate bill also incorporates a new, apparently retroactive extension of grazing permits for certain Forest Service permit-holders who previously got extensions under the notorious timber rider from the FY 1995 Rescissions Act. In addition, the House bill also includes a grazing provision that grants life estates to certain permit holders at Lake Roosevelt National Recreation Area in the state of Washington.

Finally, on the positive side the House and Senate both approved provision in the Interior bill that would actually improve environmental protection by restricting potentially damaging energy development off the coast of California.

SUMMARY OF OBJECTIONABLE ENVIRONMENTAL RIDERS IN FY 2003 APPROPRIATIONS BILLS

Agriculture

- Conservation Security Program: A House provision would limit the new program, authorized nationwide in the 2002 Farm Bill, to Iowa in FY 2003.

Energy & water

- Elk Creek: The House bill would block the most cost-effective way to protect endangered salmon and trout at the Elk Creek dam located on the Rogue River in Oregon.
- Devil's Lake (ND): The Senate bill would (1) authorize and appropriate \$5 million for the construction of an uneconomic and environmentally objectionable water project, and (2) attempt to weaken consultation requirements under the 1909 Boundary Waters Treaty between the U.S. and Canada. The Canadian Government is concerned that any outlet that this project would construct linking Devil's Lake with the Sheyenne River and the Red River, which flows into Canada, threatens not only to degrade water quality throughout these watersheds, but also could introduce damaging invasive species into the entire Hudson Bay basin.

Interior

- Wildland Fires: The full Senate is considering an amendment offered by Sen. Craig (ID) and others to accelerate hazardous fuels reduction, making it easier for the timber industry to log 10 million acres of Federal forest lands by prohibiting appeals and restricting the ability of private citizens to sue the Forest Service or BLM to block environmentally unsound logging.
- Grazing Reviews: House and Senate provisions would again, for the fifth straight year, mandate grazing on Federal lands without completion of environmental reviews.
- Special Grazing Provision: Extends livestock grazing within the Lake Roosevelt National Recreation Area, despite a 1990 National Park Service determination that grazing should not be allowed.
- Forest Service Strategic Planning: House and Senate provisions would bar funding to implement overdue long-range planning by the Forest Service, as authorized under the Forest and Rangeland Renewable Resources Planning Act (RPA). This is a repeat of a rider first enacted in FY 1998.
- Tongass Red Cedar: House and Senate provisions would again attempt to micro-manage the "allowable sale quantity" for Alaska red cedar grown in the Tongass National Forest (Alaska).
- Forest Plan Revisions: House and Senate language would repeat an FY 2002 rider that prohibited legal action being brought against the Forest Service if the agency missed the statutorily required 15-year deadline to update the management plan for a particular national forest.
- Stewardship Contracting: The House and Senate increase the authority of the Forest Service to implement more stewardship "end-result" pilot projects before the effectiveness or impact of similar pilot projects are known.

Veterans Affairs, Housing & Urban Development

- Tolerance Fee: The House would once more prohibit the EPA from implementing a final rule allowing them to collect from manufacturers the necessary costs of setting

limits on pesticides in food, as authorized by law. The preferable Senate provision requires the rule to be finalized, as long as it does not collect fees retroactively.

- **Dioxin Study:** The House appropriations subcommittee would have required the EPA to conduct a duplicative study of dioxin effects, a needless requirement that the full committee fixed by encouraging the agency to do any such assessment as part of a review process already underway.
- **Idaho Superfund Site Re-Study:** House report language would require a National Academy of Sciences study on whether there is a need to do cleanup in the Coeur D'Alene basin affecting Idaho and Washington. This study is motivated by the desire of the state of Idaho to delay or perhaps reduce cleanup at a major Superfund site.

FY 2002 Supplemental Appropriations

- **San Pedro River (Arizona):** House language would have exempted the Department of Defense (DOD) from provisions of the Endangered Species Act (ESA) that protect species in and along the San Pedro River—recognized as one of the world's eight "Last Great Places" by The Nature Conservancy. This provision was stricken from the final Supplemental conference report.
- **Black Hills (South Dakota) Wildland Fire Provisions:** This provision, which was included in the final conference report, needlessly restricted the rights of the public to challenge in the courts the environmental affects of a timber-harvesting project.

Department Of Defense Authorization

- **Migratory Bird Treaty Act (MBTA):** The final bill temporarily allows DOD to kill migratory birds and destroy their nesting habitat with a blanket exemption from the MBTA, as long as DOD unilaterally characterizes its actions as "military readiness activities" and until the administration can issue new, final rules governing these activities.
- **Endangered Species Act (ESA):** The House bill would have eliminated a vital ESA protection (critical habitat designation) when an "Integrated Natural Resources Management Plan—INRMP" has been developed. INRMPs have proven to provide inadequate species protection and there is no basis for reliance on them in lieu of critical habitat designations. This provision was not included in the final bill.
- **Wilderness:** The House bill attempted to reduce protections for pristine Utah wilderness administered by the Departments of the Interior and Agriculture; the provision would have allowed DOD to build roads, close public access, deny water rights needed to protect wildlife, and prevent revision of management plans. This provision was not included in final bill.
- **San Onofre (California):** The House bill would have directed the Secretary of Defense to grant an easement for the construction of a four-lane toll road through property owned by DOD in California's San Onofre State Beach park, destroying habitat critical to a number of endangered species. This provision was not included in final bill.

TABLE 1: The FY2003 Environmental Budget**Environmental Spending In FY2003 Appropriation Acts (Function 300)**

(Total discretionary budget authority in millions of dollars; numbers may not add due to rounding and exclude effects of Administration-proposed pension/annuitant health funding changes, which Congress disapproved)^{1,2}

	FY01	FY02	FY03			
	Final	Final	Request	House	Senate	Avg H&S
Department of the Interior (DOI) Land Mgt	5,509	5,529	5,464	5,902	5,535	5,719
Forest Service (USDA)	4,435	4,130	3,949	4,645	4,028	4,337
Subtotal, Land Management	9,944	9,659	9,413	10,547	9,563	10,055
Other DOI (Geological Survey/Minerals Mgt/Surface Mining)	1,325	1,378	1,316	1,389	1,395	1,392
Water Res. Agencies (Corps of Engineers/Bur. of Reclamation/Central Utah Project)	5,358	5,609	5,054	5,714	5,603	5,659
Environmental Protection Agency	7,937	8,079	7,621	8,205	8,299	8,252
Nat. Oceanic & Atmospheric Admin.—(DOC) ¹	3,106	3,259	3,128	3,128	3,350	3,239
Natural Res. Conservation Service (USDA)	874	962	1,000	1,020	1,043	1,032
Subtotal³	28,544	28,946	27,532	30,003	29,253	29,628
Miscellaneous:						
Other DOI (BIA/Dept. Offices)	312	330	339	339	339	339
Presidio Trust (CA)	33	23	21	21	21	21
Chemical Safety Board	8	8	8	7	8	8
Marine Mammal Commission	2	2	2	0	2	1
Advisory Council on Historic Preservation	3	3	3	3	3	3
Subtotal, Miscellaneous	358	366	373	370	373	372
Total, Function 300 Spending^{3,4}	28,902	29,312	27,905	30,373	29,626	30,000
FY02 total revised to subtract supplemental funding		28,478	27,9053	30,373	29,626	30,000

(1) House C-J-S bill not marked up yet. NOAA's House FY03 estimate is the Request level.

(2) DOE civilian energy spending appears in Function 270.

(3) Subtotal and total assume FY03 request for NOAA's House level, pending House action on the C-J-S-appropriations bill.

(4) FY02 includes about \$834 million in enacted supplementals for emergency firefighting and homeland security.

TABLE 2: EPA Appropriations, FY2003**FY2003 Appropriations For VA/HUD Agencies**

(Budget Authority in millions of dollars)

	FY02				FY03		
	Request	Conf.	Supp	Final	Request	House	Senate
Environmental Protection Agency (EPA)							
Science and Technology	641	698	90.3	788.3	670.0	714.6	710.0
Environmental Programs and Management	1,973	2055	39.0	2094.0	2047.7	2111.7	2140.5
Inspector General	34	34		34.0	35.3	35.3	35.3
Buildings and Facilities	25	25		25.0	42.9	42.9	42.9
Superfund	1,268	1270	41.3	1311.3	1272.9	1422.9	1272.9
Leaking Underground Storage Tanks	72	73		73.0	72.3	72.3	73.0
Oil Spill Response	15	15		15.0	15.6	15.6	15.6
State and Tribal Assistance Grants (STAG)		0.0					
Clean Water State Revolving Fund (SRF)	1,300	1350		1350.0	1212.0	1300.0	1450.0
Safe Drinking Water SRF	823	850		850.0	850.0	850.0	875.0
State/tribal program/categorical grants	1,056	1074	5.0	1079.0	1158.3	1172.9	1133.8
U.S./Mexico border projects	75	75		75.0	75.0	75.0	75.0
Alaska Rural/Native Villages	35	40		40.0	40.0	35.0	45.0
Brownfields assessment/revitalization	—	—	—	—	120.5	120.5	120.5
Home Stake (SD) Mine	—	—	—	—	8.0	0.0	—
Nat Comm De-Centralized Wastewater Demos	—	—	—	—	—	8.2	—
Remediation of above-ground leaking fuel tanks	—	—	—	—	3		
Needy Cities earmarked water/wastewater grants		344.0	0.0	227.6	140.0		
Subtotal, STAG	3,289	3733	5	3738.0	3463.8	3789.2	4009.6
Total, EPA	7,313	7903.2	175.6	8078.8	7620.5	8204.5	8299.1
Council on Environmental Quality (CEQ):	2.974	2.974	0	2.974	3.031	3.031	3.031
Chem Safety & Hazard Investigations Board:	7.6	7.85	0.00	7.85	7.85	7.85	7.85

TABLE 3: Interior Department Appropriations, FY2003**FY2003 Appropriations for Interior and Related Agencies**

(Budget Authority in millions of dollars; numbers may not add due to rounding)

	FY01		FY02	FY03	
	Final	Enacted	Request	House	Senate
Department of the Interior (DOI)					
Bureau of Land Management (BLM)	2,147	1,873	1825	2,111	1,880
Fish and Wildlife Service (FWS)	1,227	1,276	1,283	1,396	1,283
Endangered Species Act (ESA)	(121)	(126)	(126)	(130)	(132)
National Park Service (NPS) ¹	2,135	2,380	2,356	2,395	2,372
Subtotal, DOI Land Management Agencies	5,509	5,529	5,464	5,902	5,535
U.S. Geological Survey (USGS)	883	914	867	928	926
Minerals Management Service (MMS)	139	157	170	171	172
Office of Surface Mining (OSM)	303	307	279	290	297
Total, DOI (non-add)	9,387	9,496	9,451	9,969	9,627
Forest Service (FS)—USDA					
Total, Forest Service	4,435	4,130	3,949	4,645	4,028
Conservation Spending Category (CSC)²					
Interior	878	1,006	979	1,096	1,073
Forest Service	300	314	339	344	370
Total, CSC	1,178	1,320	1,318	1,440	1,443
Wildland Firefighting					
BLM	977	678	654	655	654
Forest Service	1,910	1,590	1,400	1,544	1,400
Total, National Fire Plan ^{3,4,5,6}	2,887	2,268	2,054	2,199	2,054
Department of Energy (DOE)					
Energy Conservation	813	913	902	985	922
(Federal Energy Efficiency)	(622)	(638)	(586)	(685)	(636)
(State Grants)	(191)	(275)	(316)	(300)	(286)
Fossil Energy Research and Development	432	583	475	664	641
Total, DOE in Interior Appropriations (non-add)	1,453	1,766	1,703	1,893	1,831
Total, Interior and Related Agencies (non-add)	18,892	19,168	18,939	20,414	19,347

(1) NPS FY02 total includes \$57 million in emergency supplemental funding; conference level was \$2,323 million.

(2) The FY03 allotment for public lands under the Conservation Spending Category (the Land Conservation, Preservation, and Infrastructure Improvement Fund) was supposed to equal \$1,440 million.

(3) FY01 includes \$1,243 million in contingent emergency funding, including \$625 million for suppression.

(4) FY02 includes \$400 million in contingent emergency funding, including \$300 million for suppression.

(5) On 8/29/02, Administration requested an additional \$825 million in FY02 emergency funding for suppression (\$626 million for the Forest Service and \$189 million for BLM). These amounts are not included above.

(6) Senate FY03 total includes \$400 million in FY03 contingent emergency funding for suppression (\$290 million for the Forest Service and \$110 million for BLM).

TABLE 4: Energy and Water Agency Appropriations, FY2003***FY2003 Appropriations for Energy and Water Agencies***

(Budget authority in millions of dollars; numbers may not add due to rounding and exclude effects of Administration-proposed pension/annuitant health funding changes, which Congress disapproved)

	FY01	FY02	FY03		
	Final	Conf.	Request	House	Senate
Army Corps of Engineers:					
General Investigations	161	154	102	144	148
Construction, General	1,716	1,716	1,416	1,831	1,745
Mississippi River Flood Control	350	346	281	342	338
Operations and Maintenance, General	1,898	1,875	1,914	1,990	1,956
Regulatory Program	125	127	144	134	144
Flood Control and Coastal Emergencies	0	-25	20	20	20
General Expenses	152	153	156	155	156
Subtotal	4,402	4,346	4,033	4,616	4,507
Formerly Utilized Sites Remedial Action Program (FUSRAP)	140	140	140	150	140
Total, Corps of Engineers¹	4,542	4,657	4,173	4,766	4,647
Bureau of Reclamation (DOI)					
Water and Related Resources	679	763	726	808	816
Non-Adds:					
Animas—La Plata (CO)	(2)	(16)	(33)	(33)	(35)
Northern Great Plains Rural Water (MT/SD)	(49)	(60)	(43)	(70)	(75)
Central Valley Project (CVP; CA)	(130)	(155)	(130)	(146)	(160)
Garrison (ND)	(25)	(27)	(26)	(28)	(29)
Loan Program	9	7	0	0	0
California Bay Delta Restoration	0	0	15	0	0
Central Valley Project Restoration Fund (CA)	38	55	49	49	49
Policy and Administration	50	53	55	55	55
Subtotal, Reclamation	776	878	845	912	920
Central Utah Project (DOI)	40	36	36	36	36
Total, DOI Energy and Water²	816	951	881	948	956
Grand Total, Water Resources (Corps + DOI)	5,358	5,608	5,054	5,714	5,603
Department of Energy (DOE)					
Energy Supply	661	667	694	634	815
Non-Adds:					
Renewable Energy Sources	376	396	407	396	448
Nuclear Energy Programs	260	250	250	214	214

TABLE 4: Energy and Water Agency Appropriations, FY2003 (continued)***FY2003 Appropriations for Energy and Water Agencies***

(Budget authority in millions of dollars; numbers may not add due to rounding and exclude effects of Administration-proposed pension/annuitant health funding changes, which Congress disapproved)

	FY01	FY02	FY03		
	Final	Conf.	Request	House	Senate
Environmental Cleanup					
Defense Environmental Restoration and Waste Mgt	5,235	5,243	4,544	4,544	5,407
Defense Environmental Mgt Clean-Up Reform	0	0	1,100	1,100	0
Subtotal (053),	5,235	5,243	5,644	5,644	5,407
Non-Defense Environmental Mgt	287	236	166	213	176
Uranium Facs Maint and Remediation	413	418	382	382	471
Subtotal (271)	700	654	548	595	647
Total, Defense and Non-Defense Env Mgt	5,935	5,897	6,192	6,239	6,054
Energy and Water Approps Bill Totals (non-add)³	24,512	25,660	26,163	26,541	26,786

(1) FY02 subtotal for the Corps of Engineers includes \$171 million in emergency supplemental funding for homeland security.

(2) FY02 subtotal for the Bureau of Reclamation includes \$30 million in emergency supplemental funding for homeland security, plus \$7 million in regular supplemental funding.

(3) FY02 total for the Energy and Water approps bill includes \$574 million in emergency supplemental funding for homeland security.

TABLE 5: Department of Energy Appropriations, FY2003***FY2003 Appropriations for DOE in Interior and Related & Energy and Water Bills***

(Budget authority in millions of dollars; numbers may not add due to rounding and exclude effects of Administration-proposed pension/annuitant health funding changes, which Congress disapproved)

	FY01	FY02	FY03		
	Final	Enacted	Request	House	Senate
Department of Energy (DOE) in Interior and Related					
Energy Conservation (272)	813	913	902	985	922
(Federal Energy Efficiency)	(636)	(638)	(586)	(685)	(636)
(State Grants)	(191)	(275)	(316)	(300)	(286)
Fossil Energy Research and Development (271)	432	583	475	664	641
Total, DOE in Interior and Related for Energy Cons. and Fossil Energy R&D	1,245	1,496	1,377	1,649	1,563
Department of Energy (DOE) in Energy and Water:					
Energy Supply (271)	661	667	694	634	815
Non-Adds:					
Renewable Energy Sources	376	396	407	396	448
Nuclear Energy Programs	260	250	250	214	214
Environmental Cleanup					
Defense Environmental Restoration and Waste Mgt	5,235	5,243	4,544	4,544	5,407
Defense Environmental Mgt Clean-Up Reform	0	0	1,100	1,100	0
Subtotal (053),	5,235	5,243	5,644	5,644	5,407
Non-Defense Environmental Mgt	287	236	166	213	176
Uranium Facs Maint and Remediation	413	418	382	382	471
Subtotal (271),	700	654	548	595	647
Total, Defense and Non-Defense Env Mgt	5,935	5,897	6,192	6,239	6,054
Total, DOE in Energy and Water for Energy Supply and Cleanup	6,590	6,564	6,886	6,873	6,869
Total, DOE Environmental Funding in Interior and Energy & Water	7,835	8,060	8,263	8,522	8,432