



# REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush Administration's Assault on the  
Environment*

*Authors*  
Robert Perks  
Gregory Wetstone

Natural Resources Defense Council  
January 2003



# REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

---

## 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 at [www.nrdc.org](http://www.nrdc.org).

---

## ACKNOWLEDGMENTS

NRDC acknowledges the generous support of Greg and Anne Avis, The Bauman Foundation, Mark Chandler and Chris Kendrick, Scott and Jenny Dietzen, Bob Epstein and Amy Roth, Lisa Gansky, Tom and Vicki Haggin, Nicole Lederer and Larry Orr, The John Merck Fund, the Orchard Foundation, The Pew Charitable Trusts, David Readerman and Rita Burgess, Steve Silberstein and Anne Lipow, Amy Slater and Garrett Gruener, Tides Foundation, the Tara Fund, a charitable vehicle of Kathleen C. Barry and Robert Burnett, and the Turner Foundation, Inc.

We would also like to thank the following NRDC staff for their review and expertise: Sharon Buccino, Hal Candee, Drew Caputo, Sarah Chasis, Chuck Clusen, Jon Coifman, Aaron Colangelo, Jon Devine, Geoffrey Fettus, Karen Garrison, David Goldstein, Linda Greer, Steve Gurney, Michael Jasny, Rich Kassel, Dan Lashof, Nathaniel Lawrence, Susan Casey-Lefkowitz, Amy Mall, Robbin Marks, David McIntosh, Elliot Negin, Barry Nelson, Stan Norris, Erik Olsen, Joel Reynolds, Daniel Rosenberg, Jennifer Sass, Jacob Scherr, Brad Sewell, Melanie Shepherdson, Lisa Speer, Nancy Stoner, Johanna Wald, John Walke, Wesley Warren, and Andrew Wetzler. Finally, this report would not be possible without the support of NRDC's members, who now number more than 500,000.

*NRDC Reports Manager*

Emily Cousins

*NRDC President*

John Adams

*Layout*

Julia Cheung

*NRDC Executive Director*

Frances Beinecke

*Cover Design*

Jenkins & Page

*NRDC Director of Communications*

Alan Metrick

Copyright 2003 by the Natural Resources Defense Council.

For additional copies of this report, send \$7.50 plus \$3.50 shipping and handling to NRDC Publications Department, 40 West 20th Street, New York, NY 10011. California residents must add 7.25% sales tax. Please make checks payable to NRDC in U.S. dollars.

This report is printed on paper that is 80 percent recycled, 60 percent post-consumer waste, processed chlorine free.

## TABLE OF CONTENTS

<b>Executive Summary</b>	<b>iv</b>
<b>Chapter 1: Energy Policy Follies</b>	<b>1</b>
<b>Chapter 2: More Power to Air Polluters</b>	<b>6</b>
<b>Chapter 3: Turning Down the Heat on Global Warming</b>	<b>11</b>
<b>Chapter 4: Watering Down the Clean Water Act</b>	<b>13</b>
<b>Chapter 5: Corporate Wealth Trumps Public Health</b>	<b>20</b>
<b>Chapter 6: Slacking off on Enforcement</b>	<b>26</b>
<b>Chapter 7: Slash and Burn Forest Policy</b>	<b>29</b>
<b>Chapter 8: Open Season on National Parks</b>	<b>33</b>
<b>Chapter 9: Wildlife Laws as Fair Game</b>	<b>36</b>
<b>Appendix I</b>	<b>45</b>
<b>Endnotes</b>	<b>52</b>



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

### EXECUTIVE SUMMARY

Although our landmark environmental laws are among the most popular and successful legislative efforts of the last 40 years, for the second year in a row they are under siege by the Bush administration. The timing could hardly be worse.

As scientists continue to bolster the case for prompt action to deal with pressing environmental challenges like global warming and deterioration of our oceans, America's environmental laws face a fundamental threat more sweeping and dangerous than any since the dawn of the modern environmental movement in 1970. Environmental protections have been challenged before, most notably in the James Watt era and in the Newt Gingrich Congress, but never through a campaign as far-reaching and destructive as the threat posed today by the Bush administration and the 108<sup>th</sup> Congress.

One of the most immediate results of the recent mid-term congressional elections has been an acceleration of the administration's virulent effort to weaken key environmental safeguards. In the short period since the election, federal agencies have announced seismic policy shifts in areas ranging from air and water pollution, to forest and wildlife protection, to stewardship of America's public lands.<sup>1</sup>

This report examines the continuing environmental retreats by the Bush administration over the past year, and especially the escalating assault in the few short months since the 2002 congressional elections. It is not a pretty picture. Over the past year environmental programs have been peppered with more than 100 weakening changes, affecting every program that protects our air, water, forests, wetlands, public health, wildlife and pristine wild areas. The following pages examine these actions. Here are a few of the most troubling examples:

- In late November, the Environmental Protection Agency (EPA) moved to weaken a fundamental compromise that traces back to original 1970 Clean Air Act. Under that law, new factories must install tough air pollution controls, while facilities already operating at the time of the law's enactment were allowed to continue largely uncontrolled until they expanded or modernized, at which time they would have to install state-of-the-art pollution controls. After 32 years, most of the exempted facilities still operating are finally due for modernization and tougher controls. But, by changing the so-called new-source-review program, the EPA seeks to let the nation's oldest and dirtiest power plants and refineries off the hook, allowing them to expand and modernize without installing updated pollution controls.
- Shortly before Thanksgiving, the Forest Service proposed to eliminate the fundamental requirement that forest management plans protect wildlife, and to reduce public involvement in forest planning. Only weeks later, in December, the Forest Service proposed major changes to rules that govern clearcutting in national forests. In the name of "healthy forests" and "fire prevention," nearly unlimited clearcutting would be allowed in pristine national forests. Long-standing mandates for public input and environmental review would be eliminated.

- In early January 2003, the EPA announced plans for new policies to greatly reduce the number of wetlands and waterways protected by the Clean Water Act. Only a month earlier, the EPA had issued new rules governing factory farms that failed to address the immense water pollution problems caused by millions of tons of untreated animal waste that routinely contaminate rivers, streams, and waterways. The rules seek to protect corporate agriculture interests from financial liability for illegal spills and groundwater contamination. These were only the latest in a deluge of assaults on the Clean Water Act that include an effort to exempt mining waste from regulation as a pollutant under federal law and a series of additional measures to undercut wetlands protection.
- Through a series of proposals over the past six months, the President's Council on Environmental Quality and other Bush administration agencies have moved to undercut the grandfather of environmental statutes, the National Environmental Policy Act (NEPA). NEPA requires public participation in key environmental decisions, and mandates the preparation of environmental impact statements for federal actions with potentially important environmental repercussions. In recent proposals, the Bush administration has sought to scaleback long-standing requirements for environmental reviews and public participation applying to highway construction, offshore oil development, and logging in our national forests.

It is clear that every federal agency with authority over environmental programs has been enlisted in a coordinated effort to help oil, coal, logging, mining, chemical, and auto companies and others promote their short-term profits at the expense of America's public health and natural heritage. The agencies include the Interior Department, the Environmental Protection Agency, the Forest Service, the Energy Department, and the Army Corps of Engineers.

This onslaught is being quietly coordinated through the White House. The White House Office of Management and Budget—or more precisely OMB's Office of Information and Regulatory Affairs—has been busy identifying environmental safeguards that industry finds most objectionable, strong-arming agencies to review and weaken these programs, and promoting changes in scientific and economic assumptions that twist the regulatory process to favor industry. The OMB "hit list" of targeted environmental safeguards assembled early in 2001 proved to be an accurate indication of the year's most destructive Bush administration environmental assaults.<sup>2</sup>

Although Congress entrusted the heads of the federal environmental agencies with authority to carry out environmental laws, the director of OIRA, John Graham, has effectively assumed that responsibility. He has routinely rejected agency actions that are fully consistent with environmental laws but do adequately reflect his industry orientation and conservative ideology.<sup>3</sup>

America's environmental laws have improved our quality of life in fundamental ways. They have brought us cleaner air in our cities and parks, cleaner water in our lakes and rivers, and lower lead levels in our children's blood. They have protected the

*Every federal agency with authority over environmental programs has been enlisted in a coordinated effort to help oil, coal, logging, mining, chemical, and auto companies and others promote their short-term profits at the expense of America's public health and natural heritage.*

*The Bush administration's assault rolls on even as polls continue to show overwhelming support for environmental protection.*

stratospheric ozone layer and, of course, preserved some of the last remaining wild places that make America special and saved threatened wildlife such as the bald eagle.

Yet the Bush administration's assault rolls on even as polls continue to show overwhelming support for environmental protection. Indeed, a November *New York Times*/CBS News poll found that 62 percent of the American public believes the federal government "should be doing more to protect our environment" while only 7 percent feel that it "should be doing less."<sup>4</sup>

The White House is fully aware of just how unpopular its "seven percent" agenda, and makes every effort to minimize the public's awareness. The administration routinely times its major environmental announcements to make it as difficult as possible for the news media to report on them, usually releasing information late on Friday afternoons. Especially important pronouncements are saved for big holidays when most reporters are unavailable.

For example, the EPA announced its most recent changes in clean air regulations on the afternoon before Thanksgiving and on New Year's Eve. In a further effort to keep the stories out of the news, EPA Administrator Christine Whitman did not make the announcements, nor did she attend the agency's press conferences. The administration's penchant for minimizing public scrutiny explains why Whitman also has declined invitations to defend her clean air actions on Sunday morning television news shows. To mask the real effect of its environmental proposals, the administration often uses misleading code words such as "streamlining" or "reforming," instead of "weakening," and "thinning" instead of "logging."

Some may argue that NRDC's characterization overstates the situation. After all, the laws under siege by the Bush administration are, for the time being at least, fully intact. But we cannot ignore the reality of what it takes for our laws to work to protect our environment. Laws themselves cannot change industry behavior without an effective infrastructure to assure that they are interpreted in good faith, monitored and fully enforced. In other words, the laws must be credible to be effective, and maintaining that credibility should be a central goal of federal agencies. But, if the agencies work to undermine, rather than bolster, the credibility of our environmental laws, these vital measures become mere words on paper, increasingly irrelevant to what polluters, developers, and mining and logging companies are required to do in the real world.

This is the threat we face today as agencies issue rulemakings and guidance that continually re-interprets laws to require less from industry, and as it becomes increasingly clear that the cop is off the beat where enforcement of our environmental laws is concerned. Penalties for violations of environmental laws have decreased precipitously since the Bush administration took office, with the amount of the average penalty dropping by more than half. The EPA's two most senior career enforcement officials resigned in 2002 after decades of service. Both cited the administration's refusal to enforce environmental protections as the reason for their departure.

Now, more than ever, our government should be addressing pressing problems such as global warming, sprawl, and the loss of wildlife and natural areas—not retreating on the environment. But, as described in the pages that follow, another year has passed during which the Bush administration has directed its time and energy to moving America backwards on our most basic environmental safeguards.

## CHAPTER 1

# ENERGY POLICY FOLLIES

Many of America's last remaining wild places are on the Bush administration's hit list for energy development. A top Bush official set the tone in March, telling energy industry executives at a Denver conference to expect speedier drilling approvals, fewer environmental restrictions, easier access to mineral deposits, and reduced royalty payments.<sup>5</sup> Despite the fact that industry enjoys access to the vast majority of public lands, federal agencies are committed to weakening safeguards designed to protect wildlife, cutting back environmental reviews, and relaxing environmental standards.

---

### WHAT'S MINED IS YOURS

In January, the administration granted a Kentucky coal company a reprieve to continue mining without a federally required reclamation bond. Addington Enterprises, one of the nation's largest coal companies, did not have adequate insurance to cover the cost of reclaiming mined areas—a violation of a federal law requiring companies to post bonds to ensure they can repair environmental damage from coal mining.

In an unusual move, the Interior Department gave the company a 90-day grace period to find reclamation insurance or risk having to stop its mining operations in Kentucky and Tennessee. After the grace period expired, the administration extended the deadline for three additional months. In lieu of a requiring a full cash bond, the Interior Department allowed Addington Enterprises to put up a cash bond of \$1 million to cover its liability—just pennies on the dollar of the actual cleanup cost. Deputy Interior Secretary Steven Griles—a former coal industry lobbyist—justified the extensions by citing national insurance troubles created by the September 11, 2001 terrorist attacks.<sup>6</sup>

---

### DRILL FIRST, ASK QUESTIONS LATER

Under the Bush administration, the Bureau of Land Management (BLM) has led the charge to rubber-stamp a wide variety of energy development projects on environmentally sensitive public lands.<sup>7</sup> In January, for example, the BLM gave preliminary approval to a company to drill eight natural-gas wells on federal land on the eastern end of the Upper Missouri River Breaks National Monument in Montana. The remote and spectacular landscape of the Missouri Breaks features sandstone cliffs that have been shaped by wind and water into twisting spires and towers. It is such a special place that President Clinton designated 47,000 acres along the 149-mile stretch of the Missouri River a national monument. Environmental groups filed suit against the BLM's action and are awaiting the court decision.



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

Also in January, the BLM gave WesternGeco—the world’s largest seismic exploration company—permission to look for oil on the Dome Plateau, a scenic 36-square-mile area near Arches National Park in southern Utah’s Redrock Canyon country. WesternGeco’s project would involve crisscrossing the landscape with nearly 50 miles of cable and heavy-duty “thumper” trucks to conduct seismic testing. NRDC and other environmental groups challenged the project, arguing that the agency failed to fully consider soil erosion, potential harm to wildlife habitat, and other environmental damage.

In March, the Interior Department’s independent Office of Hearing and Appeals agreed and halted the project. But in September, after the Interior Department lifted the stay, NRDC and other environmental groups filed suit to stop the project. In late December, environmentalists won a victory when a federal district court finally halted the project and ordered the Interior Department to complete a thorough environmental review and seek public input before allowing energy companies to explore for oil outside the park.

In August, the BLM decided that companies could expand oil and gas exploration beyond the boundaries of their existing leases at Canyons of the Ancients National Monument in Colorado. With about 85 percent of the 164,000 monument already leased for energy exploration, the BLM approved a seismic exploration project on nearly 1,900 acres of unleased monument land. A federal judge halted the project after environmental groups filed suit, arguing that further exploration would damage sensitive biological and archeological areas and set a precedent of increased energy development on prized public lands. The groups and the energy company subsequently settled the suit.

In October, the BLM approved a Houston company’s request to begin the largest oil and gas exploration project ever in Utah over the EPA’s objections and in spite of a record 25,000 public comments opposing the decision. The project would encompass more than 3,000 square miles of public land in the wild and remote Book Cliffs region, including seven areas proposed for wilderness designation. The EPA had concluded that the BLM’s environmental assessment lacked “sufficient information” to justify permitting the company, Veritas, to drill 5,000 60-foot deep holes in which to detonate seismic charges for mapping underground mineral reserves. The BLM also failed to consider the impact of heavy vehicles on wildlife habitat and desert soils. NRDC and other environmental groups have challenged the agency’s action in federal district court in Utah.

---

## **TAKING A POWDER**

The administration has made developing the Powder River Basin in northeastern Wyoming and southern Montana a cornerstone of its national energy plan. In late January, the BLM began considering a proposal for more than 51,000 new coal-bed methane wells in the Wyoming portion of the basin alone, which would be the largest project of its kind on federal lands. The plan would require 17,000 miles of new roads and some 20,000 miles of pipelines snaking across 200,000 acres of sensitive, largely undeveloped agricultural land. Nestled near the Bighorn Mountains, the region’s unique



landscape of craggy cliffs, rolling hills, and sweeping plains is home to many sensitive wildlife species.

In April, the Interior Department's Board of Land Appeals delivered a setback to the administration's plans when it ruled that the BLM's Wyoming field office had illegally granted three coal-bed methane leases in the Powder River Basin. The panel ordered the agency to conduct a new environmental study of coal-bed methane extraction, an environmentally perilous activity. Energy companies produce methane gas by pumping huge quantities of groundwater to relieve the pressure trapping the gas in coal seams.<sup>8</sup> Sometimes they retain the water in ponds, but the Fish and Wildlife Service has warned that these ponds could concentrate selenium at levels that are toxic to federally protected birds and fish.

Under the current plans for the Powder River Basin, companies would be allowed to dump most of the 1.5 trillion gallons of contaminated water produced by coal-bed methane drilling into the ground untreated, where it would eventually flow into the region's streams and rivers. In May the EPA gave its worst possible rating to the BLM's assessment of the proposal, calling it "environmentally unsatisfactory." The EPA concluded that if the polluted water were allowed to flow into rivers, the resulting rise in salinity levels would make the water unsuitable for crop irrigation.

The administration continued to push drilling in the Powder River Basin even after two top Bush officials came under fire for their close ties to the energy industry. In June, a Senate committee began investigating allegations that Deputy Interior Secretary Steven Griles may have violated government ethics rules. When he joined the administration, Griles signed two recusal memos promising not to participate in any action that would benefit former clients involved in energy development in Wyoming and other Western states. But in May, Griles intervened by trying to block the EPA's critical report on the environmental effects of coal-bed methane development in the Powder River Basin. Before joining the administration, Griles had been a consultant to several of the companies vying for permits to drill in the region.

Rebecca Watson, BLM's assistant secretary for land and minerals management, also signed a recusal memo specifically for Powder River Basin coal-bed methane projects when she joined the administration. Regardless, she lobbied the Republican governor of Montana to adopt weaker environmental standards favored by some of the corporate clients she used to represent as a partner in a Helena-based law firm.

*The administration continued to push drilling in the Powder River Basin even after two top Bush officials came under fire for their close ties to the energy industry.*

---

## **POLAR OPPOSITES**

Despite government studies indicating that oil drilling in the Arctic National Wildlife Refuge would harm polar bears, the Interior Department did an about-face in January. Two Interior Department Fish and Wildlife Service reports—from 1995 and 1997—concluded that oil drilling in the refuge could violate U.S. obligations under a 1973 international treaty to protect the world's largest land predators and their habitat. Although its staff is divided on the issue, the Interior Department declared that the bears could be adequately protected because of improvements in oil drilling technology.<sup>9</sup>

*It apparently pays to have a brother in the White House.*

The U.S. Geological Survey (USGS) also did a remarkable turnaround. In April it released a study concluding that opening the Arctic refuge to oil development would significantly harm wildlife. It found that drilling in the refuge coastal plain could especially threaten the Porcupine caribou herd, which uses that area for calving. The report, based on 12 years of study, showed that caribou are “particularly sensitive” to disturbances from oil exploration and other human development, and likely would avoid roads and pipelines. USGS scientists also confirmed that drilling activities could endanger other refuge wildlife, including polar bears, musk oxen, and snow geese.<sup>10</sup> Then, a week after releasing the study, the agency issued a two-page report at the request of high-level Interior Department political appointees disputing its findings that drilling would harm wildlife.

---

### **OH BROTHER WHERE ART THOU**

In May, the administration granted Florida Gov. Jeb Bush’s request to spare the Sunshine State’s beaches from the threat of offshore energy development. The Interior Department agreed to pay \$235 million to buy back oil and gas leases some 30 miles off the coast of Florida and mineral rights in the Everglades’ cypress swamps. Although his decision was widely viewed as a ploy to boost his brother’s reelection prospects, President Bush insisted that local interests and economic factors played a key role in his decision to protect Florida’s environment.

The Interior Department’s newfound respect for Florida beaches gave Californians hope that the administration would prohibit drilling off their coast as well. In January, the Interior Department’s Minerals Management Service had extended 36 undeveloped oil leases off the state’s central coast. Environmentalist sued, and in June, a federal district court ruled that the agency had acted illegally because it had denied state officials a role in the process. Instead of accepting the ruling, however, the administration appealed it. A few weeks later, Interior Secretary Gale Norton rejected California Governor Gray Davis’ request that the federal government buy back his state’s offshore oil leases.

President Bush’s gambit to open up the California coast to drilling ultimately failed, however. In December, a federal appeals court sided with environmental groups and the majority of Californians by upholding the lower court ruling—blocking the administration’s attempt to revive offshore oil exploration and drilling in federal waters near the California coastline without the consent of state officials.

---

### **BUYER’S REMORSE IN LAND SWAP**

In June, Interior Department officials agreed to exchange 135,000 acres of federal land, which has valuable petroleum and coal deposits, for 108,000 acres of scenic land owned by the state of Utah. According to a memo by the BLM minerals specialists, the Interior Department was offering to swap federal land “known to contain significant mineral resources” that it falsely claimed had “no or nominal mineral potential.”<sup>11</sup> They cited several places where federal officials handling the land swap had completely ignored or

substantially devalued significant oil, gas, and tar-sand deposits, even though the exchange was supposed to be of equal value to Utah and the federal government. In addition, the BLM specialists said their superiors prevented them from conducting mineral assessments before certain tracts were included in the exchange, and that entirely new tracts were added to the deal at the last minute by the negotiators without any evaluation. The land exchange, which amounted to a \$100-million taxpayer giveaway, is currently being investigated by the U.S. Office of Special Counsel.



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

## CHAPTER 2

# MORE POWER TO POLLUTERS

The Bush administration talks the talk about corporate responsibility, but it favors letting corporate polluters walk. In particular, the administration has pushed the EPA to ease federal air pollution regulations. When it comes to protecting America's air from pollution, the approach is all carrot, no stick.

---

### **POLLUTERS BREATHING EASIER**

Emissions from coal-fired power plants have long been linked to environmental and health problems, including tens of thousands of deaths every year. Yet this administration sees no need to curb those lethal emissions.

The Clean Air Act's new-source-review provision requires older, dirtier power plants and other industrial facilities to install modern pollution controls whenever they make plant upgrades or expansions. Under the guise of reform, the EPA proposed industry-friendly revisions to new source review in February that would allow tens of thousands of industrial facilities across the nation to increase their air pollution without cleaning up. In March, the EPA followed up by announcing formal rule changes aimed at discouraging new government lawsuits against polluters in favor of incentives for voluntary reductions in toxic emissions. Under the rule, older plants that expand or significantly modify their operations—without installing updated anti-pollution equipment—can no longer be sued for violating the New Source Review provision.

EPA officials insist that the proposed new rules would not increase air pollution, but the agency balked at repeated congressional requests to provide documentation or analyses to support the claim. However, two studies by an EPA consultant, commissioned and released by an environmental group in October, suggest that air pollution from oil refineries and factories would, in fact, increase under the administration's less stringent proposal.<sup>12</sup>

Despite growing concern that weakening new-source-review rules would worsen air quality and jeopardize public health, the administration decided to proceed with its plan to roll back federal air pollution rules for industry. In November, EPA Administrator Christine Whitman signed a package of final and proposed rules that would exempt some 17,000 of the country's biggest polluting facilities from having to install pollution-control equipment. The EPA's sweeping changes would expand loopholes to exempt old, coal-fired power plants, chemical plants, oil refineries, and other facilities from federal regulation. As expected, the changes also would make it harder for the federal government to sue companies for violating the new-source-review provision.

The administration's unprecedented decision to relax pollution restrictions prompted nine northeastern states to legally challenge the rulemaking, claiming it would undermine their efforts to combat industrial pollution and result in dirtier air. The coalition of New England and mid-Atlantic state officials is led by New York Attorney General Elliot Spitzer, who called the Bush action "a betrayal of the right of Americans to breathe clean, healthy air."<sup>13</sup>

---

## INDUSTRY FRIENDS IN HIGH PLACES

After an eight-month review ordered by the White House, the Justice Department concluded in January 2002 that the lawsuits filed by the Clinton administration against 51 power companies were fully consistent with the Clean Air Act. However, Justice Department officials cautioned that potential settlements of these cases would reflect the administration's planned changes to federal air pollution protections. The proposals also conceded that clean air violators likely would resist settlement discussions because the administration planned to weaken the law.<sup>14</sup> In other words, industry waited for a better deal from the White House—and it paid off.

EPA Administrator Whitman gave polluters free legal advice at a Senate Government Affairs Committee hearing in March when she suggested it would be unwise for utility companies facing air pollution lawsuits to settle with the government before a federal appeals court rules on a case involving the Tennessee Valley Authority (TVA). The TVA is one of nine utilities that have been sued by the federal government for failing to comply with the Clean Air Act's new-source-review regulations.

The topic of the hearing was the Bush administration's lax environmental record. Committee Chairman Sen. Joseph Lieberman (D-CT) had called Whitman to the hearing specifically to respond to charges that the White House was undermining the lawsuits against 51 polluting power plants and refineries initiated during the Clinton administration. After an eight-month review ordered by the White House, the Justice Department concluded in January 2002 that those lawsuits were fully consistent with the Clean Air Act. However, Justice Department officials cautioned that potential settlements of these cases would reflect the administration's planned changes to federal air pollution protections.

Waiting for a better deal from the White House paid off when Whitman tacitly discouraged industry from cooperating with federal efforts to limit pollution at their aging facilities. "If I were a plaintiff's attorney," she said at the hearing, "I wouldn't settle anything until I knew what happened with that [TVA] case."<sup>15</sup>

A few weeks later, a utility lobbyist—in lieu of an EPA representative—testified before Congress, defending the administration's proposed cuts to the EPA's enforcement budget. After the EPA declined an invitation to send a representative to a Senate Environment and Public Works subcommittee hearing, Scott Segal went instead. Segal chairs a lobbying group, the National Electric Reliability Coordinating Council, which represents the country's biggest polluting utilities, including TVA, Southern Co., FirstEnergy, and Duke Power. The EPA has pending lawsuits against those four companies for violating the new-source-review provision of the Clean Air Act.

*Whitman tacitly discouraged industry from cooperating with federal efforts to limit pollution at their aging facilities.*

---

## FROM CLEAR SKIES TO GRAY

In February, the administration unveiled its so-called Clear Skies initiative, a plan to encourage industry to voluntarily reduce emissions of sulfur dioxide, nitrogen oxide, and mercury. In fact, the plan would delay—by as long as 10 years—significant emission cuts now required under the Clean Air Act. Specifically, Clear Skies would allow three times more toxic mercury emissions than current law and would postpone forthcoming mercury limits by a decade. It would allow 50 percent more sulfur emissions—which cause acid rain and premature death from respiratory disease—than current law and push back cleanup standards from 2012 to 2018. Furthermore, it would allow hundreds of thousands of tons of additional smog-forming nitrogen oxide pollution, and delay its cleanup for a decade beyond current requirements.

*The White House did not ask the EPA to fully analyze the potential health benefits, if any, of the Clear Skies plan.*

The president's proposal is less stringent than an alternative EPA plan, which would reduce air pollution further and faster. Clear Skies, for example, does not address carbon dioxide, the leading global-warming pollutant. The EPA estimates that the amount of coal burned by electric power companies under Clear Skies actually would increase 7.3 percent over the next 20 years, triggering a 79-million-ton increase in coal use. Moreover, Clear Skies calls for scrapping existing federal air pollution laws—which the EPA projects would decrease coal use over the next 20 years—in favor a new emissions cap-and-trade system and voluntary measures to reduce mercury, nitrogen oxides, and sulfur dioxide. While Clear Skies would limit the amount of sulfur dioxide emitted nationally to three million tons by 2018, the EPA had argued that those emissions should be limited to two million tons by 2010.<sup>16</sup>

The EPA's analysis of its alternative plan concludes that it would prevent at least 19,000 premature deaths, 12,000 new cases of bronchitis, and 17,000 hospitalizations—and save about \$154 billion in annual health care costs by 2020.<sup>17</sup> The White House did not ask the EPA to fully analyze the potential health benefits, if any, of the Clear Skies plan.

---

## MAMMOTH POLLUTION

In August, the Interior Department reversed its finding that air pollution from a proposed coal-fired power plant in western Kentucky would significantly hamper visibility at nearby Mammoth Cave National Park. A senior Bush official at the Interior Department ordered the about-face at the behest of Peabody Energy Corp., one of the nation's largest coal companies and one of President Bush's major campaign contributors. Peabody wants to build a 1,500-megawatt plant, dubbed Thoroughbred, which would burn dirty, high-sulfur coal and emit 22 million pounds of sulfur dioxide into the skies over Kentucky every year. The plant would be located 50 miles west of Mammoth Cave, where the air is already more polluted than at nearly every other national park in the country.

Experts at the National Park Service concluded that Peabody's proposed power plant would hamper visibility at Mammoth Cave. But after a top Interior Department official and the head of the Park Service—both political appointees—met with Peabody executives, Interior Assistant Secretary Craig Manson sent a letter reversing the National Park

Service's position to Kentucky air quality officials. Manson's letter describes a deal cut by Peabody, Kentucky, and the administration that would allow the power plant's emissions to hinder visibility in the park for two years. After that, the state—not the federal government—would determine whether Peabody would be willing to cut emissions.<sup>18</sup>

*The EPA approved a plan in late October that will allow Louisiana oil and chemical companies to emit more carcinogenic and hazardous chemicals.*

---

## **CALIFORNIA'S CLEANER CAR PLAN BACKFIRES**

The federal government's longtime support for California's efforts to fight air pollution came to an end in October when the administration filed a friend-of-the-court brief supporting an auto industry lawsuit challenging the state's zero-emission vehicle rule. California is allowed to set air quality standards tougher than federal air pollution laws. Automakers, and now the White House, claim that the state overstepped its authority in revising its zero-emissions rule last year to include hybrid-engine vehicles. Traditionally, these hybrid autos have been defined in terms of fuel economy, which is determined solely by the federal government. California officials believe that the state's move to spur the advancement of cleaner-air technologies falls within its authority to set pollution standards under the Clean Air Act.

### **BACKING OFF OFF-ROAD**

Bad luck prevailed on Friday the 13<sup>th</sup> of September when the EPA finally issued new standards for off-road vehicle emissions and engine regulations. Off-road vehicles are especially dirty. The pollution from a single snowmobile, for example, can equal that of 100 cars, according to the EPA. Bowing to industry pressure, the administration weakened the rule it proposed in 2001.\*

The Office of Management and Budget forced the EPA to undertake an extensive cost-benefit analysis that critics say was biased toward industry's economic concerns at the expense of public health and the environment. As a result, the new rule does require significant reductions in emissions from hundreds of thousands of off-road vehicles whose pollution until now had not been regulated. The final rule will give snowmobile manufacturers until 2012 to achieve emissions reduction targets. It also gives the agency more flexibility in deciding how much each pollutant must be reduced and allows all-terrain vehicles to emit 50 percent more pollution than under the original proposal.

\*Source: Editorial, "Infernal Machines," *The New York Times*, September 17, 2002.

---

## **DOWN ON THE BUY YOU**

In an effort to bypass federal air pollution laws, the EPA approved a plan in late October that will allow Louisiana oil and chemical companies to emit more carcinogenic and hazardous chemicals in return for reducing emissions of a less dangerous pollutant, nitrogen oxide.<sup>19</sup> The EPA approved this new form of “interpollutant” credit trading despite criticism by the agency’s own staff experts that the plan fails to ensure that trades will result in net reductions in pollution.

The trading plan may also violate the agency’s own environmental justice policies. Louisiana has the greatest concentration of crude-oil refineries, natural-gas processing plants and petrochemical-production facilities in the country, all of which generate high levels of air pollution that disproportionately affects predominantly African-American communities in the lower Mississippi Basin. News of Louisiana’s new trading scheme surfaced less than a month after the EPA’s inspector general labeled open-market trading of air pollution credits in other states a failure.



# TURNING DOWN THE HEAT ON GLOBAL WARMING

After breaking his campaign promise to regulate carbon dioxide (CO<sub>2</sub>) pollution from fossil-fuel burning power plants, President Bush has steadfastly resisted mandatory measures to slow global warming pollution caused by burning fossil fuels. The Bush administration did finally acknowledge what scientists have been saying for years about climate change: heat-trapping CO<sub>2</sub> pollution plays a significant role in rising global temperatures and poses a significant threat to the United States and the entire world. The answer is cleaner cars and cleaner energy, but the White House opposes mandatory limits on CO<sub>2</sub> pollution from either source.

---

## WARM AND FUZZY CLIMATE POLICY

To tackle global warming, the United States and other nations need to start cutting the heat-trapping CO<sub>2</sub> pollution that is causing the problem. But early last year, the White House used a slight-of-hand calculation to set a global warming pollution target that allows emissions to continue to grow at the same rate they have been for years. What's more, this industry goal is voluntary.

In February, the administration announced a nonbinding goal to reduce "emissions intensity"—CO<sub>2</sub> pollution relative to economic output—by 18 percent over the next decade. Carbon dioxide emissions relative to economic activity have been falling for many years, however. So, based on the administration's projections, actual emissions would increase 14 percent—precisely the rate they grew during the last 10 years. Regardless, a White House fact sheet went so far as to claim that its target is similar to the global warming targets for the rest of the world. In fact, the new plan would result in U.S. emissions 30 percent higher than 1990 levels in 2012. Meanwhile, the rest of the industrialized world is committed to reduce emissions to near 1990 levels under the global warming treaty abandoned by the White House.

Ten months later, in December, the administration ignored a decade of peer-reviewed science when it announced its global warming agenda that called for at least five more years of study before taking any substantive action. Such a delay will make it more difficult and much more expensive to address the problem.



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

*President Bush scrambled to disavow the report, which he dismissively said was “put out by the bureaucracy.”*

---

## SHOOTING THE MESSENGER

To the delight of ExxonMobil and other well-connected energy companies, the administration orchestrated the removal of top climatologist Robert Watson as head of the Intergovernmental Panel on Climate Change (IPCC), the international research organization that provides rigorous, consensus-based assessments on global warming. The IPCC chairman since 1996, Watson drew the ire of industry and the White House because of his outspoken belief that global warming is a serious environmental threat caused by human-made pollution.

In February, ExxonMobil officials asked the White House to replace Watson. The company, along with Southern Co. (the second largest U.S. electric company) and other polluting industries also joined with OPEC countries to lobby for Watson’s ouster. In April, immediately following closed-door talks with oil, utility, and auto lobbyists, the administration announced it would not renominate Watson to the IPCC.<sup>20</sup> This was the first time that the IPCC chairman has been selected without a consensus.

---

## FLIP-FLOP FLAP

The administration issued a report in May acknowledging that global warming is a real and potentially costly threat to the United States, and conceding that CO<sub>2</sub> pollution is a major cause.<sup>21</sup> *The U.S. Climate Action Report 2002*, prepared by an interagency task force coordinated by the EPA, is in line with mainstream scientific opinion, including the views of the National Academy of Sciences. It was a marked departure from prior Bush White House waffling on climate change.

After submitting the report to the United Nations under a 1992 global warming pact signed by the president’s father at the Rio Earth Summit, the administration quietly posted the report deep inside the EPA’s Web site.<sup>22</sup> But the document quickly made its way into the news, generating a sharp backlash from industry and conservative political groups that were worried the report would make it more difficult for the administration to continue to sit on its hands.

President Bush scrambled to disavow the report, which he dismissively said was “put out by the bureaucracy.”<sup>23</sup> EPA Administrator Whitman later said she learned about the report only after “reading the paper.”<sup>24</sup> That prompted NRDC to release documents showing that top administration officials had been closely reviewing the report for months before it was released. A few days later, the White House reversed itself yet again. Spokesman Ari Fleischer announced the president was standing by the EPA report, but said that position did not conflict with the administration’s earlier ones.

After the fiasco with the EPA’s global warming report, it came as no surprise when top EPA officials—with White House approval—deleted a chapter on global warming pollution from its annual report on U.S. air pollution trends, which it released in September. Had the EPA published the data as it has in the past, they would have shown that U.S. CO<sub>2</sub> emissions have increased 17 percent over the last decade.

# WATERING DOWN THE CLEAN WATER ACT

The Bush administration held events around the country last October commemorating the thirtieth anniversary of the Clean Water Act. Environmental Protection Agency Administrator Christine Whitman cited water quality as “the biggest environmental issue we face in the 21<sup>st</sup> century.” Officially declaring 2002 the “Year of Clean Water,” President Bush challenged Americans to help the administration “finish the business of restoring and protecting our nation’s water for present and future generations.”<sup>25</sup> But the administration has been finishing clean water protections in a very different way.

---

## WASHING AWAY WETLANDS PROTECTIONS

Wetlands control flooding, filter polluted runoff in streams and rivers, and protect wildlife habitat. Unfortunately, more than 60,000 acres of wetlands are destroyed each year by developers and mining companies. Just before Earth Day 2001, the White House issued a statement pledging that the “administration will continue to take responsible steps to ensure that we can preserve [wetlands] for future generations of Americans.” But this promise has not been kept.

In January 2002, the White House signed off on a controversial Army Corps of Engineers proposal to relax nationwide permit rules. The nationwide permit program, established by Congress in 1977, allows the Corps to issue “general” permits for activities that discharge fill or dredged material into wetlands or streams only if those projects have “minimal adverse effects” on the environment. These permits do not require public notice or comment, and they undergo much less stringent review, if any, by the Corps than do individual permits. The administration’s new permit program weakens environmental protections by lifting a 300-foot limit on the destruction of streams; revoking standards that require an acre-for-acre replacement of destroyed wetlands; and loosening restrictions on filling wetlands in floodplains.

Shortly after the Corps’ decision, it was revealed that Interior Secretary Gale Norton had suppressed a Fish and Wildlife Service report that was highly critical of the Corps’ plan to weaken wetlands protections. In fact, Norton signed off on the Corps proposal even though her own agency’s biologists had drafted comments denouncing the permitting changes as scientifically and environmentally unjustified, and warning that they would increase wildlife habitat destruction.<sup>26</sup>

Months later, on the day after Christmas, the Corps and the EPA issued revised federal guidelines on replacing wetlands lost or damaged by development. The new Bush



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

guidelines on mitigation purport to emphasize the ecological quality of the wetlands replaced over quantity. Currently, the Clean Water Act prohibits developers from filling in wetlands unless the Corps grants a permit, in which case the permit holder must either restore wetlands elsewhere or create replacement wetlands as compensation.

Instead of ensuring a minimum acre-for-acre replacement as compensation for those destroyed by highways, subdivisions or other construction projects, the administration now is focusing on restoring the specific function or benefit of the lost wetlands. But requiring developers to restore equivalent wetland functions instead of replacing actual wetlands destroyed would do little to stem the loss of wetlands. Bush officials acknowledge that this approach could result in a numerical loss of wetland acres, but they claim it would result in an overall ecological gain. However, the administration is ignoring recent reports by the National Academy of Sciences and the General Accounting Office concluding that 80 percent of wetlands restoration or mitigation projects are failures.<sup>27</sup>

This measure, along with weakening changes to the wetlands permit program, signal a 180-degree turn from the “no net loss” of wetlands policy set in 1990 by President George H.W. Bush.

*A federal judge ruled that permits allowing companies to dump mining waste into valley waterways are illegal under the Clean Water Act.*

---

## **MINE YOUR OWN BUSINESS**

It's no mystery why mountaintop removal is the mining industry's preferred method for extracting coal. Using explosives to shear off the tops of mountains and expose coal seams, and then dumping the rock and dirt into hollows and streams is an inexpensive way to mine coal.

If mountaintop removal is good enough for the mining industry, then it's apparently good enough for the Bush administration. In May, the EPA reversed a 25-year-old Clean Water Act rule by redefining “fill material,” making it legal for coal companies to dump mining waste into rivers, streams, lakes, and wetlands. Administration officials claimed this so-called “clarification” in the rule was necessary to save West Virginia's coal mining industry from shutting down for lack of an affordable way to dispose of mining waste. But a federal judge ruled that permits allowing companies to dump mining waste into valley waterways are illegal under the Clean Water Act. He admonished the administration for trying to “rewrite” the law for industry.<sup>28</sup> The administration appealed the decision to the Fourth Circuit Court of Appeals, which is expected to rule on the lower court's decision soon.

A few days after the judge's decision, it was revealed that that Interior Department Deputy Secretary Steven Griles—a former mining lobbyist—wanted to create “one-stop shopping” to make it easier for companies to obtain mountaintop removal permits and to eliminate post-mining reclamation requirements.<sup>29</sup>

The administration also scuttled a federal study on mountaintop removal. In response to massive flooding in West Virginia last summer, the Office of Surface Mining in early October announced plans to fly federal inspectors over more than 100 valley fills—streams buried under waste from mountaintop removal mining—to determine whether they posed threats to downstream communities during heavy rains. But state officials complained

that a federal investigation could lead to restrictive rules for mining companies, so the administration quietly killed the investigation.<sup>30</sup>

### **THE PERFECT STORMWATER**

In June, the administration let developers off the hook for stormwater runoff, which is contaminated with sediment, metals, pesticides, fertilizers, automotive oil and grease, excessive nitrogen and phosphorous, bacteria and viruses, and trash. This form of water pollution is the leading cause of beach closures and shellfish contamination, and, as development expands at an alarming rate across the country, the problem is getting worse. An acre-sized parking lot produces 16 times the runoff of an undeveloped meadow, for example, and a forest stripped for construction produces 500 to 1,000 times more sediment than an undeveloped forest.

In response to a 1990 NRDC lawsuit, the EPA spent several years developing stormwater technology standards to meet Clean Water Act requirements. The agency submitted proposed rules to the Office of Management and Budget (OMB), which promptly rejected them. The OMB forced the EPA to rewrite the standards based on a skewed cost-benefit analysis at the request of developers. Ironically, the OMB dropped the portions of the rule that were the most cost-effective according to the EPA's expert economic consultants.

At the OMB's suggestion, the EPA eventually proposed very minimal requirements to reduce pollution caused by construction and no controls on post-construction erosion and sediment runoff. The EPA also dropped minimum standards for best management practices, discharge limits, discharge monitoring, performance levels, and pollution prevention. Finally, the EPA redefined "new source" in the regulations to exclude new construction and development as new sources of stormwater runoff. According to NRDC, the OMB's decision to gut the EPA's proposed stormwater rules violates the Clean Water Act's requirements of minimum water pollution controls for polluting industries. The EPA agency is expected to propose final rules in the spring of 2004.

---

### **TRADING AWAY CLEAN WATER**

The EPA unveiled a pollution credits trading program in May that it claimed would help reduce discharges into the nation's waterways. Giving polluters "greater flexibility incentives"—as EPA Administrator Christie Whitman put it—in meeting Clean Water Act standards is risky, however, because the administration's plan lacks safeguards to ensure water quality improvement.<sup>31</sup>

*In a move that could reverse 30 years of progress, the administration is considering revoking Clean Water Act protection for a broad range of waterways.*

Modeled on the same kind of market-based initiative that the administration supports for air pollution, this voluntary plan would allow dischargers to buy pollution credits instead of actually reducing their discharges. In other words, rather than the government enforcing clean water protections, the EPA's trading scheme would give industries the right to pollute. The Clean Water Act does not allow for such a trading system. Currently, dischargers receive permits specifying their allowable pollution levels. If they exceed the limit, they are in violation of the law and can be held accountable. By contrast, the proposed Bush plan includes no effective monitoring and enforcement effort.

---

### **THE DIRTY WATER ACT**

In a move that could reverse 30 years of progress, the administration wants to revoke Clean Water Act protection for a broad range of waterways. During a House subcommittee hearing in September, high-level officials from the EPA and the Army Corps of Engineers testified that their agencies have decided to propose new rules that redefine "waters of the United States" under the law. In January 2003, the EPA announced it would move forward with a proposal to identify wetlands and waterways that will be excluded from Clean Water Act protection. The new proposal may suggest excluding creeks, small streams, natural ponds and many types of wetlands, such as bogs, marshes, prairie potholes, sloughs and mudflats, from federal protection—opening them up to dredging, filling and waste dumping.<sup>32</sup> These smaller waterways and wetlands filter out pollutants as they drain into larger water bodies, as well as replenish groundwater sources. Therefore, allowing pollution, or "fill," in smaller waters would harm the water quality of countless lakes, rivers and coastal waters downstream.

Administration officials claim the new position reflects a January 2001 Supreme Court decision on wetlands.<sup>33</sup> However, that narrow ruling struck down only a policy that allowed the Corps to extend Clean Water Act protection to water bodies solely on the basis that they are used by migratory birds. In light of the court's decision, corporate lobbyists for developers and polluting industries have tried to convince the administration to expand the legal loophole by excluding from federal protection so-called non-navigable waters.

---

### **A FAILING GRADE FOR U.S. WATER QUALITY**

In September, the EPA released its biennial report on U.S. water quality conditions, and the news was not good. The long-delayed "2000 Water Quality Inventory" documented water quality trends for rivers, lakes and estuaries based on information provided by states and other jurisdictions. According to the report, the nation's waterways are becoming increasingly polluted and increasingly unsafe for their intended uses, such as swimming, boating, and providing aquatic habitat and drinking water. In fact, 45 percent of the nation's waterways are too polluted for fishing or swimming, up from 40 percent two years ago.<sup>34</sup>

Despite this dire situation for the nation's waters, EPA Assistant Administrator G. Tracy Mehan III, the chief enforcer of the Clean Water Act, testified at a Senate Environment and Public Works Committee hearing in October that efforts to combat terrorism and to provide for national defense will require the administration to cut funding for wastewater and sewage cleanup efforts.<sup>35</sup>

---

## **TROUBLE DOWN ON THE FARM**

In December, the EPA announced new livestock waste regulations that will allow factory farms to continue fouling the nation's waterways with animal waste pollution. Large-scale animal factories, which raise thousands of animals and produce 220 billion gallons of manure annually, now dominate animal production across the country. These operations routinely dump massive amounts of animal manure that spills into waterways, killing fish, spreading disease, and contaminating drinking water supplies.

The rules, which were issued in compliance with a court mandate from a 1989 lawsuit brought by NRDC, will require some 15,500 factory farms to obtain government permits to dispose of livestock waste. But the permits would change little because the new Bush regulations require fewer farms to comply than the Clinton-era proposal, grant livestock owners more leeway to draft their own pollution-management plans, relieve major

### **PLOWING UNDER FARMLAND CONSERVATION**

Since farmland conservation programs have popular support, the administration can not simply kill them outright. Instead, it has decided to scuttle them by blocking their funding. Last summer, Congress approved funding to help farmers enroll land in voluntary conservation programs—the Conservation Reserve Program, the Wetland Reserve Program, and the Farmland Protection Program. But the White House Office of Management and Budget (OMB) denied a request from the Department of Agriculture for roughly \$36.5 million in technical assistance funding that pays the salaries of agency employees administering the programs. In September, the OMB released only \$5.9 million and directed USDA to cover the rest by diverting money from a discretionary fund promoting ecological stewardship and environmental compliance. But “robbing Peter to pay Paul” would strip tens of thousands of farmers and ranchers of other much-needed federal assistance.

corporations of financial liability for illegal spills, eliminate measures to make use of new technology to combat pollution, and fail to require groundwater monitoring.<sup>36</sup>

---

## **IMPAIRED VISION ON WATERWAYS**

In December, the EPA formally withdrew a Clinton administration rule that imposed federal oversight on states' efforts to clean up some 20,000 of the nation's “impaired” or

*By making it easier for states to remove waterways from the cleanup list and more difficult for additional waterways to be added to the list, the new rule would ensure that America's dirty waters remain polluted for decades to come.*

polluted waterways, a designation that applies to about 300,000 miles of rivers and shorelines and 5 million acres of lakes.

For three decades, national water pollution control efforts have been guided by the fundamental goals of the Clean Water Act: that rivers, lakes, estuaries, and coastal waters must be safe for swimming and boating and any fish caught should be safe to eat. Although there has been progress, nearly half of the assessed waters nationwide are still considered impaired for human or aquatic life use.<sup>37</sup> The key provision of the law governing the cleanup of these polluted waters is the total maximum daily load (TMDL) program. The TMDL program requires states and the EPA to identify polluted waterways, rank them for priority attention, and develop pollution limits for each water body. Despite the law, the EPA and states largely failed to clean up waterways under the program until a wave of citizen lawsuits forced them to begin doing so.

In keeping with the administration's disregard for strong standards and strict enforcement, the EPA's proposed new rule stresses the need for flexibility and voluntary efforts to clean up pollution. However, by making it easier for states to remove waterways from the cleanup list and more difficult for additional waterways to be added to the list, the new rule would ensure that America's dirty waters remain polluted for decades to come.

---

#### **EVER(FAILING)GLADES RESTORATION**

The agency that is overseeing restoration of the Florida Everglades did a number of things in 2002 to thwart this ecological recovery effort. In April, the Army Corps of Engineers proposed allowing more than double the number of open-pit limestone mines in the Everglades—covering 5,409 acres—over the next decade. That's just the first phase of the Lake Belt project, which involves bulldozing and dynamiting 30 square miles of the Everglades' fragile wetland habitat to extract 1.7 billion tons of limestone rock that lie underneath. The crushed limestone, coveted by Florida's burgeoning construction industry, is used to build roads, bridges, homes, and parking lots.

Under the Clinton administration, the EPA and the Interior Department objected to the project, pointing to the thousands of acres of unique wildlife habitat that would be destroyed, the harm the pits would do to restoring water flows in the Everglades, and the threat the mines would pose to adjacent drinking water supplies. The two agencies withdrew their objections once President Bush took office, and the Corps finalized the permits in August—despite its own study that concluded the project's impact would be “irreversible” and “significant.”

Ironically the Corps is calling the Lake Belt mining plan a boon to the environment and critical to the long-term health of the Everglades. Three decades from now, when the two 80-foot-deep rock pits are mined out, the Corps plans to spend \$1 billion of taxpayer money to try to convert them into water storage reservoirs. One is supposed to provide drinking water for Miami, and the other to supply much-needed fresh water to the Everglades. Theoretically, the gigantic man-made lakes will preserve the Everglades habitat by containing sprawl on Miami's western boundary and rehydrating saw grass



prairies. But hydrologists are not convinced the reservoirs will hold water: their walls might collapse or their bottoms may leak.

What is certain, according to the U.S. Geological Survey, is that the mining pits will encourage fresh water to seep out of the Everglades through porous underground aquifers—one of the very problems the \$8 billion restoration plan is supposed to address. And EPA scientists worry that the mines could contaminate the adjacent drinking water aquifer used by the 1 million residents of Miami-Dade County. Studies are underway to determine the feasibility and risks of the Lake Belt project, but they won't be completed for a decade or more. Meanwhile, the Corps is supporting a project that will destroy more wetlands in the Everglades than the agency permitted for destruction across the entire country in 2002.

But mining is not the only way the administration has endangered the Everglades this year. Congress had originally asked the Corps to develop rules to flesh out the conceptual \$8 billion restoration blueprint it authorized in December 2000. The proposed regulations were intended to determine how to restore the natural flow of the “River of Grass,” a daunting task. The project represents the largest ecological restoration in history, with 68 projects currently planned over more than 30 years. During the span of the restoration, millions of new Floridians will move to the area and draw on the same water reserves needed for the ecosystem. Critics were not surprised by the Corp's actions, especially since its draft Everglades restoration plan is mainly concerned with supplying water for more urban sprawl. As environmentalists feared, the Corps' new draft plan, proposed in July, concentrates on procedure instead of substance, and will not ensure restoration, as Congress mandated.<sup>38</sup> The draft regulations do not incorporate interim goals or timetables, lack meaningful restoration targets, contain no enforcement provisions, and fail to ensure that the Everglades is first in line for water. Just how water will be divided between the Everglades and the farmers and cities ringing it remains one of the most divisive questions, one that was supposed to be addressed by federal regulations but now may be decided by backroom Florida political deals. The proposed rules also do not give the Interior Department a strong enough voice in restoration decisions. Congress had mandated a “concurring” role for the Interior Department in its 2000 authorization, but the agency did not object to its back seat role as outlined in the Corp's draft regulations.

*The Corps is supporting a project that will destroy more wetlands in the Everglades than the agency permitted for destruction across the entire country in 2002.*



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

### CHAPTER 5

# CORPORATE WEALTH TRUMPS PUBLIC HEALTH

Every day Americans are exposed to thousands of toxic chemicals, including hundreds known to pose serious harm to them and their environment. Policy decisions regarding these chemicals should be based on how they affect public health. Under the Bush administration, however, the burden of proof about chemicals' harmful effects has shifted from industry to the public.

---

#### CLEANING OUT SUPERFUND

With the future of the federal Superfund program in doubt, the administration decided to provide relief to polluters by sticking U.S. taxpayers with the cleaning bill. In 1980, Congress established a federal trust fund for cleaning up 30 percent of the nation's worst toxic waste sites by levying a tax on industry. Presidents Ronald Reagan and George H.W. Bush reauthorized the "polluter pays" principle, but Congress let the corporate tax expire in 1995. Now the fund is facing a cash crunch, having dwindled from \$3.8 billion in 1996 to a projected \$28 million next year.

In February, the EPA proposed a solution: shift cleanup costs to citizens rather than make polluters pay. President Bush's budget proposed that taxpayers pay \$700 million in 2003 to cover more than half of the total cleanup, after which citizens would cover the entire cost of the program. Meanwhile, lack of money has forced the government to cut the number of sites designated for cleanup and fewer cleanups have been completed. Since the Superfund program began, 1,551 sites have been placed on the national priority list, 257 sites have been cleaned up, and another 552 nearly cleaned up, according to the EPA.<sup>39</sup> The administration projected that it would complete cleanups at 65 sites in 2001 but finished only 47—not a good track record compared to the average of 76 sites cleaned up annually during President Clinton's last term.

In June, the EPA's inspector general reported to Congress on the administration's deep funding cuts to the Superfund program, which would slow or halt 33 cleanups in 18 states. The EPA regional offices had requested \$450 million to complete work at those sites, but the administration allocated only \$228 million. Meanwhile, an internal EPA report, leaked to the news media, revealed that Superfund was facing an \$82.4-million shortfall for the remainder of the fiscal year. These revelations prompted the EPA to restore \$29.6 million for 11 of the neglected sites, but only 4 received the amount they required. By the end of the 2002 fiscal year, the EPA had completed only 42 Superfund cleanups, down from 47 during the previous 12 months.<sup>40</sup>

## **ASBESTOS OR BUST**

Last April, the federal government was on the verge of declaring the first ever public health emergency—warning millions of Americans about the widespread risk of asbestos-contamination—but the OMB thwarted the agency from taking action.\*

The EPA was set to disclose that ore from a vermiculite mine in Libby, Montana, was contaminated with an extremely lethal asbestos fiber that has killed or sickened thousands of miners and their families. From the 1940s through the 1990s, nearly 16 billion pounds of asbestos-tainted vermiculite ore from the town's mine was used to insulate walls and attics in millions of homes, buildings, and schools across America. The EPA was prepared to authorize the removal of the contaminated insulation from homes in Libby, provide medical care for those affected, and notify property owners elsewhere who might be at risk from asbestos exposure.

However, a few days before the EPA intended to take action, the OMB derailed the announcement. To date, the EPA has issued no warnings and has not notified homeowners about the health threat.

\*Source: Andrew Schneider, "White House office blocked EPA's asbestos cleanup plan," *The St. Louis Post-Dispatch*, December 29, 2002.

---

## **STANDING PAT ON ATRAZINE**

As part of a mandatory six-year review, the EPA in April gave a clean bill of health to the nation's drinking water standards, notwithstanding the fact that there are thousands of unregulated toxic chemicals, parasites, and bacteria in tap water.<sup>41</sup> For example, despite evidence that triazine pesticides (including several popular herbicides commonly found in tap water) disrupt the body's hormone system, the EPA rejected the pleas of health and environmental groups to strengthen old standards. One of these chemicals, atrazine—the most widely used weed-killer in the nation—poses a significant threat to public health. Several European countries have banned atrazine because it is a probable human carcinogen. In contrast, the EPA permits atrazine levels in drinking water to rise and fall over the course of the year, so long as the yearly average remains below 3 parts per billion. But seasonal spikes are often much higher, especially in the Midwest where it is used widely by farmers on corn and other crops.

In the wake of recent studies linking atrazine to sexual deformities in frogs and high rates of prostate cancer among workers at a Syngenta atrazine manufacturing plant in Louisiana, NRDC in June called on the EPA to ban the herbicide. NRDC also asked the EPA to launch a criminal investigation of Syngenta, a Swiss company that is the principal manufacturer of atrazine, for illegally suppressing studies that concluded that atrazine may cause cancer in humans.<sup>42</sup>

*The administration wanted to grant states the flexibility to determine which children should be tested for elevated lead levels, ending the federal requirement that states test all young children on Medicaid.*

---

## **PERCOLATING A DANGEROUS BREW**

One of the most dangerous chemicals the EPA has failed to regulate is perchlorate, or perc. More than 10 million Americans drink tap water with perc levels higher than the EPA considers safe. Southern California recently mandated a phase-out of perc in the dry cleaning industry, but the military—which uses perc as the main ingredient of solid rocket fuel—remains virtually unregulated.

A known toxin, perc can affect the production of thyroid hormones, causing neurological problems and developmental damage in infants and children, and possibly cancer and other serious ailments in adults. For decades, millions of Americans have been exposed unknowingly to perc in their local water supplies, but the substance remains only partly regulated because of fierce debate between the EPA and the Pentagon over what levels constitute dangerous exposure. The EPA has identified 75 perc hotspots in 22 states and will make a final decision on perc in 2003. But the Pentagon contends that small doses of the chemical are safe, and has asked Congress for an exemption from environmental laws to avoid cleaning up explosive residues at military sites. One thing is certain: the government's internal debate over perc means the United States is still years away from establishing a nationally enforced standard for the toxic chemical.

## **POPS GOES THE WEASEL**

President Bush won widespread praise from environmentalists and health advocates when, shortly before Earth Day 2001, he declared his support for an international treaty cutting the use of chemicals linked to cancer and birth defects. A year later, however, he weakened the treaty by ensuring that the list of banned chemicals could not be expanded.

The treaty, the Stockholm Convention on Persistent Organic Pollutants (POPs treaty), calls for the gradual worldwide elimination of several pesticides, such as DDT, and industrial chemicals, such as PCBs. Most of those chemicals are already banned in the United States and other industrialized countries. In April, a year after signing the treaty, President Bush formally sought congressional approval. But the administration backtracked on its commitment when the Office of Management and Budget dropped a provision from the legislation that would have established a way to add more chemicals to the list of banned pollutants.

---

## **GETTING THE LEAD OUT**

Although the government banned the use of lead-based paint in homes over 25 years ago, more than 800,000 young children still suffer from lead poisoning. In some parts of the nation, more than one in four children under the age of six have elevated lead levels in

their blood stream. The problem is especially pressing in poor communities with older housing stock.<sup>43</sup>

In April, the administration announced it was considering a new policy for testing children for lead poisoning. A 1989 federal law requires that children on Medicaid be tested for lead poisoning, which can cause seizures, learning disabilities, brain damage, and sometimes death.

Low-income children are much more likely than wealthier children to have dangerous levels of lead in their blood because they often live in substandard housing, where they can be exposed to high concentrations of lead-based paint. Federal studies have found that 90 percent of lead poisoning cases in the country occur in low-income children, affecting more than 535,000 children. Many states have been lax in screening—only 10 percent of poor children were screened in 1999 and 2000—primarily due to the cost.<sup>44</sup>

The administration wanted to grant states the flexibility to exclude some children from testing for elevated lead levels, ending the federal requirement that states test all young children on Medicaid. According to many health officials, the proposed policy change would have allowed states to liberally interpret federal law, redefine who is at risk, and test fewer children—jeopardizing the health of tens of thousands of low-income children. A few weeks after proposing the idea, intense criticism from Congress and health experts forced the White House to abandon its plans to loosen federal regulations for lead poisoning screenings.

---

## CHEMICAL INSECURITY

Last year the administration violated a 1999 law by failing to assess the vulnerability of the nation's chemical facilities to terrorist attacks, according to the GAO.<sup>45</sup> The Justice Department, which was assigned the task of addressing this issue, released an interim report on chemical security in May—nearly two years late and only after NRDC sued to force the agency to do so. Then, in August, the Justice Department missed its deadline to provide Congress with a final report.

Millions of lives could hang in the balance if U.S. chemical plants are not secured. There are more than 15,000 facilities in the country that manufacture, use, or store large quantities of hazardous chemicals, making them potential targets for terrorist attacks. Out of those 15,000 sites, the EPA has identified 123 chemical plants that, if destroyed by an attack, could each put more than 1 million people at risk.<sup>46</sup> Even so the government has taken no steps to bolster security at chemical facilities since the September 11, 2001 terrorist attacks.

The Homeland Security Act that President Bush signed in November fails to address the vulnerability of the nation's chemical plants to terrorism. The administration sided with the chemical industry in opposing the addition of a bill by Sen. Corzine (D-N.J.)—the Chemical Security Act (S. 1602)—as an amendment to the homeland security legislation. S.1602, which unanimously passed the Senate Environment and Public Works Committee in July, would have required a safety assessment for many of the nation's chemical facilities and ensured that they reduced the risk of public exposure to hazardous substances resulting from possible terrorist attacks.

*The government has taken no steps to bolster security at chemical facilities since the September 11, 2001 terrorist attacks.*

*Unhappy with the findings of the scientific advisory committees that guide federal policy, the administration began stacking these panels by replacing respected scientists with ones hand-picked by industry.*

---

## **FLUNKING THE TOXIC TEST**

Pesticide residues found on food and in drinking water pose a greater health risk for children than adults because their growing bodies are more vulnerable to toxic exposures and the damaging effects are more likely to be permanent. Prompted by a lawsuit brought by NRDC in 2000, the EPA reviewed the cumulative risks of organophosphorus pesticides in foods most eaten by children, finding that 28 of 30 pesticides were safe. However, a report released in July by an independent panel of scientists concluded that the EPA used an inadequate margin of safety to determine that the 28 pesticides pose no danger to children's health.<sup>47</sup>

Federal law requires the EPA to ensure that there is a "reasonable certainty of no harm" from pesticide exposures. But the panel found that agency's assessment failed to meet this test in a fundamental and significant way. Panel members blasted the agency for using an inadequate three-fold safety margin instead of the 10-fold factor required by the Food Quality Protection Act.

---

## **BIRD-KILLING PESTICIDE BACK FROM THE DEAD**

The EPA decided in June to allow Louisiana rice growers to use carbofuran, one of the most toxic pesticides. Carbofuran had not been allowed on rice since 1998, largely because it was responsible for the deaths of tens of thousands of birds, including bald eagles. The granular form of this pesticide is so dangerous that the manufacturer voluntarily took it off the market in the mid-1990s.

According to the Fish and Wildlife Service, it is not possible for farmers to use carbofuran without killing migratory birds. The EPA, however, did not consult that agency, as required by law, when it considered an "emergency use" application from the Louisiana Department of Agriculture to use the chemical to combat water weevil on 100,000 acres of rice fields. Without seeking public comment, the EPA granted the rice growers permission to spread 3 tons of carbofuran on 10,000 acres, even though safer, more effective alternatives are routinely used throughout the rest of the country.

After receiving a flood of complaints about the closed-door decision, the EPA tried to make amends by allowing the Louisiana Department of Agriculture to use only enough of the pesticide to cover 2,500 acres. The EPA also opened up a brief public comment period—reduced from 15 days to five. Citizens submitted more than 6,000 comments opposing the EPA's decision. NRDC and more than 50 other environmental and public health groups also threatened to file suit, if necessary, to stop the use of carbofuran. Within a month, the EPA revoked its authorization.

### **CHOOSING TO CHEAPEN LIFE**

The Office of Management and Budget (OMB) sparked a scientific and ethical controversy when it suggested that the life of a senior citizen—someone 70 years or older—is worth considerably less than a younger person’s life. Therefore, elderly people warrant less protection under federal regulations.

For example, the OMB ordered the EPA to apply the discounted value of 63 percent for elderly Americans when it was assessing whether to impose new air pollution restrictions on the polluting industries.\* Whereas the traditional approach to cost-benefit analysis values each life equally, regardless of age, the new approach weighs the years of life saved by government regulation rather than the number of lives saved.

Critics have blasted the administration for discounting human lives in an apparent attempt to relieve industry from the cost of complying with requirements intended to safeguard public health. Moreover, the cut-rate standard being applied by OMB is based on faulty science that is out of date and doesn’t even apply to U.S. regulations. The 63 percent value is based on a 20-year old scientific survey in Britain, in which citizens were asked how much they would pay for a safer bus system. More recent studies have concluded that there is little difference between the value that the elderly and younger people place on saving their life.

\* Source: Borenstein, “Life of elderly less valuable in White House cost-benefit analysis,” Knight-Ridder, December 18, 2002.

---

### **SCIENCE FOR SALE**

Apparently unhappy with the findings of the scientific advisory committees that guide federal policy, the administration began stacking these panels by replacing respected scientists with ones hand-picked by industry. The changes marked a major restructuring of the 258 committees that advise Health and Human Services (HHS) Secretary Tommy Thompson. In September, it was revealed that the HHS is eliminating some committees whose recommendations conflicted with administration positions, and shaking up membership in others.<sup>48</sup> The agency, for example, is in the midst of replacing nearly all the 18 members of a committee assessing the effects of chemicals on human health—the new members have financial ties to the chemical industry.<sup>49</sup>

The administration also has targeted the Centers for Disease Control’s Advisory Committee on Childhood Lead Poisoning Prevention. In October, the administration rejected renowned scientists who work on lead poisoning to fill slots on this federal advisory committee and instead appointed scientists with close ties to the lead industry. Among other things, the committee is responsible for assessing the state of the science and telling the government what levels of lead are toxic.<sup>50</sup>



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

### CHAPTER 6

# SLACKING OFF ON ENFORCEMENT

**L**aws protecting America's water, air, wildlife, scenic landscapes, and other natural resources can only be effective if properly implemented and enforced. But the Bush administration has undermined the credibility of our environmental statutes by failing to enforce vital environmental requirements.

---

#### **FALLING DOWN ON THE JOB**

The president has sought to reduce hundreds of enforcement jobs at the Environmental Protection Agency. Congress objected to those cuts in 2001, but the president's new budget request for fiscal year 2003, which is pending, once again seeks to eliminate more than 200 EPA enforcement positions from the level when Bush took office. The administration would rather leave the job to states. But studies show that without strong federal backing, state environmental agencies do a poor job of cracking down on polluters.<sup>51</sup>

Under President Bush, the number of EPA personnel assigned to conduct inspections and enforce environmental laws has fallen to its lowest level since the agency was established. The drop in staff undermines the agency's ability to identify environmental violators. Gone are nearly 122 inspection and civil enforcement positions from the EPA's Office of Enforcement and Compliance. Overall, enforcement staff fell by more than 12 percent—from 528 to 464—since the president took office. Moreover, the number of EPA civil enforcement employees also has been cut by nearly 6 percent.<sup>52</sup>

The implications of weaker pollution enforcement are serious. The EPA's own budget documents predict that if the bloodletting doesn't stop, EPA inspections and civil investigations would decline further, and pollution would increase by 330 million pounds a year.

---

#### **ANOTHER TOP COPS QUIT THE SHOP**

In February, one of the EPA's senior officials resigned to protest White House efforts to weaken tough standards for power plants. Eric Schaeffer, head of the EPA's Office of Regulatory Enforcement, accused the Energy Department and the White House of catering to the energy industry and obstructing EPA efforts to enforce New Source Review rules.



In his much-publicized resignation letter to EPA Administrator Whitman, Schaeffer said he was tired of “fighting a White House that seems determined to weaken the rules we are trying to enforce.” He expressed particular frustration with the administration’s cozy relationship with industries the agency regulates and its unwillingness to take legal action against polluters. “It is hard to know which is worse,” Schaeffer wrote, “the endless delay or the repeated leaks by energy industry lobbyists of draft rule changes that would undermine lawsuits already filed.”<sup>53</sup>

Another of EPA’s top enforcement officials also resigned for similar reasons. After more than two decades at the agency, most recently as assistant administrator in the Office of Enforcement and Compliance Assurance, Sylvia Lowrance retired in August rather than accept a new job assignment. Lowrance publicly criticized the administration for easing enforcement of air pollution regulations and for halting the government’s crackdown on polluters. During a Senate hearing, Lowrance testified that companies have little incentive to settle cases with the EPA because they think new rules proposed by the White House will let them off the hook.

*The administration is not only forcing fewer polluters to pay fines, but also assigning penalties that are much smaller than they were during the Clinton era.*

---

## **LOWERING THE PRICE OF POLLUTION**

In August the General Accounting Office (GAO) rejected the EPA’s methodology for calculating enforcement penalties levied against industries that violate clean water, clean air, pesticide, and waste management regulations. The GAO forced the agency to withdraw its proposed calculation because, in many cases, it would have result in smaller fines against polluters—in violation of federal law.

The Federal Civil Penalties Inflation Adjustment Act requires federal agencies to periodically increase their penalties to account for inflation. The EPA’s final rule, released in June, proposed boosting its penalties by 13.6 percent—the rate of inflation since 1996—but wanted to round up those increases based on the actual increase to each penalty category, as opposed to the penalty itself.

Even without a change in the EPA’s penalty calculation, polluters have paid 64 percent less in fines for breaking environmental laws during the first two years of the Bush administration than they did under the Clinton administration. According to federal records released in November by ex-EPA enforcement official Sylvia Lowrance, the administration has not only forced fewer polluters to pay fines, but also has levied much smaller penalties than during the Clinton era. According to the data, the average civil penalty dropped 56 percent under Bush—from \$1.36 million to \$605,455. In addition, the Bush EPA is requiring polluters to pay 77 percent less for environmental projects they have to complete as a condition of their settlements.<sup>54</sup>

---

## **SAFEGUARDING POLLUTERS**

Largely overlooked in the passage of a homeland security bill in December was a White House-backed provision broadening corporate secrecy at the expense of public health and the environment. The bill’s language generally bars the federal government from

disclosing voluntarily submitted information regarding a company's environmental and health hazards, product defects and other dangers, including accidental chemical spills. This exemption from the Freedom of Information Act shelters industry from the consequences of violating the nation's environmental, consumer protection, and health and safety laws.

# SLASH AND BURN FOREST POLICY

The Bush administration has been busy fulfilling industry's desire to exploit resources in our public lands. Several pending changes initiated by the administration make it clear that environmental considerations are not going to stand in the way of logging and other potentially destructive activities in our national forests.

---

## A CLEARCUT CHOICE IN THE NORTHWEST

Over the last 150 years, logging has destroyed as much as 90 percent of the spotted owl's habitat in the Pacific Northwest, putting the bird on the endangered species list. Threats to the owl and other wildlife prompted the Clinton administration to establish the landmark Northwest Forest Plan in 1994. Unfortunately, the Bush administration wasted no time in dismantling its protections.

The first salvo came in January, when the Fish and Wildlife Service gave the green light to timber sales in Pacific Northwest national forests by concluding that logging poses no threat to spotted owls. In April Forest Service Chief Dale Bosworth, a Bush appointee, instructed regional heads of his agency to recommend changes to the Northwest Forest Plan, dumping wildlife habitat protections that blocked logging in old growth forests. Although Bosworth set no deadline for "fixing" the forest plan, he said the administration has made it a priority and the White House would suggest changes at its discretion.<sup>55</sup>

In September, as part of a legal settlement with the timber industry, the administration agreed to further ease environmental restrictions in the Northwest Forest Plan, particularly "survey and manage" rules that help protect little-known aspects of forest biodiversity.<sup>56</sup> Timber companies had attacked these rules as too time-consuming to implement, too costly, and too protective of what they consider to be insignificant flora and fauna. In November, the administration proposed rolling back a salmon-protection component of the Northwest Forest plan to expedite logging and timber sales. The administration's proposal would allow Forest Service officials to approve timber sales without considering their full impact on the fish. Dozens of these Pacific Northwest salmon species are listed as threatened or endangered, and this proposal would bring them under greater attack.



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

*Administration  
officials complaining  
about “analysis  
paralysis”  
conveniently  
overlooked a  
government report  
that found just the  
opposite.*

---

## **SO LONG TONGASS**

In 2001 the administration rolled back protections for the 17-million-acre Tongass National Forest in southeastern Alaska, which contains nearly 30 percent of the world’s unlogged coastal temperate rainforest. Then, in May 2002, the Forest Service disobeyed a federal court order to increase wilderness protection in the Tongass, leaving nearly 10 million acres of forest—home to the world’s largest remaining populations of grizzly bears, bald eagles, and other old-growth-dependent wildlife—open to logging, road-building, and other commercial activities. The agency already has begun considering some 30 large-scale timber sales in the Tongass that would violate the Roadless Area Conservation Rule.

---

## **FANNING THE FLAMES**

As forest fires blazed across the West last summer, the administration falsely claimed that forest protection efforts—particularly appeals and litigation by environmentalists—were to blame. In June, the Forest Service announced plans to study whether legal actions and petitions by environmentalists added to delays in wildfire prevention projects, thereby contributing to the catastrophic wildfire season.

Administration officials complaining about “analysis paralysis” conveniently overlooked a government report that found just the opposite. Of the 1,671 fire-prevention projects proposed by the Forest Service in 2001, less than 1 percent had been appealed and none had been litigated, according to the General Accounting Office report.<sup>57</sup> A Forest Service study on the same issue came up with different numbers, but only looked at the types of projects that tend to be challenged most frequently, and included projects other than those dedicated to fire prevention.

While conceding that some forests contained an excessive amount of small trees and brush, environmentalists pointed out that “thinning,” or logging, backcountry woods—miles from homes and communities facing fire dangers—is the wrong approach to fire management. They also noted that the logging actually can make fires worse by drying forests out, removing medium and large fire-resistant trees, and creating new access roads that greatly increase the chance that people could purposefully or accidentally start fires deep in the woods. Environmentalists encouraged the administration to focus its efforts on proven methods to protect homes and communities—to no avail.

---

## **PREVENTING FORESTS, NOT FIRES**

In August President Bush unveiled his simple solution for reducing the risk of wildfires: cut down trees. That is essentially what his so-called Healthy Forests Initiative would do by “streamlining,” or relaxing, federal laws to allow the timber industry to increase logging in millions of acres of national forest land. The administration’s plan contains loopholes that allow the industry to log large trees, which are more fire resistant than smaller ones, instead of the more flammable but worthless smaller trees and brush. This thinly veiled giveaway to the timber industry also would speed up commercial logging on

national forest lands by curtailing public input and eliminating environmental review—as required under the National Environmental Policy Act—and forbidding courts from halting logging during legal challenges.

Loggers and environmentalists agree that the catastrophic fires in recent years occurred in large part because of a variety of Forest Service policies, including the practice of extinguishing low-intensity fires. This policy, followed since the 1920s, resulted in much denser forests and a buildup of smaller trees and brush. In the meantime, timber companies have harvested the larger, most fire-resistant trees. This created the perfect conditions for high-intensity fires that threaten communities and the environment.

The administration’s plan ignores the fact that logging medium and large fire-resistant trees actually contributes to an increase in fire risk, as do the roads needed to log the trees and the actual logging process itself. Further, the administration is ignoring studies that conclude the best way to protect homes and communities is to clear areas in the immediate vicinity of structures.

Congress rejected legislation similar to the Healthy Forests Initiative before adjourning for the year. So the White House sidestepped lawmakers by offering its plan as a policy proposal in December. Under the proposed rules, which will be finalized after a brief public comment period, federal agencies could claim that almost any kind of logging would reduce the risk of fire. The package of new rule changes also includes a proposal to “categorically exclude” destructive logging projects in pristine backcountry areas of our national forests and other public lands from extensive environmental reviews, despite the fact that a federal judge rejected the same kind of industry-friendly exemption in 2001.

---

## **FACT-FREE FORESTRY**

In a strange and telling development, the administration in August chose Allen Fitzsimmons to head the Interior Department’s wildfire prevention program. Fitzsimmons, who now is responsible for implementing the administration’s Healthy Forests Initiative, doubts the existence of ecosystems and believes the extinction of threatened and endangered species might not be a bad idea.

Fitzsimmons is a free-market policy analyst who formerly consulted for libertarian and conservative think tanks. In his 1999 book, *The Illusion of Ecosystem Management*, Fitzsimmons wrote that, because ecosystems exist only in the human imagination and cannot be delineated, federal policies should not be used to try to manage or restore them.<sup>58</sup> In another paper, he took the position that the nation is not experiencing a biodiversity crisis. In fact, the loss of all of the species currently listed by the government as threatened or endangered, he argued, would be balanced out by an increase in non-indigenous species—many of which are taking over native landscapes with devastating results.

*This thinly veiled giveaway to the timber industry also would speed up commercial logging on national forest lands by curtailing public input and eliminating environmental review.*

*They would make it easier for federal officials to ignore the impact of logging and other activities on wildlife, watersheds, and recreational uses.*

---

## **A SIMPLE PLAN**

Over the last quarter century, no federal regulation has been as instrumental in protecting fish and animals on public lands as the one requiring national forest management plans to ensure the continued viability of wildlife in any national forest. From wolves and brown bears in the Tongass rainforest to spotted owls and bull trout in the Pacific Northwest, goshawks in the Southwest, and songbirds on the East Coast, this wildlife “viability” rule has stopped more environmentally harmful logging, road-building, grazing, mining, and drilling than any other law on the books.

A few days before Thanksgiving, however, the administration proposed repealing this requirement as part of a broad array of changes to the plans that guide how federal agencies manage public forestlands. The proposed changes also would greatly reduce the amount of information available to the public and curtail input from the public, federal agencies, and scientists. Further, they would make it easier for federal officials to ignore the impact of logging and other activities on wildlife, watersheds, and recreational uses. Given that supervisors at more than 100 national forests are supposed to revise their outdated management plans by the end of this decade, these new rules could be devastating if they are adopted.

# OPEN SEASON ON NATIONAL PARKS

The federal government established national parks to conserve resources—both natural and historic—that Americans have chosen to set aside as part of our heritage. The Bush administration certainly grasps the political significance of national parks. The White House has repeatedly used the parks as a natural backdrop for unveiling new environmental policies and initiatives, even though many of its proposals actually would put these special places at risk.

---

## SNOWMOBILES RULE

Every winter, America's most popular national parks host an increasing number of visitors, including thousands who roam the trails and backcountry on snowmobiles. More than 1,000 snowmobiles a day enter Yellowstone during the winter season—a record 67,000 visited in 2001—much to the consternation of other park visitors, not to mention wildlife, seeking solace in the spectacular surroundings.

In February, nearly a year and a half after the National Park Service issued a supposedly final decision to gradually phase out snowmobiles in Yellowstone and Grand Teton National Parks by the winter of 2003-04, the administration bowed to a request from the snowmobile industry—which had filed a lawsuit to overturn the ban—by ordering yet another study of the decision.<sup>59</sup> In its lawsuit, the International Snowmobile Manufacturers Association insisted that the industry could make cleaner, quieter machines. However, the park service issued a report in 2001 discounting the claim as “speculative and insufficient for analysis purposes,” maintaining that these off-road vehicles pollute the air and interfere with wildlife.

Nothing had changed since the agency first proposed a ban on snowmobiles in the parks—except the political climate. And so, snowmobiles continued to roar through the parks while the administration sought public comments on the ban for the fifth time.

The snowmobile industry appeared to suffer a setback in late April when the EPA issued a report supporting an outright ban on snowmobiles in the two parks. Reiterating its position of three years before, the EPA said the continued use of snowmobiles would violate air pollution standards and a ban would be the “best available protection” for air quality, wildlife, and the health of park employees and visitors. Interior Secretary Norton expressed disappointment over the EPA's position, and questioned why her agency had not been notified in advance of the announcement. EPA Administrator Christine



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush Administration's Assault on the Environment*

January 2003

Whitman admitted that she was unaware of the report, which was issued by the regional administrator in the EPA's Denver office.<sup>60</sup>

Despite the concern of the EPA health experts, the administration in June reversed the proposed ban, opting instead to allow snowmobiling to continue in the parks—with modest restrictions to reduce the volume of traffic and require quieter, cleaner machines.<sup>61</sup> Because details of the plan are still being developed, no changes will take place this winter. The administration's decision marks a stunning victory for the snowmobile industry, running counter to the overwhelming opinion of the more than 330,000 people who filed comments with the park service.

*Padre Island became the first national park to be drilled during the current Bush regime.*

---

## **SHE SELLS SEASHORES**

A proposal to designate one of the last undeveloped stretches of Southern California's coast a national seashore is in danger of being scuttled by the administration. Since 1999, the National Park Service has been studying the feasibility of permanently protecting 46 miles of coastline just north of Santa Barbara from the threat of urban sprawl. The plan, which calls for a federal land purchase to create a new national seashore—to be called Gaviota National Seashore—is bitterly opposed by property rights activists and real estate developers who fear possible restrictions on land use.

At an August public meeting, Lynn Scarlett, assistant secretary of the Interior Department, dashed environmentalists' hopes when she expressed a preference for private land ownership over federal control, and conceded that "land acquisition is not a priority of this administration." Previously, Interior Department officials showed interest in the proposal to protect the dramatic cliffs, remote beaches, and terraced grasslands by designating 200,000 acres as a national seashore. Scarlett said the administration is retreating in response to recent feedback from local landowners.<sup>62</sup>

The park service plans to release a draft outlining the five alternatives for the coastal stretch in January 2003. After a public comment period, the final report will recommend to Congress the option favored by the administration.

---

## **HITTING THE ROAD**

In October, a high-level National Park Service official resigned in protest over the administration's pronounced deference to developers. The superintendent of Yosemite National Park, David Mihalic, opted to retire after a 30-year career rather than accept a transfer to the Great Smoky Mountains National Park.<sup>63</sup> The underlying reason for his retirement, according to Mihalic, was pressure applied by Bush officials to approve two environmentally harmful projects: building a 28-mile road through the largest undeveloped wilderness in the eastern United States and conducting a land swap that would allow a local Indian tribe to develop 200 acres of meadowland—168 acres of which is wetlands—inside Yosemite.

The park service's long-standing opposition to the two projects has fueled political controversy for decades. Now, with additional pressure from local congressional



representatives, the administration wants a new Yosemite superintendent to push the projects through. Mihalic said he balked when a park service deputy director told him about the land swap and ordered him to “get it done.”<sup>64</sup>

---

### **PARADISE LOST ON PADRE ISLAND**

In November, Padre Island became the first national park to be drilled during the current Bush regime. With no public announcement, the National Park Service issued a permit to allow BNP Petroleum Corp. to drill for natural gas at Padre Island National Seashore off the coast of Texas. At 69 miles long, Padre offers the world’s longest stretch of undeveloped barrier island. A 156-foot drilling derrick now sits above the dunes and, depending on what BNP finds, more might be coming soon.

Although the government acquired and set aside the land as a park 40 years ago, Congress opted not to buy the mineral rights from the two families who had owned the island. Environmentalists charged that the government failed to adequately consider the threat posed by exploratory drilling on 11 endangered species, including the world’s smallest and most imperiled sea turtle. To build the new natural-gas-drilling well, tractor-trailers and other heavy trucks now make as many as 40 trips a day along a 14-mile stretch of beach that serves as the turtle’s principal nesting ground.



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush  
Administration's  
Assault on the  
Environment*

January 2003

### CHAPTER 9

# WILDLIFE LAWS AS FAIR GAME

The Bush administration's philosophy on the fate of many of America's imperiled wildlife species is simple: out of sight, out of mind. In fact, a top Interior Department official served notice in September that the government should be relieved of the "burdens" of the Endangered Species Act. He was referring specifically to the administration's upcoming effort to de-list wolves throughout the West. The wolves are by no means the only species imperiled by the administration's policies. This administration has targeted the fundamental concept that we must protect habitat to protect wildlife.

---

#### **RUNNING AGROUND IN THE COLUMBIA RIVER**

In an effort to aid shipping, the Army Corps of Engineers decided in January to dredge more than 100 miles of the Columbia River, increasing the river's depth by 3 feet from its mouth at Astoria, Oregon, to its confluence with the Willamette River at Portland. Environmentalists had sued to stop the \$188-million project in 1999. In 2000, the National Marine Fisheries Service withdrew its support pending further study of the project's potential environmental impact.

Environmentalists have a number of concerns with the project: deepening the channel would allow saltwater to move farther up the river, killing some plants and animals; large ships would cast bigger wakes, perhaps tossing small fish in shallow water onto dry land; and more silt from dredging and shipping could harm fish. The Corps has acknowledged there is uncertainty about long-term effects, but maintains that dredging the river would not cause significant harm to wildlife, including threatened Pacific salmon. The fisheries service signed off on the project in May, but before dredging can begin the Corps must obtain approval under the Clean Water Act and Coastal Zone Management Act.<sup>65</sup>

---

#### **CRITICAL CONDITION**

Despite the fact that habitat loss is the primary reason for species extinction, the administration wants to placate real estate developers by rescinding federal "critical habitat" designations that protect millions of acres of habitat across the country. Critical habitat is a category of land protected by the Endangered Species Act. Before the federal government can issue a permit that allows someone to modify designated critical habitat,

it must first ensure that the modification will not threaten the survival or recovery of any protected wildlife species that relies on that habitat.

Real estate developers who require federal permits for their projects have long fought against critical habitat designations in the courts. They now have an ally in the White House—the administration has declined to defend against several lawsuits seeking to overturn critical habitat designations. Instead, it has offered developers sweetheart settlements in which the government has voluntarily withdrawn protected habitat. For example, in May the administration settled one such lawsuit by agreeing to remove critical habitat protections for every federally listed species of salmon and steelhead on the West Coast.

Similarly, Mark Twain's once celebrated frog has little to cheer about these days, thanks to the administration's relentless campaign to overturn critical habitat protections. The red-legged frog, the subject of Twain's story about a frog jumping competition in Calaveras County, has lost 70 percent of its original range and is making its last stand in the foothills and suburbs of Northern California, an area under intense development pressure.

In 1999, the Fish and Wildlife Service carved out 4.1 million acres of critical habitat for the frog, prompting a lawsuit two years ago by the Home Builders Association of Northern California. In June, the agency agreed to settle the case by nullifying all of the frog's habitat protections. If the administration keeps caving in to developers, in a few years federally protected species will be stripped of millions of acres of protected critical habitat across the country.

There have been some setbacks in the administration's campaign against critical habitat designations. In June, a federal district judge kept nearly 500,000 acres of critical habitat protections in place for the coastal California gnatcatcher after NRDC intervened in a case brought by developers. In July, in yet another California legal case in which environmentalists intervened, a federal judge ruled against developers by upholding the federal designation of 400,000 acres as critical for the survival of the Alameda whipsnake. The slender, 3-foot brush-climbing snake makes its home in grassland areas in parts of rural Alameda, Contra Costa, Santa Clara, and San Joaquin counties.

---

## **DAM SALMON**

In late February, the Army Corps of Engineers issued its final recommendation for the fate of four dams on the lower Snake River in Washington. As expected, the news was not good for endangered salmon.

Since the 1980s, the Corps has studied ways of improving salmon passage through the four lower Snake River dams and reservoirs—Ice Harbor, Lower Monumental, Little Goose, and Lower Granite. These obstructions bear much of the blame for the extinction of native fish populations or their listing under the Endangered Species Act. Snake River salmon and steelhead populations plummeted after the four dams were built in the 1960s and 1970s. Scientists believe that the key to rebuilding fish populations is restoring river habitats by breaching the dams.

*The war over water  
in the West took a  
turn for the worse, as  
far as fish are  
concerned, when the  
Bureau of  
Reclamation released  
its operating plan for  
the Klamath River  
Basin.*

The Corps opposes breaching the dams, even though leaving them intact could lead to the extinction of the Snake River's salmon and steelhead. Instead, the Corps favors spending millions of dollars over the next decade on fish ladders, additional transportation barges, and other programs to make the dams less lethal to migrating fish. Federal biologists have concluded that such an investment will do little to help the dwindling salmon population.

---

#### **KLAMATH CALAMITY**

The war over water in the West took a turn for the worse, as far as fish are concerned, when the Bureau of Reclamation released its operating plan for the Klamath River Basin in late January. The 112-page report set in motion a series of reviews on how water should be divided over the next decade between farmers and fish in the broad, arid basin straddling the Oregon-California border. The bureau proposed sharp reductions in lake levels and to the river downstream. These reductions might please farmers who want more water for irrigation, but they gravely endanger federally protected fish populations.<sup>66</sup>

In March, in a case filed in the state of Washington, a federal judge upheld the government's right to protect endangered species by ruling that the Forest Service could restrict irrigation water to protect salmon listed under the Endangered Species Act. The judge dismissed a lawsuit brought by county officials and local irrigators who argued that minimum stream-flow requirements on national forest lands are illegal because they favor fish over farmers.

The administration ignored this ruling. In May, both the Fish and Wildlife Service and the National Marine Fisheries Service signed off on the bureau's plan to make water deliveries to Klamath agribusiness interests a priority this year, in the hope that irrigation operations over the next 10 years would gradually increase flows into the river to aid wildlife.

Tragedy struck in September, when 33,000 fall-run salmon and steelhead died from lack of water. An investigation by the California Department of Fish and Game faulted the administration's decision to fully satisfy the water demands of agribusiness interests. The resulting low river flows forced salmon to swim closely together, causing disease outbreaks that resulted in the largest fish kill ever recorded in the West.

Michael Kelly, a National Fisheries Marine Service biologist now seeking whistleblower protection, blames the fish kill on the administration. Kelly said his agency's recommendations were twice rejected under political pressure so that the Bureau of Reclamation could set lower water levels than federal biologists believed necessary for the survival of coho and chinook salmon in the Klamath River. Kelly's team concluded, in an April draft opinion, that the bureau's plan to divert more water to farmers on the California-Oregon border would jeopardize federally protected salmon. After the administration rejected that opinion, Kelly's team issued a second opinion, which the bureau again rejected. Kelly believes that his agency's opinion was then abruptly changed under political pressure without his team having the opportunity to

conduct required analyses—in direct violation of the administration’s legal duty to use “the best available science.”<sup>67</sup>

A month later, a U.S. Geological Survey economist accused the administration of suppressing government reports that concluded buying out farms in the Klamath River Basin would benefit the fishery and boost recreation services, which provide more economic value than agriculture. Bush officials conceded that the administration rejected the three reports, completed last year, because of the political and scientific controversy. Andrew Sleeper, a co-author of one of the reports, said the studies reveal that federal decisions routing limited water to farmers overlook the economic value of leaving the water in the Klamath River to support healthy fish runs. His report concluded that it would cost \$5 billion to buy out farmland and restore the river system, with eventual benefits totaling some \$36 billion in increased fishing opportunities and recreational spending. Currently, recreation on the Klamath generates an estimated \$800 million each year, eight times more than \$100 million in farm revenue.<sup>68</sup>

---

### **A SNEAK ATTACK ON THE ENVIRONMENT**

In March, the Defense Department circulated draft legislation exempting it from complying with federal laws that protect water quality, air quality, endangered species, and wildlife habitat. The administration wanted Congress to exempt military activities at sea, air bases, bombing ranges, and other facilities from protections under eight landmark environmental laws, including the Endangered Species Act, Clean Air Act, Clean Water Act, and Marine Mammal Protection Act. However, nearly all of these environmental regulations already contain exemptions for the Defense Department in national emergencies, times of war, and for national security.

Environmentalists, state attorneys general, and local communities around the country were able to block most of the new proposed exemptions. In November, however, Congress passed legislation giving the Defense Department a broad exemption from one major environmental law—the 1918 Migratory Bird Treaty Act, which protects 850 species of birds from harmful practices. President Bush signed the migratory bird protection waiver, giving the military license to bomb and destroy the natural habitats of migratory birds, putting more than 1 million birds at risk.

*The Defense Department circulated draft legislation exempting it from complying with federal laws that protect water quality, air quality, endangered species, and wildlife habitat.*

---

### **EVERY MANATEE FOR HIMSELF**

The number of manatees killed last year by boats reached an all-time high of 95—up substantially from the previous record of 82 in 1999. Biologists at the state-funded Florida Marine Research Institute predicted last summer that the population of manatees could decline by as much as 45 percent by 2050.<sup>69</sup>

As a result of a legal settlement, the Fish and Wildlife Service agreed to create refuges and sanctuaries in Florida for these endangered marine mammals by September 2001. But the agency violated the agreement by designating only two protected areas—and not until January 2002—while delaying action on 14 others. The agency also missed its

November deadline to finalize the remaining manatee sanctuaries. Instead, Bush officials asked the judge to revoke or delay the settlement requiring the creation of the safe havens. When the judge refused to lift the order, the administration appealed the decision. This prompted the judge to threaten Interior Secretary Gale Norton and other agency officials with contempt of court for violating the original settlement agreement.

In late October, the Fish and Wildlife Service did designate four marine sanctuaries and nine refuges for the endangered mammals. Only adjoining property owners will be allowed to use boats in the sanctuaries, and there will be speed limits in all of the refuges. Environmentalists said the plan did too little too late because the protection zones are in areas that are not particularly dangerous for the creatures. In addition, the agency failed to add any new zones outside areas that already are protected by the state of Florida.

After federal wildlife officials scrambled in December to post temporary notification buoys in 11 of 15 newly designated safe zones in Florida waters, the judge agreed to wait until the next hearing—scheduled for January 2003—to decide whether Interior Secretary Norton and other agency officials should be held in contempt of court for violating its settlement agreement to safeguard the manatees.

---

## FISHY DECISIONS

In June, the Fish and Wildlife Service reversed its own proposal, deciding against protecting coastal cutthroat trout as a threatened species in Washington and the lower Columbia River Basin. As the basis for its decision, the agency cited new information indicating that the fish are more abundant than previously believed and that improvements in habitat protection will minimize the prospect of the fish declining to the brink of extinction.

Native trout populations are in such grave danger throughout the West that it is difficult to believe that the species could have recovered so swiftly. In fact, coastal cutthroat trout is one of 29 species the agency agreed last year to fast-track for Endangered Species Act protection as part of a legal settlement with environmental groups. At the time, federal biologists considered the coastal cutthroat trout nearly extinct in two rivers and facing threats from habitat loss, hatcheries, and overfishing. Since then, Washington state has implemented new logging regulations and habitat conservation plans with the timber industry to protect the fish.

In September, the administration rejected a request to place white marlin, a popular sport fish, on the federal endangered species list. Such protections would have barred recreational anglers from catching the far-ranging billfish. International fleets indiscriminately kill large numbers of white marlin while trying to catch tuna and swordfish. Though the marlin population has declined dramatically, the National Marine Fisheries Service—which regulates offshore fishing—said stocks have not dropped enough to warrant banning their catch in U.S. coastal waters. In 1997, the federal government listed the white marlin as overfished.

*The administration suggested that federal agencies no longer should be required to publicly review the environmental effects of their projects.*

---

## **DROWNING OUT THE SOUND OF SILENCE**

In July, the Navy obtained a permit to deploy low-frequency active sonar (LFA), a submarine-detection system, across as much as 75 percent of the world's oceans. The administration's permit exempted the Navy from the moratorium imposed by Marine Mammal Protection Act, allowing it to harm whales, dolphins, and other species by flooding the oceans with intense sound. The high-powered system generates noise levels billions of times more intense than those known to disturb the migration of large whales. NRDC jumped into the fray in August, filing suit to stop LFA deployment.

Active sonar has been conclusively linked to a mass killing of whales in the Bahamas in March 2000 and is the likely cause of numerous other mass strandings of whales over the past 15 years. Regardless, the National Marine Fisheries issued the permit, even though the Navy's environmental impact statement—which by law has to be a “rigorous and objective evaluation” of environmental risks—failed to answer critical questions about the threat the system poses to marine mammals and the ocean ecosystem. For example, leading marine experts pointed out that the Navy's limited assessment could not determine how long-term exposure to LFA sonar would affect the breeding, feeding or migration of whales and other marine species. In October, a federal judge in San Francisco issued a preliminary injunction blocking global deployment of the LFA system. A trial on the merits is scheduled for June 2003.

Meanwhile, in August, the Justice Department argued in federal court that the National Environmental Policy Act, the bedrock law that requires environmental impact statements for any government project that would have a significant effect on the environment, does not apply to activities occurring beyond 3 nautical miles from the nation's shorelines. In other words, the administration suggested that federal agencies no longer should be required to publicly review the environmental effects of the offshore projects, a change that would open up the oceans to a host of unregulated activities that could damage and destroy marine life. NRDC challenged the administration's argument, asserting that in addition to territorial waters, the law covers activity within the nation's so-called exclusive economic zone, which extends off shore for 200 miles. The court agreed, but the administration may not be finished: a group of high-ranking political appointees from various agencies met afterwards to discuss turning the Justice Department's position into a new federal policy.

*The Corps is caught  
in the middle of a  
political tug-of-war.*

---

## **EBB AND FLOW ON THE MISSOURI**

For more than a decade, the Fish and Wildlife Service has tried to persuade the Army Corps of Engineers to alter the Missouri River's flow, returning it to its condition before it was dammed and deepened for barge traffic. In November 2000, the Fish and Wildlife Service concluded that dams on the Missouri are harming three federally protected species—the pallid sturgeon and two birds, the interior least tern and the piping plover. The agency suggested re-engineering the river's flow patterns to mimic natural ebb-and-flow conditions, with a rise in level in the spring for fish spawning and lower summer flows to provide nesting habitat for the shorebirds.

The Corps is caught in the middle of a political tug-of-war. Environmentalists and politicians from upriver states, which would benefit from more water in their reservoirs in the summer, insist the Corps is legally obligated to implement the Fish and Wildlife Service's recommendations. And in 2001, the Corps was leaning toward revising its river management plans to benefit wildlife. But then President Bush publicly sided with downriver states and agricultural interests that want higher water levels in summer for navigation but lower levels in spring to avoid flooding.

The Corps, at the behest of the White House, reversed course in August 2002, entering into yet another round of conflict resolution with the Fish and Wildlife Service. It was no surprise then when the Corps decreed in October there would be no spring rise on the Missouri River next year. But environmentalists were disappointed when the Fish and Wildlife Service signed off on the Corps' plan despite concerns that it would violate the Endangered Species Act.

The situation may not yet be resolved, however. In November, the Fish and Wildlife Service sent the Corps a letter insisting—once again—that lowering the Missouri River's summer water level to create sandbars and slow-moving water is essential to safeguard federally protected birds, fish, and other wildlife threatened by management policies favoring navigation.<sup>70</sup>

---

## **CALFED UP**

In August, the administration quietly dropped its appeal of a court ruling that would gut a critical component of California's widely supported water plan, leaving environmentalists to appeal the decision themselves to protect endangered salmon and other wildlife.

At issue is the state-federal "CalFed" plan, which was designed to restore the San Francisco Bay-Delta and improve water supply reliability for California. The origin of the CalFed plan dates to 1992, when President George H.W. Bush signed into law the Central Valley Project Improvement Act (CVPIA), a major overhaul of the federal project that delivers delta water to farmers and other California water users. The Interior Department wrote rules to implement the CVPIA that serve as the foundation of the CalFed plan.

While Congress was considering legislation to authorize funding for the CalFed plan, a federal judge in Fresno ruled in February that federal regulators improperly allocated water to fish and wildlife. In May, the Interior Department filed an appeal in the suit, which had been brought by Central Valley agribusiness interests. Three months later, however, the Interior Department withdrew its appeal.

If upheld, the court decision would reduce the amount of water available for safeguarding federally protected endangered and threatened species. But environmentalists say the damage could go beyond fish and wildlife; the ruling threatens to bring down the carefully balanced program and its promise of reliable water supplies for the rest of the state. NRDC and other environmental groups have appealed the ruling to the Ninth Circuit Court of Appeals.

Regardless of the lawsuit's outcome, the administration plans to go further than the court decision shifting water meant for wildlife to agricultural uses. A new plan by the



Interior Department, proposed in December, would allow federal water managers to declare drought conditions three times more frequently so that water supplies for federally protected fish could be more easily diverted to farmers. The proposed drought provisions would reduce the amount of water for wildlife by 100,000 to 200,000 acre-feet per year. The rules will be finalized after a public comment period.<sup>71</sup>

---

## WHALE OF A DEAL

To map potential underwater mineral reserves, miners use intense blasts of sound. This type of seismic testing has raised concerns about environmental dangers and prompted government officials to develop new regulations to protect marine mammals in the Gulf of Mexico. But an industry lobbyist persuaded the Mineral Management Service to weaken some of the protections.

Sperm whales have coexisted with oil and gas companies in the Gulf for decades. But over the past 15 years, as offshore operations have moved from shallower waters not frequented by the animals to deep water in search of profitable new reserves, scientists have become concerned that booming sound waves from seismic testing may be affecting the whales. The government decided to study the problem because sperm whales, which are highly sensitive to loud noises, have a low reproduction rate.

After the Mineral Management Service proposed draft regulations in August to protect the whales, the International Association of Geophysical Contractors—which represents 140 seismic testing companies—took action. The association’s president, Chip Gill, had a five-hour meeting with Mineral Management Service Director Chris Oynes to discuss the draft rules, after which the agency made a number of changes favorable to industry. Among other things, the agency agreed to delay monitoring for two months and shrink the size of the exclusion zone—the area that companies must “whale proof” before conducting a seismic test.<sup>72</sup>

*BLM is seeking to deflect concerns about the survival of one particularly rare plant, the milk vetch, by urging the Fish and Wildlife Service to consider contradictory research—some of it paid for by the off-road industry group lobbying to open up the dunes.*

---

## GETTING SANDBAGGED IN CALIFORNIA DESERTS

What good is a plan that satisfies no one, least of all the endangered animals that the government is supposed to protect? That’s what environmentalists are wondering after reading the BLM’s long-awaited draft management proposal for a 5.5 million-acre portion of the California’s Sonoran Desert. The plan, in the works for nearly a decade and released in September, favors vehicles at the expense of wildlife. It rejects the federal government’s own prescription for saving the endangered desert tortoise by reducing more than 150,000 acres of critical habitat for the species. It also allows off-road vehicles in dry streambeds that provide fragile habitat for dozens of other imperiled animals and rare plants.

Meanwhile, the BLM also is attempting to open up much of the 150,000-acre Algodones sand dunes system to off-road vehicles, much to the dismay of environmentalists and federal biologists who have raised concerns about the impact to rare plants and endangered species. The administration has proposed overturning a

Clinton-era legal settlement banning off-road vehicles on about 50,000 acres of the dunes—also known as the Imperial Sand Dunes Recreation Area—which span nearly 40 miles in southeastern California. In March, the BLM indicated its preference for lifting restrictions on vehicles—reopening a previously closed 34,000-acre area to more than 500 vehicles at a time, and another 15,000 acres to an unlimited number of riders. Off-road vehicles currently are allowed on 68,000 acres of dunes. The BLM is seeking to deflect concerns about the survival of one particularly rare plant, the milk vetch, by urging the Fish and Wildlife Service to consider contradictory research—some of it paid for by the off-road industry group lobbying to open up the dunes. BLM officials, however, deny that Bush officials pressured the field office to push the off-road proposal through. A final decision is expected soon.

---

### **DOWN TO THE LAST DROP**

Signaling a major shift in federal policy that could significantly threaten imperiled wildlife, the administration is poised to grant Western states more control over scarce water resources traditionally reserved for federal lands. Under the Clinton administration, the federal government exerted its authority to prevent states from diverting vast quantities of water away from national parks, forests, wildlife refuges, and other federal lands for urban and agricultural uses. In a case that could set a new precedent in this long-running federal-state battle, the administration loosened its claim to river water stored in a federal reservoir upstream from a national park in Colorado.

The dispute over water in the Black Canyon of the Gunnison River National Park was brought before a state water court, which ruled in 1978 that the federal government had the right to an unspecified quantity of water from a tributary of the Colorado River to preserve the park's ecology and beauty. But Interior Secretary Gale Norton, who repeatedly challenged federal water claims when she was Colorado's attorney general, said in September that the administration is willing to reach a settlement that would give the federal government considerably less water. As part of any agreement, the government would seek to make up the difference by acquiring water from other sources, which could mean having to buy it back from the state.

The administration's stance in the Colorado case is consistent with its other actions on water rights, including one in 2001 in which the administration opted not to challenge a state court decision that allowed Snake River water to be diverted from a national wildlife refuge in Idaho—to the detriment of federally protected fish and bird species. The administration's policy has encouraged at least five other Western states to mount challenges over water rights.

# ADDITIONAL ENVIRONMENTAL RETREATS

The following list includes additional anti-environmental actions taken by the Bush administration in 2002. A comprehensive and detailed chronology of the administration's record on the environment to date can be found on NRDC's website at: [www.nrdc.org/bushrecord/default.asp](http://www.nrdc.org/bushrecord/default.asp).

<b>January 16</b>	The Environmental Protection Agency said it would seek court approval to postpone for one year a requirement that utilities cut smog-causing pollution significantly by May 2003.
<b>January 18</b>	The White House failed to require light trucks to meet stricter fuel efficiency standards, saying (after six months of study) that it did not have enough time to evaluate a report by the National Academy of Sciences that recommended higher fuel efficiency standards.
<b>January 22</b>	The Forest Service filed an appeal in federal court to overturn a ruling halting salvage logging on 46,000 acres of burned timber in Montana's Bitterroot National Forest. The court found that the agency had illegally approved the plan by bypassing the usual public appeals process.
<b>February 4</b>	President Bush's fiscal year 2003 federal budget proposed billions of dollars in subsidies for energy companies while slashing overall spending for environment and natural resources departments by \$1 billion. His proposed budget also requested \$404 million in subsidies to support timber sales on national forests.
<b>February 7</b>	The White House announced that legal protections for five endangered species in Florida's Everglades may be reduced.



## REWRITING THE RULES, YEAR-END REPORT 2002

*The Bush Administration's Assault on the Environment*

January 2003

<b>February 11</b>	The National Park Service authorized motor vehicle tours in Georgia's Cumberland Island Wilderness. The Wilderness Act prohibits the use of motor vehicles in wilderness areas except in rare cases, such as emergencies.
<b>February 15</b>	Despite many unresolved scientific questions, President Bush approved Yucca Mountain—90 miles north of Las Vegas, Nevada—as the site of the sole repository for the nation's high-level nuclear waste.
<b>February 15</b>	The Forest Service gave preliminary approval for lead mining exploration in Missouri's Mark Twain National Forest, despite concerns that the porous limestone in the Ozarks could lead to massive water pollution.
<b>February 26</b>	The Environmental Protection Agency's top air official, Jeffrey Holmstead, acknowledged to state regulators that the Bush plan to cut utility emissions of three pollutants is insufficient to help the Northeast meet federal Clean Air Act standards.
<b>March 5</b>	An internal memo from the Forest Service stated that road construction near streams in national forests will no longer require Clean Water Act permits.
<b>March 6</b>	News reports reveal that Fish and Wildlife Service employees in Alaska were issued a gag order on discussing issues related to drilling in the Arctic National Wildlife Refuge.
<b>March 6</b>	Martha Hahn, director of the BLM office in Idaho, resigned rather than accept a forced transfer to a National Park Service job in New York. Interior Deputy Secretary Steven Griles did not consult Hahn about the transfer or give her a choice for her new assignment. Apparently Hahn had drawn the ire of Senator Larry Craig (R-ID) for repeatedly refusing to back down from restricting livestock grazing on public lands.
<b>March 12</b>	The U.S. Fish and Wildlife Service withdrew its proposal to establish the Little Darby National Wildlife Refuge near Columbus, Ohio, after a four-year planning process and broad public support for a refuge.

<b>March 28</b>	Agriculture Secretary Ann Veneman said the administration might lift a federal ban on oil and gas exploration, and even logging, in Montana's Rocky Mountain Front. In 1996, after years of study and extensive citizen input, the supervisor of Lewis and Clark National Forest prohibited energy exploration in the region, which extends north from Augusta to Glacier National Park.
<b>April 1</b>	The National Highway Traffic Safety Administration missed a deadline for issuing a fuel economy standard for 2004 light trucks, sport utility vehicles, and minivans.
<b>April 9</b>	The Justice Department filed a motion in federal district court to block the deposition of Andrew Lundquist, the director of Vice President Cheney's energy task force. NRDC secured a subpoena to Lundquist seeking task force records not included among the court-ordered documents provided to the public.
<b>April 16</b>	The National Marine Fisheries Service agreed to allow overfishing of New England fish, despite requirements under the 1996 Sustainable Fisheries Act to impose limits on when, where, and how fishermen can fish. The agreement also ignored data that shows that 12 of 18 New England fish stocks are severely depleted.
<b>April 24</b>	After a year-long delay, Interior Secretary Gale Norton began developing management plans for 15 of 19 national monuments designated by President Clinton, opening intense debate on allowing activities ranging from oil drilling to dirt-biking.
<b>May 3</b>	The Army Corps of Engineers, without completing hydrologic modeling and other environmental analyses, expedited construction of storage facilities to hold hundreds of millions of gallons of polluted stormwater on the borders of Everglades National Park. The Corps ignored concerns about polluted stormwater being pumped into the park from the reservoir during the wet season.

<b>May 21</b>	<p>The Interior Department cancelled a two-year ban on new mining claims in 1.2-million acres in and around southwestern Oregon's Siskiyou National Forest. Containing 15 wild rivers flowing through deep forest canyons and nearly 300 plants unknown anywhere else on Earth, the region had been under consideration as a new national monument. Beginning in January 2003, 90 percent of the area will be open to gold miners using giant, gasoline-powered dredges to suck stream beds or drill holes into the sides of mountains and insert explosive charges to blast out the ore.</p>
<b>May 22</b>	<p>The Forest Service proposed opening up 140,000 roadless acres in Los Padres National Forest to oil and gas leasing. The area includes some of the wildest and most rugged land in California and is home to more than 20 endangered or threatened animals and plants.</p>
<b>May 23</b>	<p>The Energy Department overturned the SEER 13 air conditioner standard (requiring a 30 percent increase in efficiency) in favor of a lower standard of SEER 12 (requiring a 20 percent efficiency increase beginning in 2006). The Bush standard will reduce energy savings by one-third. Fifty new power plants will be required by 2020 to meet the resulting increase in energy demand.</p>
<b>June 10</b>	<p>The White House set its sights on drilling the 23-million acre National Petroleum Reserve in Alaska, after being denied access to the Arctic National Wildlife Refuge. The reserve is no less ecologically rich however, and drilling would disturb polar bears, brown bears, wolves, birds, and caribou.</p>
<b>June 12</b>	<p>U.S. delegates to an international treaty on wild Atlantic salmon agreed to allow a foreign commercial harvest of fish from one of the nation's last surviving critically endangered salmon runs. The agreement will allow Greenland fleets to fish for salmon, even though the species clings to survival in only eight rivers in the state of Maine.</p>

<b>July 18</b>	The Government Accounting Office exposed the Energy Department’s plans to give itself the authority to reclassify 100 million gallons of nuclear waste as “incidental” waste, so it wouldn’t have to transport the waste from old weapons facilities in Washington, Idaho, and South Carolina. But leaving the waste in leaking underground tanks, and covering them in concrete, poses a serious contamination risk.
<b>July 19</b>	The White House joined several U.S. power utilities to oppose a renewable energy requirement in the Senate energy bill. The provision would boost sales of electricity from wind, solar, and other renewable sources from 2 percent to about 10 percent by 2020, saving consumers \$13 billion in reduced energy bills, and reducing greenhouse gas emissions and smog.
<b>August 3</b>	The Environmental Protection Agency missed a legal deadline for reassessing the safety-tolerance levels of 6,000 pesticides—despite the fact that the deadline was mandated by the Food Quality Protection Act of 1996.
<b>August 15</b>	The White House announced that President Bush would skip the U.N. World Summit on Sustainable Development, where more than 100 heads of state will discuss global environmental problems.
<b>August 29</b>	The Interior Department approved a controversial \$1 billion, 50-year project to store and pump water beneath the Mojave Desert. The private company that owns the land above the aquifer plans to sell the water it stores to a California water district. The Interior Department signed off despite concerns that the project could pose a danger to the aquifer and the fragile desert ecology it supports. Fortunately, the company eventually dropped its plans.
<b>September 10</b>	As oil companies sought to extend their use of the trans-Alaska oil pipeline for another 30 years beyond the January 2004 expiration, Interior Secretary Gale Norton rejected the need for establishing a citizens’ panel to oversee its operations.

<b>September 12</b>	Forest Service Chief Dale Bosworth told reporters that the 1993 law requiring his agency to accept appeals of all land-management decisions “doesn’t make sense,” and should be repealed. The agency then moved ahead with plans to exempt “fire-prevention” logging on millions of acres of Western forests from environmental reviews and citizen appeals.
<b>September 17</b>	The Environmental Protection Agency missed its statutory deadline to develop standards for some 176 toxic air pollutants, completing standards for only 82 industrial categories that emit the pollutants.
<b>September 18</b>	President Bush signed an executive order directing federal agencies to “streamline” the environmental review process for controversial, federally backed highway and airport construction projects, and limit public participation in planning and permitting processes.
<b>September 27</b>	The Interior Department overruled the Clinton administration’s decision to reject a proposal to excavate a 1,571-acre mine on public land in California considered sacred by local Indians. The Clinton administration’s decision was based on anticipated environmental damage.
<b>October 10</b>	The Environmental Protection Agency allowed local governments to apply pesticides on water to kill mosquitoes without having to get permits under the Clean Water Act.
<b>November 11</b>	At an international conference on endangered species, the U.S. representative proposed a plan that would reopen commercial trade in elephant ivory.
<b>November 18</b>	The solicitor general of the Interior Department, William Myers, said the administration is examining ways to limit environmental reviews under the National Environmental Policy Act, and assured ranchers that his agency would guard against efforts to use the Clean Water Act and the Endangered Species Act to restrict grazing activities on public lands.



<b>December 12</b>	The White House announced a paltry measure that would boost SUV and light truck fuel economy standards by a mere 1.5 mpg over the next five years. The mileage requirement for other passenger cars would remain at 27.5 miles per gallon, the standard set more than a decade ago.
<b>December 26</b>	The Bureau of Land Management issued a new rule to make it easier for state and local governments to claim ownership of rights-of-ways along roads, trails, paths, and rivers on federal lands. The rule created a streamlined procedure to allow the BLM to cede federal control over disputed parcels, possibly spurring development in national parks and wilderness areas.

## ENDNOTES

<sup>1</sup> This trend is not difficult to understand. The shift in Senate control derailed Senate investigations into the unsavory relationship between Bush administration officials and corporate lobbyists, and dramatically reduced, if not eliminated, congressional oversight of administration environmental policy.

<sup>2</sup> Among the issue identified in the OMB 2001 hit list are: clean air new source review, factory farm pollution, the roadless area forest rule, forest planning rules, and snowmobiles in national parks.

<sup>3</sup> Graham formerly ran an industry-funded center at Harvard that promoted economic and policy grounds for weakening environmental and public health safeguards.

<sup>4</sup> Adam Nagourney and Janet Elder, "Positive ratings for the G.O.P., if not its policy," *The New York Times*, November 26, 2002.

<sup>5</sup> Theo Stein, "BLM to ease oil, gas access," *The Denver Post*, March 19, 2002.

<sup>6</sup> Larry Addington donated nearly \$1 million to President Bush and other Republican candidates during the 2000 election campaign. (Source: <http://www.opensecrets.org>)

<sup>7</sup> According to BLM data released in March 2001, the Bush administration had increased the number of leases for oil, gas, and coal mining on public lands by 51 percent – from 2.6 million acres in 2000 to 4 million acres the previous year.

<sup>8</sup> In October, House Democrats charged EPA officials with manipulating data presented to Congress in an effort to downplay the threat of hydraulic fracturing – a natural-gas-well development

method – to drinking water. Representative Henry Waxman (D-CA) sent EPA Administrator Christine

Whitman a letter alleging that the agency altered scientific and policy conclusions in order to benefit Halliburton, a company formerly headed by Vice President Cheney and the primary hydraulic-fracturing contractor in the United States. Waxman cited an EPA report that found that hydraulic fracturing poses risks to drinking water. He noted that, after consulting with industry, the agency changed its findings – minimizing the risks – in order to bolster a controversial energy bill provision that would exempt hydraulic fracturing from the Safe Drinking Water Act.

<sup>9</sup> Grunwald, "Interior: Drilling won't violate polar pact," *The Washington Post*, January 18, 2002.

<sup>10</sup> Kim Murphy, "Limited drilling won't harm caribou, scientists say," *The Los Angeles Times*, April 8, 2002.

<sup>11</sup> Brent Israelsen, "Land swap deal under fire," *The Salt Lake Tribune*, July 19, 2002.

<sup>12</sup> Cat Lazaroff, "Bush administration rule could increase air pollution," Environment News Service, October 24, 2002.

<sup>13</sup> Pianin, "New Pollution Standards Prompt Suit," *The Washington Post*, January 1, 2003.

<sup>14</sup> H. Josef Hebert, "Justice orders continuation of Clinton-era clean-air lawsuits," *Associated Press*, January 15, 2002.

<sup>15</sup> John Heilprin, "EPA chief suggests utilities wait on suit's outcome before agreeing to power plant pollution cleanups," *Associated Press*, March 7, 2002.

<sup>16</sup> Katherine Q. Seelye, "White House rejected a stricter EPA alternative to the president's

Clear Skies plan," *The New York Times*, April 28, 2002.

<sup>17</sup> *Ibid.*

<sup>18</sup> James Bruggers, "Power plant finding changed after intervention," *The Courier-Journal*, November 9, 2002.

<sup>19</sup> See <http://www.peer.org/press/287.html>

<sup>20</sup> Brad Foss, "Group: Exxon pressured White House," *Associated Press*, April 3, 2002.

<sup>21</sup> Andrew Revkin, "U.S. sees problems in climate change," *The New York Times*, June 3, 2002.

<sup>22</sup> See [http://aospub.epa.gov/web/meta\\_first\\_new2.try\\_these\\_first](http://aospub.epa.gov/web/meta_first_new2.try_these_first)

<sup>23</sup> "Not told of key report, Whitman says," *Reuters*, June 13, 2002.

<sup>24</sup> *Ibid.*

<sup>25</sup> See: <http://www.epa.gov/water/yearofcleanwater/>

<sup>26</sup> Michael Grunwald, "Interior's silence on Corps plan questioned," *The Washington Post*, January 14, 2002.

<sup>27</sup> *Compensating for Wetland Losses Under the Clean Water Act*, National Academy of Sciences, 2001, and *Wetlands Protection: Assessments Needed to Determine Effectiveness of In-Lieu-Fee Mitigation*, General Accounting Office, May 2001.

<sup>28</sup> Ken Ward, Jr., "Haden won't suspend valley fill rules," *The Charleston Gazette*, June 18, 2002.

<sup>29</sup> Ward, "Federal Office of Surface Mining opposes EPA's proposed mine reforms," *The Charleston Gazette*, May 10, 2002.

<sup>30</sup> Ward, "Feds to curb study to prevent coalfield flooding," *The Charleston Gazette*, October 28, 2002.

<sup>31</sup> "Plan allows trade of clean-water credits," *Associated Press*, May 17, 2002.

<sup>32</sup> Eric Pianin, "U.S. to rethink clean water rules," *The Washington Post*, September 20, 2002.

<sup>33</sup> *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*

<sup>34</sup> See <http://www.epa.gov/305b>  
<sup>35</sup> "EPA official defends Bush's proposed cuts in wastewater, sewage cleanup program," *Associated Press*, October 19, 2002.

<sup>36</sup> This rule is yet another example of how contributors to the Bush-Cheney campaign are getting what they paid for. During the 2000 election, the Bush-Cheney campaign received \$2,636,625 from agribusiness, including \$647,285 from the dairy, livestock, and poultry and egg industries. President Bush received more livestock industry contributions (\$506,085) in the 2000 election campaign than any other federal candidate received between 1990 and 2000. (Source: <http://www.opensecrets.org>)

<sup>37</sup> The EPA's 2002 National Coastal Condition report acknowledged that the overall condition of our coastal waters is only fair to poor.

<sup>38</sup> The administration has turned a deaf ear to requests that it put in place the independent science review panel for the restoration project as Congress required as part of the authorization. The review panel requirement was added to the law after a number of scientists, including many from within the government, criticized the Corps' original technical blueprint for the project as containing "deep, systemic" problems. Despite the legal requirement and a December 2002 deadline for the panel's first report, no

progress towards institution of a panel has apparently been made.

<sup>39</sup> Seelye, "Bush proposing policy changes on toxic sites," *The New York Times*, February 23, 2002.

<sup>40</sup> Seelye, "Bush slashing aid for EPA cleanup at 33 toxic sites," *The New York Times*, July 1, 2002.

<sup>41</sup> In response to a negotiated agreement with NRDC and others, the EPA did make a commitment to review the old coliform bacteria standard, but not until 2005 – three years after the statutory deadline. The EPA cited economic factors for delaying its action even though the Safe Drinking Water Act does not allow cost considerations to affect health and safety determinations.

<sup>42</sup> See [http://www.nrdc.org/media/pre\\_s/releases/020603.asp](http://www.nrdc.org/media/pre_s/releases/020603.asp)

<sup>43</sup> Steve Edwards, "Lead poisoning still plagues cities," TomPaine.com, January 7, 2003.

<sup>44</sup> "Medicaid: Elevated Blood Levels in Children," General Accounting Office, February 1998.

<sup>45</sup> See [http://www.house.gov/commerce\\_democrats/press/gaochemse\\_crpt.pdf](http://www.house.gov/commerce_democrats/press/gaochemse_crpt.pdf)

<sup>46</sup> James V. Grimaldi, "Chemical plants feared as targets," *The Washington Post*, December 16, 2001.

<sup>47</sup> See [http://www.epa.gov/pesticides/cumulative/cum\\_exp\\_&\\_risk\\_ass.htm](http://www.epa.gov/pesticides/cumulative/cum_exp_&_risk_ass.htm)

<sup>48</sup> Rick Weiss, "HHS seeks science advice to match Bush views," *The Washington Post*, September 17, 2002.

<sup>49</sup> One new panel member is a California scientist who helped defend Pacific Gas & Electric Company against Erin Brockovich.

<sup>50</sup> Largely due to this panel's work, the definition of the toxic level of lead in the bloodstream was lowered from 60 micrograms per deciliter in the late 1970s to no higher than 10 in 1991.

<sup>51</sup> "Audit: State Enforcement of Clean Water Act Dischargers Can Be More Effective," U.S. Office of Inspector General, August 2001.

<sup>52</sup> "Bush EPA slashes inspection staff," *AIR Daily*, September 9, 2002.

<sup>53</sup> See <http://www.prospect.org/webfeatures/2002/epa-letter-02-28.html>

<sup>54</sup> Seth Borenstein, "Polluters pay less under Bush administration, records show," Knight-Ridder, November 5, 2002.

<sup>55</sup> Michael Milstein, "Bush will overhaul Northwest Forest Plan," *The Oregonian*, April 8, 2002.

<sup>56</sup> *Douglas Timber Operators, Inc. v. Secretary of Agriculture and Secretary of Interior*

<sup>57</sup> "Forest Service: Appeals and Litigation of Fuel Reduction Projects," General Accounting Office, August 2001.

<sup>58</sup> See <http://www.perc.org/pdf/dec99.pdf>

<sup>59</sup> The options available under the new study were: (1) delay the phase-out for another year; (2) continue to allow snowmobiles on all existing roads but reduce the numbers allowed to enter Yellowstone at the popular West Entrance (where air quality is so bad that rangers sometimes wear respirators); or (3) require cleaner and quieter snowmobiles, reduce their number, and limit access only on major snow roads.

<sup>60</sup> Seelye, "Snowmobile letter surprises EPA leader and Interior chief," *The New York Times*, May 2, 2002.

<sup>61</sup> For example, the Park Service will encourage snowmobilers to travel in groups on guided tours rather than on their own.

<sup>62</sup> Kenneth R. Weiss, "National seashore washing out with Bush administration," *The Los Angeles Times*, August 20, 2002.

<sup>63</sup> Mihalic's retirement took effect on January 3, 2003.

<sup>64</sup> Dean E. Murphy, "After top job in Yosemite, he's hanging up the ranger hat," *The New York Times*, December 10, 2002.

<sup>65</sup> The agency is also redoing its 1999 economic analysis of the project and must get Congress to appropriate the money.

<sup>66</sup> On February 6, 2002, the National Academy of Sciences issued a 26-page report concluding there was "no substantial scientific foundation" for a decision by federal biologists that led to water cutbacks the previous spring to agriculture fields to help endangered salmon and suckerfish. But the 12-scientist panel also found fault with the Bureau of Reclamation's 2002 Klamath River Basin operating plan that favored farmers over fish.

<sup>67</sup> Steve Hyman, "Federal biologist invokes Whistleblower Act," *The Los Angeles Times*, October 29, 2002.

<sup>68</sup> Marilee Enge, "River dispute rages despite salmon deaths," *San Jose Mercury News*, November 30, 2002.

<sup>69</sup> "Manatees are not endangered, but 'threatened,' state report says," Associated Press, October 10, 2002.

<sup>70</sup> Bill Lambrecht, "Missouri River battle brews anew," *The St. Louis Post Dispatch*, December 5, 2002.

<sup>71</sup> Mike Taugher, "Federal policy draft would shift water for salmon runs to farmers,"

*Contra Costa Times*, December 18, 2002.

<sup>72</sup> John M. Biers, "Whale of a problem," *The Times-Picayune*, October 13, 2002.