



REWRITING
THE RULES
3RD ANNUAL EDITION

*The Bush
Administration's
Assault on the
Environment*

April 2004

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NATURAL RESOURCES DEFENSE COUNCIL
April 2004



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ABOUT NRDC

The Natural Resources Defense Council is a national, nonprofit environmental organization with more than 1 million members and online activists. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and the environment. NRDC has offices in New York City, Washington, D.C., Los Angeles, and San Francisco. Visit us on the World Wide Web at www.nrdc.org.

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EXECUTIVE SUMMARY

After three years, the Bush administration's environmental record is unambiguous: landmark environmental programs protecting our air, water, lands, and wildlife are weaker. This third edition of "Rewriting the Rules" documents more than 150 assaults on our environmental safeguards between January 2003 and March 2004, reflecting a destructive pace that has only accelerated during President Bush's tenure. This report also presents the recent emergence of independent voices and documentary evidence exposing the inner workings of the Bush administration's environmental onslaught, and examines the long-term repercussions of these policies.

THE YEAR'S MOST NOTABLE ENVIRONMENTAL ASSAULTS

Below are some of the past year's most troubling Bush administration environmental actions.

Sewage in Our Waterways

Beaches and rivers across the country are exposed to bacteria, viruses, fecal matter, and a host of other wastes from sewage releases. In the Clinton administration, the EPA proposed to address the problem through a new Clean Water Act rulemaking, the result of a lengthy consensus process that included environmentalists and federal, state, and municipal authorities. But when the Bush administration took office in January 2001, it shelved the proposal for three years of "internal review." In November 2003, the Bush administration proposed to legalize the release of inadequately treated sewage into waterways, as long as it is diluted with treated sewage, a process the agency has euphemistically labeled "blending."

Sewage in Our Drinking Water

Florida is injecting treated sewage into so-called deep wells. The injection of treated sewage has continued despite concerns that, in Florida's hydrogeology, contaminants in the treated sewage could migrate upward into the drinking water supply. Recent studies finding cryptosporidium and giardia, two bacteria that cause illnesses in people, show that this is exactly what is happening in south Florida aquifers. However, rather than bringing the waste injection to a halt, as current Safe Drinking Water Act rules require, the EPA has proposed a special exemption, just for Florida, that allows injection of treated sewage to continue.

The End of New Wilderness

In April 2003, the Bush administration reversed the federal policy at the core of the U.S. wilderness preservation system. This policy protected public lands while federal land managers assessed them for possible protection as officially designated wilderness areas. In a sweeping legal settlement with then-Utah governor and current EPA Administrator Mike Leavitt, the administration renounced the government's authority to conduct wilderness inventories on public lands or to protect more areas for their wilderness values. The sudden settlement involved no public comment or open deliberations. This new policy threatens to open millions of acres of wilderness-quality public lands to drilling, mining, road building, and other development.

More Mercury Pollution in Our Air

Last year, 44 states issued warnings for eating mercury-contaminated fish, a 63 percent jump from 1993 when 27 states issued such warnings. The central sources of the problem are U.S. power plants and other industrial facilities, which together spew more than 150 tons of mercury into the air each year. But the Bush administration has refused to regulate mercury through the same tough approach used for other hazardous air pollutants, which are subject to rigorous standards under the Clean Air Act, using advanced pollution control technology. Rather than protect the public from this persistent hazard, the EPA announced a plan that allows nearly seven times the mercury pollution from coal-fired power plants than would be allowed if mercury were to be regulated like other hazardous air pollutants, and gives industry decades longer to comply. Originally, a 2018 deadline was contemplated, but the EPA is now looking at even further delay.

Reckless Energy Development

New Mexico's spectacular Otero Mesa is a banner example of the pervasive threat to our last wildlands posed by the current drive for energy development at any cost. Otero Mesa boasts more than a million acres of Chihuahuan grassland and, in a state plagued by drought, holds enough fresh drinking water to sustain half of the state's population. Although previously protected by the Bureau of Land Management policies, the Bush administration eased environmental safeguards in January 2004 to allow drilling after limited environmental analysis and public review, despite widespread local opposition.

DOCUMENTARY EVIDENCE EXPOSES INDUSTRY INFLUENCE

The direct influence of industry on Bush environmental policies was made painfully clear through recent documentary evidence. The documents expose the direct role of major polluters in drafting Bush administration policy, and undercut industry arguments embraced by the administration.

Industry's role in crafting the administration's plan to regulate mercury emissions from coal-fired power plants was exposed in January 2004, when it was revealed that at least a dozen paragraphs in the EPA's mercury proposal were lifted, sometimes verbatim, from memos sent by a law firm that represents the utility industry. A month later, a New Jersey official pinpointed additional verbatim and paraphrased wording from a report sponsored by an industry association representing two-dozen large Western utility companies.

Meanwhile, a Department of Justice brief disclosed internal industry documents that were used as the basis for weakening the Clean Air Act new source review (NSR) rules. The Justice Department brief also says the utility industry has known for more than a decade that massive air pollution increases from coal-fired power plants violated the Clean Air Act. Industry has claimed that the NSR rules were "ambiguous" and that they were unaware of violations until the first of several high-profile enforcement lawsuits in 1999. Because the documents were given to the government in November 2003, it seems the Bush administration has been promoting

and defending its new Clean Air Act loopholes with full knowledge that the central basis for them was a false industry assertion.

SCIENTISTS, JUDGES, SENIOR OFFICIALS JOIN CHORUS OF ENVIRONMENTAL CONCERN

In the past year numerous influential voices, sometimes from unexpected sectors, have lent their credibility to the chorus decrying the administration's direction on the environment.

Federal Courts Overturn Agency Policy

Federal courts have historically shown reluctance to overturn federal agency decisions on the environment, an attitude born out of deference to the agencies' technical expertise in these typically complex issues. Despite this high hurdle, Bush administration environmental policies have suffered a series of stinging defeats in rulings from federal judges who found the actions inconsistent with U.S. environmental laws. Several of the most important environmental assaults subject to court reversals are listed below:

- ▶ The Energy Department's efforts to relax energy efficiency standards for new air conditioners.
- ▶ The Interior Department rules allowing broad snowmobile access to Yellowstone National Park, characterized by a federal judge as "completely politically driven."
- ▶ The Energy Department's effort to reclassify high-level nuclear waste as incidental in order to escape requirements for proper disposal.
- ▶ The Interior Department's effort to allow oil exploration in public wildlands on the eastern boundary of Utah's Arches National Park.
- ▶ The Environmental Protection Agency's efforts to relax the Clean Air Act's new source review requirements that require power plants and factories to install modern pollution controls when they upgrade equipment.

In the latter case, the D.C. court of appeals found the EPA's new Clean Air rules to be so damaging and legally weak that the court issued a rare stay, immediately blocking the new source review rules from taking effect, even as the court undertakes the more extensive legal review required for final disposition of the case.

Scientists Accuse the Bush Administration of Manipulating Science

In February 2004, 63 scientists—including 20 Nobel laureates and 19 recipients of the National Medal of Science—issued a statement accusing the Bush administration of "deliberately and systematically" distorting scientific fact and misleading the public in order to further its own partisan political objectives. In a damning report, the scientists detailed numerous examples of the administration's abuse of science: censoring government studies; gagging agency scientists; refusing to confer with or ignoring independent experts; appointing unqualified or industry-connected individuals to federal advisory committees; disbanding those government panels offering unwanted information; and misinterpreting information to fit predetermined policy objectives (see Appendix).

Senior Agency Officials Resign over the Administration's Policies

The Bush administration's approach to environmental protection has spurred an epidemic of resignations by career environmental officials, especially in the EPA's enforcement office. As key experts have left the agency, reports have confirmed major enforcement declines. Those departing include Bruce Buckheit, the director of air enforcement; Richard Biondi, the associate director for air enforcement; Eric Schaeffer, the director of regulatory enforcement; and Sylvia Lawrence, the acting director of the EPA's Office of Enforcement and Compliance Assurance.

Pentagon Sees Global Warming as a Security Threat

Even as the White House continues to downplay the issue, the Pentagon seems to be taking global warming seriously. Authors of a new Pentagon-commissioned report, *An Abrupt Climate Change Scenario and Its Implications for United States National Security*, conclude that global warming could pose a serious security threat, citing scenarios involving widespread droughts and famine. Uncovered by *Fortune Magazine* in January 2004, the report was commissioned by respected Pentagon adviser Andrew Marshall, a Rumsfeld protégé who has influenced top U.S. military thinking for more than three decades and has been termed the Pentagon's "guru of long-term threat assessment." White House sources have declined to comment on the report except to make clear that they feel no need to reevaluate their current posture of denial on global warming.

FEDERAL ENVIRONMENTAL POLICY HIJACKED BY LEAST-RESPONSIBLE U.S. INDUSTRIES

Today, it is clearer than ever that U.S. environmental laws face a fundamental threat more sweeping and dangerous than any since the dawn of the modern environmental movement in 1970. What's more, this threat is now being translated into damage on the ground. After years of improvement, data indicate that the nation's water and air pollution problems are getting worse. Sewage contamination is now a major problem in lakes, rivers, and beaches around the nation, even as the administration moves to weaken basic Clean Water Act safeguards addressing the problem. Anglers in most parts of the country are confronted with health advisories against eating locally caught fish due to mercury contamination, yet the administration proposes to dilute and delay mercury pollution standards. Across the West, natural treasures belonging to all Americans are being handed over to logging, mining, and energy companies, while public input and environmental analysis are circumvented to speed the process.

The environmental excesses documented in this report reflect a system under siege. Environmental laws in the United States have been effective because they are supported by a system of federal agency safeguards, careful monitoring, credible enforcement, and decisions guided by a respect for science and data. That vital infrastructure has been undermined through weakening changes to environmental rules, enforcement relaxations, reduced funding for environmental protection, litigation deals, manipulation of science, reduced public participation, and an

unprecedented shroud of secrecy surrounding government deliberations on the environment. In essence, federal environmental policy has been hijacked by the least-responsible elements in U.S. industries.

Because the election season is upon us, the Bush administration and its allies among the regulated industries will seek to dismiss such criticisms as a political attack. In that regard, readers are reminded that we have been raising these serious concerns, and documenting this administration's march backward on the environment, with three annual editions of this report. This is not an extreme agenda, nor a partisan agenda. It is simply sound, long-term planning that should be embraced across the political spectrum.

Our landmark environmental laws have been among the most successful legislative initiatives of the past 50 years, improving our air, water, and quality of life in this country in myriad ways. Rather than tearing these programs down, it is time to focus again on how best to build on them to make progress on pressing problems like global warming, sprawl, and the loss of wildlife and natural areas.

—Gregory Wetstone

The Friday Follies

The Bush administration realizes just how unpopular its anti-environmental agenda is, and makes every effort to minimize the public's awareness. That explains why the administration routinely times its policy announcements to make it as difficult as possible for the news media to report on them, usually releasing information late on Friday afternoons. Here are examples of what the administration was doing while the rest of us were looking forward to the weekend.

FRIDAY, MARCH 19, 2004

Public Health: The FDA warns pregnant women and young children to limit their consumption of tuna due to mercury contamination, despite concerns from scientists that the health risks warrant avoiding eating tuna altogether. **Public Lands:** The BLM approves an energy company's request to conduct seismic exploration for natural gas in Utah, near Nine Mile Canyon—which houses more than 1,000 archaeological treasures ranging from fossils and American Indian rock art to cliff dwellings.

FRIDAY, FEBRUARY 27, 2004

Endangered Species: The NPS approves BMP Petroleum's request to drill another natural gas well off Padre Island National Seashore—the world's longest stretch of undeveloped barrier island threatening 11 endangered species that inhabit the island, including the Kemp ridley sea turtle, which is the world's smallest and most imperiled sea turtle. The Corps of Engineers issues a plan for managing the Missouri River that minimizes protection for the pallid sturgeon, an endangered species whose survival is dependent on natural flow changes in the river that the Corps opposes.

FRIDAY, FEBRUARY 13, 2004

Air Quality: The EPA relaxes the way it estimates air pollution over Theodore Roosevelt National Park in North Dakota, although the air is still as hazy, to allow new coal-fired power plants to be built in the area. **Right-to-Know:** The EPA restricts public access to “worst-case scenario” summaries provided by the Clean Air Act risk management plan, which was created to provide citizens with information on the dangers of industrial plants located in their communities.

FRIDAY, JANUARY 30, 2004

Air Quality: The EPA unveils a new proposal to regulate mercury emissions from coal-fired power plants that, in addition to being weaker than existing regulations, mirror utility industry recommendations.

FRIDAY, JANUARY 23, 2004

Endangered Species: The Bush administration reverses a Clinton-era rule intended to protect hundreds of rare plant and animal species from logging in national forests in the Northwest. Timber companies no longer are responsible for surveying and protecting imperiled habitat that inhabit roughly a million acres of old-growth forest, leaving many species at high risk of extinction, according to a federal analysis. **National Forests:** The USFS, invoking the clarion call of fire danger, releases a new management plan that triples allowable logging levels in the Sierra Nevada's 11 national forests by significantly weakening wildlife habitat protections. The USFS unveils management plans that

focus on increasing logging across 3.2 million acres of national forests in five states along the southern Appalachian range.

FRIDAY, DECEMBER 19, 2003

Air Quality: The EPA issues a new rule for the way chemical plants handle mercury, which fails to address the 65 tons of the potent neurotoxin that gets released into the environment each year.

FRIDAY, DECEMBER 5, 2003

Public Lands: The BLM moves to overturn grazing reforms instituted in 1995 by proposing new, rancher-friendly rules that would allow overgrazing and limit public involvement in grazing decisions.

FRIDAY, NOVEMBER 21, 2003

Energy Policy: The Interior Department announces it will open 8.8 million acres of Alaska's North Slope to energy development, including environmentally sensitive areas.

FRIDAY, OCTOBER 31, 2003

National Forests: The White House considers changing forest rules aimed at protecting watersheds (and especially salmon-bearing streams) by exempting some logging projects from environmental requirements in the Northwest forest plan. **Public Health:** The EPA refuses to restrict the use of atrazine, despite evidence that the pesticide causes cancer and has been detected at unsafe levels in the drinking water of a million Americans.

FRIDAY, OCTOBER 17, 2003

Public Health: The EPA decides not to regulate dioxins in sewage sludge, despite evidence that it can contribute to a higher risk of cancer, as well as neurological and immune system damage and behavioral disorders.

FRIDAY, OCTOBER 10, 2003

Endangered Species: The Bush administration proposes exempting dam operators from meeting federal river temperature standards intended to protect salmon and other cold-water native fish in Oregon. **Enforcement:** The EPA misses another deadline to overhaul its permit compliance system, used to track the issuance of clean water permits, self-monitoring data and enforcement, and inspection activities. **Public Lands:** Interior Secretary Gale Norton overturns a Clinton-era regulation allowing hardrock mining operations to dump unlimited amounts of toxic waste on public lands.

FRIDAY, AUGUST 29, 2003

Energy Policy: While touting the EPA's Energy Star program, the Bush administration diverts nearly half of its funding to cover other budgetary priorities.

FRIDAY, AUGUST 8, 2003

National Forests: The Bush administration moves to double the amount of logging in national forests in the Northwest.

FRIDAY, JULY 18, 2003

National Forests: The Bush administration asks the Supreme Court to overturn an appeals court ruling that protects roadless areas awaiting formal wilderness designation.

FRIDAY, JULY 11, 2003

Water Quality: The EPA waives Clean Water Act permit requirements for pesticide discharges into waterways, arguing that chemicals designed to kill aquatic species are not wastes in need of regulation.

FRIDAY, JUNE 20, 2003

Endangered Species: The FWS cuts in half its proposed critical habitat designation for the threatened Preble's meadow jumping mouse from 20,253 acres and 237 stream miles, to 10,542 acres and 125 stream miles. **Water Quality:** The Pentagon backs off its plan for widespread perchlorate testing at all U.S. military sites.

FRIDAY, JUNE 6, 2003

Nuclear Weapons: The DOE, citing national security, says it will spend \$2–\$4 billion for a new factory to build low-yield nuclear weapons, such as “mini-nukes” and “bunker busters.”

FRIDAY, MAY 30, 2003

Air Quality: The EPA agrees to change a settlement involving long overdue toxic air pollution regulations, which triggers the revival of an original lawsuit, the outcome of which could render tens of thousands of industrial facilities in violation of the Clean Air Act.

National Forests: The White House uses forest fire prevention as a guise for eliminating environmental reviews before allowing large-scale logging or burning of trees in national forests, and calls for ending the requirement that forest managers consult with wildlife agencies to determine if thinning or controlled burns could harm endangered or threatened species. **National Parks:** The NPS reverses a ban on motorized recreation off Maryland's Assateague National Seashore, making it the first national seashore on the East Coast to allow jet skis and other personal watercraft. **Water Quality:** The Bush administration issues a report recommending streamlining mountaintop removal coal mining permits, eliminating a rule mandating a 100-foot buffer zone between mining operations and streams, and rolling back another rule requiring strict Clean Water Act permit reviews for valley fills in streams draining more than 250 acres.

FRIDAY, MAY 23, 2003

Endangered Species: The BLM reverses a three-year-old policy protecting endangered animals and plants in Southern California's Imperial Sand Dunes Recreation Area. Under the agency's new management plan, 49,000 acres that had been closed to off-road vehicles will be opened, leaving just 26,000 acres of designated wilderness. The Bush administration agrees to a demand by the timber industry to stop federal land managers from surveying for more than 300 types of rare plant and

animal species before allowing logging in old-growth forests in the Pacific Northwest.

FRIDAY, APRIL 11, 2003

Wilderness: The Bush administration settles a lawsuit filed by the state of Utah, opening wilderness quality public lands to drilling, mining, and other development activities.

FRIDAY, APRIL 4, 2003

International: An antipollution treaty signed by the United States and Mexico for the border region (extending from the Gulf of Mexico to the Pacific Ocean) lacks funding for the cleanup.

FRIDAY, MARCH 28, 2003

Water Quality: The OMB intervenes in an ongoing debate over health risks posed by perchlorate contamination in drinking water, delaying further regulatory action until after completion of yet another scientific study of the issue, and issues a gag order barring the EPA staff from publicly commenting on perchlorate pollution.

FRIDAY, MARCH 7, 2003

Environmental Immunity: Deputy Defense Secretary Paul Wolfowitz sends secret memo to all military branch chiefs directing them to develop plans for President Bush to invoke national security exemptions to five major environmental and health laws.

FRIDAY, FEBRUARY 28, 2003

Wilderness: The Bush administration denies wilderness protection for millions of acres of Alaska's Tongass National Forest, allowing nearly 50 planned timber sales to proceed.

FRIDAY, JANUARY 31, 2003

Air Quality: The EPA issues a voluntary rule on the manufacture of U.S. ship engines that will do little to reduce air emissions from oil tankers, cruise vessels, and cargo freighters. **Public Health:** The EPA decides not to ban the use of atrazine and declares that drinking water contaminated with 12 times the legal limit of this cancer-causing herbicide poses no health risk. **Water Quality:** The GAO faults the EPA for failing to adequately enforce federal regulations governing factory farm pollution.

FRIDAY, JANUARY 10, 2003

Air Quality: The Interior Department approves a 780-megawatt coal-fired power plant in Montana despite NPS warnings that the pollution will impact air quality and visibility of Yellowstone National Park. **Water Quality:** The EPA proposes lifting Clean Water Act protection for 20 million acres of wetlands and 60 percent of small streams and ponds, allowing polluters to denigrate or destroy these waters at will.

FRIDAY, JANUARY 3, 2003

National Forests: The Forest Service exempts certain logging projects from environmental review and public participation, applying categorical exclusions to more than 150 pending projects.

FAILURE TO ENFORCE



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President Theodore Roosevelt once said, “Compliance with the law is demanded as a right, not asked as a favor.”¹ Without a doubt, he would be deeply disappointed that environmental enforcement—and not polluters—is taking a beating these days.

The White House might argue that the Environmental Protection Agency (EPA) has forced companies to spend more on pollution cleanup in the administration’s first two years (roughly \$8.4 million) than it did during the final three years of the Clinton administration (nearly \$7 million).² What Bush officials dare not mention is that during the same time period, criminal penalties against polluting industries dropped by more than one-third (to \$62 million)—with new referrals down by more than 40 percent—and civil penalties sank by almost half (to \$55 million).³ Indeed, polluters have saved millions of dollars in penalties.⁴ All the while, Bush officials have repeatedly tried to reduce EPA enforcement staff by hundreds of positions. All these numbers add up to fewer inspections, lax oversight, fewer prosecutions, lighter penalties, and more pollution.

TALKING LOUDLY AND CARRYING A SMALL STICK

In October, a review by the EPA’s inspector general (IG) cited two main reasons for the decline in the agency’s environmental enforcement activities over the past few years: insufficient resources and neglectful management.⁵ More damning news came in December, when an analysis of EPA records from the past 15 years confirmed that enforcement is no longer a priority. The investigation revealed, for example, that under the Bush administration violation notices have dropped 58 percent and administrative fines have dropped 28 percent.⁶ The EPA’s slack enforcement has been further hampered by President Bush’s repeated budget requests to Congress, which each year have called for dramatic cuts in key enforcement personnel.

EPA Administrator Mike Leavitt credited the agency’s so-called smart enforcement approach, which emphasizes voluntary compliance—or working closely with companies to address pollution problems rather than punishing them for violating pollution laws. But some EPA officials insist they feel pressured by agency leaders to slow down enforcement cases. And both current and former EPA employees are concerned that the agency is failing to do its job and, as a result, is putting the public’s health at risk.⁷

In a bit of good news, the EPA recently raised penalties against polluters to match inflation. The bad news is that it took the agency nearly two years to do so. This so-called penalty adjustment, which took effect in February 2004, allowed polluters to pocket \$39 million that they otherwise would have paid in fines for violations.

Adding insult to injury, the recent adjustment is not retroactive, and therefore, the EPA cannot collect the owed penalties from 2002 to 2004.⁸

ENFORCEMENT INACTION

Polluters are benefiting from the EPA's slack enforcement approach. For example, a rule issued by the EPA to control livestock pollution puts polluters first by allowing corporate farms to continue fouling the nation's waterways with animal waste while shielding them from liability.⁹ The new regulations for Concentrated Animal Feedlot Operations (CAFOs) fail to ensure that states carrying out the program are doing enough to enforce it, according to a report by the General Accounting Office (GAO) in January 2003. For the EPA's rule governing factory farm pollution to be effective, the agency needs to conduct better oversight—a challenging task, the GAO said, given the agency's lack of a clear plan or the needed resources.¹⁰ According to the GAO, the situation is likely to get worse because the EPA has shifted responsibilities for permitting and enforcement to states that lack the expertise, political will, or funding to protect U.S. waterways.¹¹

A notable example of lax enforcement is the case of Louisiana. In February 2003, the EPA's IG issued a report blasting the agency's Dallas regional office for insufficient oversight and enforcement of federal air, water, and hazardous waste protections in the Bayou State. Specifically, the IG cited federal regulators for not holding state environmental officials accountable and for relying on faulty data provided by the Louisiana Department of Environmental Quality (DEQ).¹²

At the international level, environmental officials from the United States and Mexico signed a 10-year agreement in April 2003 to fight pollution along their shared 2,000-mile border. The treaty aims to reduce air pollution, protect water supplies, and prevent pesticide contamination in the region. As a result of intense industrial development in recent decades, some 12 million people live along the border. Conservationists criticized the new framework as a step backwards because it provides no money to help clean up the 62.5-mile corridor on either side of the border, which extends from the Gulf of Mexico to the Pacific Ocean.¹³

WATERED-DOWN ENFORCEMENT

Approximately 45 percent of assessed U.S. waterways are too polluted, under the Clean Water Act, to support drinking, fishing, or swimming. But the EPA's combination of lax enforcement and low fines threatens to dilute the effectiveness of the Clean Water Act.

The EPA's Office of Enforcement and Compliance (OEC) recently undertook the broadest effort to date to document the government's failure to enforce water pollution standards. The OEC found that, at any one time, roughly 25 percent of all large industrial plants and water-treatment facilities are in violation of federal law. And in all but a handful of cases, the EPA has failed to take action against the polluters. The study, completed in February 2003, also found that half of the serious offenders exceed pollution limits for hazardous substances by more than 100 percent; 13 percent of the polluters exceed limits by 1,000 percent. On average, the EPA takes formal disciplinary action in no more than 15 percent of these cases, with fewer than half resulting in fines.

39 million Amount polluters saved between 2002 and 2004 as a result of the EPA's failure to adjust environmental penalties for inflation.

According to the study, some companies and municipalities have illegally discharged toxic chemicals or wastes into waterways for years without government sanctions.¹⁴

Making matters worse, an investigation by the EPA's inspector general in May 2003 criticized the agency for failing to keep tabs on water pollution. The IG found that the EPA's computer tracking system is obsolete and full of faulty data, and it lacks information on tens of thousands of sources of serious pollution.¹⁵ The IG report noted that efforts to fix the 20-year-old computer system (the Permit Compliance System) have been slow, poorly managed, and underfunded, endangering the viability of the agency's entire permit system—the main tool for enforcing the Clean Water Act.¹⁶ In the EPA's current system, thousands of permits expire every year without being renewed, allowing polluters to illegally discharge toxic waste into our streams, rivers, and lakes. Other permits are granted without considering the amount of pollution that is already impairing a given watershed. Despite the IG's findings, a month later the EPA quietly decided to push back the timeline on fixing the tracking system, largely because the administration failed to provide the necessary funding.¹⁷

GET THE LEAD OUT

Over the years, the EPA has cracked down on the District of Columbia's Water and Sewer Authority (WASA) to protect Washington, D.C., residents from polluted drinking water. But since the Bush administration took office, EPA officials have been less than diligent in safeguarding the city's water supply. In fact, the EPA's enforcement of the Safe Drinking Water Act has substantially dropped off since President Bush took office. Drinking water inspections, administrative penalty orders, administrative penalties, and other measures of enforcement activity have all decreased since then.¹⁸

Perhaps this explains the recent drinking water crisis in Washington, D.C. Studies completed last summer found significant lead contamination in roughly two-thirds of tested D.C. homes. (Blood lead levels well below federal standards have been shown to decrease children's IQs significantly.) However, the EPA opted not to levy fines against the city government nor to force WASA to clean up the pollution. Instead, the agency told D.C. officials last fall that they could have nearly 15 years to replace the outdated lead pipes causing the problem.¹⁹

The administration also let WASA off the hook for failing to adequately inform residents about the health threat posed by the city's dirty tap water. After more than two years of undisclosed, serious lead contamination problems, of which the EPA was aware, the *Washington Post* published a series of front-page articles decrying the problems. Only then did local health officials recommend that pregnant women, along with children under the age of six, should immediately stop drinking unfiltered tap water and should have their blood tested for lead.²⁰

SMOKE AND MIRRORS MONITORING

Earlier this year, the EPA issued a new rule limiting how often federal and state regulators can require industrial plants to monitor pollution from hundreds of smokestacks. The Clean Air Act requires that such monitoring take place no more

210 EPA enforcement positions eliminated since President Bush took office.

\$500 million Clean Water Act enforcement funding cut proposed by President Bush (FY05 budget).

than twice every five years, but in the late 1990s the EPA required more frequent monitoring of industrial plants. At the behest of industry lobbyists, the Bush administration decided to scale back emissions monitoring.²¹ Many states, heads of pollution control agencies, and former federal enforcement officials have expressed concern, saying that the reduction will make oversight more difficult and could worsen air quality. The change comes after the release of an independent analysis of 15 years of EPA records, which found that the Bush administration has cut levels of air pollution enforcement nearly in half.²²

ENVIRONMENTAL COPS OFF THE BEAT

In April 2003, news reports revealed that after the September 11, 2001, terrorist attacks, EPA criminal investigation agents were diverted from crime-busting duties and put to work as bodyguards, chauffeurs, and even gofers for EPA Administrator Christine Whitman. Although no one questions the need to protect government officials, this diversion of resources left the decision open to criticism. Several senior agents complained anonymously about being ordered to perform personal tasks, including returning a rental car for Whitman's husband, holding a table until their boss arrived for a restaurant reservation, keeping the radio of Whitman's car tuned to her favorite music station, fetching her dry cleaning, and even walking her dog.²³

The Bush administration has cut levels of air pollution enforcement nearly in half.

The EPA agents, who were pulled from offices around the country for several days at a time, said the added duties put a strain on the already overtaxed resources of the 220-agent Criminal Investigation Division. In some cases, according to the reports, when Whitman traveled to a city, the closest EPA regional office would be left without investigators for up to a week while agents served on her protective detail. Instead of running errands for Whitman, the agents said they preferred doing what they were trained to do: investigating alleged violators of environmental laws and gathering evidence for criminal prosecutions. As one wag quipped, "Whitman took the *E* from the agency's title, turning it into the Protection Agency."

Last December, the administration announced that it would stop yanking the EPA's environmental cops off the beat to provide security for the agency's senior officials. The decision to return EPA agents to their regular duties came in response to an internal management review that found that non-agency activities "left a void in enforcement."²⁴

ENFORCERS GONE BUT NOT FORGOTTEN

In December, the EPA's director of air enforcement, Bruce Buckheit, retired from the agency after nearly 30 years. As a reason for his departure, he cited the Bush administration's lax litigation strategy against utility companies that are violating the Clean Air Act's new source review (NSR) program. Buckheit said his departure was also motivated in part by comments from J.P. Suarez, the EPA's top enforcement official at the time. Suarez told senior enforcement managers in November that the White House would require case-by-case reviews for all pending and not-yet-filed NSR investigations to see whether they are justified under the agency's new interpretation of that key Clean Air Act provision. The effect of this new approach, said

Buckheit, would be to “stop almost all” enforcement action against heavily polluting power plants.²⁵

Buckheit is not alone. In fact, he is one of four top-ranking EPA enforcement officials to cite the administration’s air pollution policies as a reason for leaving the agency. Rich Biondi, the EPA’s associate director for air enforcement, followed Buckheit out the door. Biondi also said the change in enforcement direction was a contributing factor in his decision. In 2002, the agency lost Eric Shaeffer, its director of civil enforcement, and Sylvia Lowrance, acting director of the EPA’s Office of Enforcement and Compliance Assurance—both of whom cited similar reasons for their departures.²⁶

21% Pollution violation cases that the EPA declined to refer for prosecution in 2002.

25% Industrial facilities that routinely violate the Clean Water Act, according to EPA data.



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CHAPTER 2

DIRTY SCIENCE

Sixty-three scientists can't be wrong. Earlier this year, a renowned group of experts, including 20 Nobel laureates and 19 recipients of the National Medal of Science, issued a statement accusing the Bush administration of "deliberately and systematically" distorting scientific fact and misleading the public in order to further its own political objectives. In a damning report, the scientists detailed examples of the administration's relentless abuse of science:

- ▶ censoring government studies;
- ▶ gagging agency scientists;
- ▶ refusing to confer with or ignoring independent experts;
- ▶ appointing unqualified or industry-connected individuals to federal advisory committees;
- ▶ disbanding those government panels for offering unwanted information; and
- ▶ misinterpreting information to fit its predetermined policy objectives.¹

Perhaps Princeton University professor Michael Oppenheimer put it best: "If you believe in a rational universe, in enlightenment, in knowledge, and in a search for truth, this White House is an absolute disaster."² The ire of top U.S. scientists reinforces the notion that no matter how strong the nation's environmental protections, our laws and regulations can be effective only if they are based on science, properly implemented, and fully enforced.

MERCURY MALFEASANCE

The bad news is mercury emissions from coal-fired power plants and other industrial sources pose an increasing danger to children, according to an Environmental Protection Agency (EPA) report issued in February 2003. The worse news is the Bush administration held up public release of the report for nine months. The report, "America's Children and the Environment," reveals that states are issuing more and more warnings about dangerous mercury levels in fish. It also provides mounting evidence that mercury is collecting in the blood of women of childbearing age. Known to cause mental retardation, learning disabilities, and attention disorders, mercury is one of the most dangerous substances still in common use.³ Children are more susceptible to mercury exposure because of their developing nervous systems.

Meanwhile, news reports in March 2003 revealed that Georgia officials—under pressure from industry, had persuaded the EPA to accept faulty data showing that

fish in the Savannah River had an average level of methyl mercury contamination that met the federal government's maximum allowable level.⁴ Based on the data, the EPA reclassified the "impaired" river overnight to one that no longer violated mercury pollution standards under the Clean Water Act. It turns out that officials with the state's Environmental Protection Division manipulated fish samples by inflating the data by counting some fish from the same segments of the river two or three times in order to make the samples appear larger than they actually were. After accepting the state's faulty data, the EPA declared the river no longer legally impaired and withdrew restrictions on mercury releases into the river.⁵

MERCURY OMISSIONS

Recently uncovered documents show that the administration's new proposals to regulate mercury emissions from coal-fired power plants are not only weaker than existing Clean Air Act requirements, but also echo utility industry recommendations.^{6,7} At least a dozen paragraphs in recent mercury proposals were transposed, sometimes verbatim, from memos sent by Latham & Watkins, a law firm that represents the utility industry.⁸

A few weeks later, even more industry material turned up in the EPA's mercury proposals. In fact, on the same day that the agency held a public comment session in Philadelphia on the proposed standards, an official at New Jersey's environmental protection agency pinpointed both verbatim and paraphrased wording from industry. In March 2003, West Associates—an industry association representing two-dozen large Western utility companies—submitted detailed recommendations to the EPA on mercury requirements. The EPA had evidently copied several sentences from the industry report for its proposed rules.⁹

PLAYING HIDE-AND-SEEK WITH WATER FACTS

The EPA's inspector general (IG) recently issued a report accusing agency officials of consistently misleading the public about U.S. drinking water quality.¹⁰ Moreover, because the EPA buried the IG report in an obscure area on its website, it was not made public until NRDC found it and alerted the media. The IG report documented numerous claims by Bush officials that incorrectly "portrayed [the EPA's] success at improving drinking water quality." For example, in a June 2003 press release, the EPA boasted that: "In 2002, 94 percent of Americans were served by drinking water systems that meet our health-based standards—an increase of 15 percent in the last decade."¹¹ The *New York Times* took the EPA at its word, publishing an editorial that same day citing the false data as fact.

As it turns out, the EPA's conclusions were based on "flawed and incomplete" information, according to the IG. The IG report asserts that "due to missing data on violations of drinking water standards, the agency did not in fact meet its drinking water performance goals."¹² The IG also found that the EPA is fully aware that these public claims substantially overstate actual drinking water compliance. Yet the false public statements were rarely accompanied by prominent or adequate caveats, the IG's report noted. Although the IG report does not quantify

\$130,000 Discounted value of a senior citizen's life under a controversial Bush administration regulatory calculation.

\$6.1 million Value of a senior citizen's life under the former regulatory calculation.

precisely how exaggerated the Bush administration's estimates have been, EPA scientists have admitted to NRDC that in 2002, only about 81 percent of the jurisdictions monitored had safe drinking water—13 percent lower than what Bush officials reported.¹³

ROCKET MEN AND DRINKING WATER

NRDC has obtained thousands of pages of documents leaked by federal employees, as well as documents provided by the Pentagon to congressional investigators. The documents reveal that the federal government has known of perchlorate contamination and its threat to public health for more than 20 years—and has not acted upon it.¹⁴ A chemical used primarily in rocket fuel, perchlorate has been used in significant quantities in at least 49 states, and it has polluted drinking water supplies in more than half of those states.¹⁵ Still, most Americans have never heard of the chemical, and the Bush administration would like to keep it that way.¹⁶

Over the past year the Pentagon and the EPA have waged an interagency battle over regulating perchlorate. The EPA has been aware of the health risks posed by perchlorate for more than a decade. However, documents obtained by NRDC show that every time the agency has completed a report concluding that perchlorate is harmful at low doses, the Pentagon and its contractors have attacked the EPA science, have tried to obfuscate the issues, and have successfully blocked the EPA regulatory measures or strong cleanup action.¹⁷ Simply put, the Pentagon—which has billions of dollars in cleanup costs at stake—disputes the EPA's contention that even trace amounts of perchlorate pose a health risk, particularly to young children and fetuses.

In July 2003, the administration quietly declined to set any drinking water standard for perchlorate, maintaining that more study is needed. The administration took the perchlorate risk assessment out of the EPA's hands and sent it to the National Academy of Sciences (NAS) for a lengthy review. Thus, there currently is no legal limit on the amount of perchlorate allowed in drinking water anywhere in the United States.

In apparent violation of federal law, industry-funded scientists were named to the NAS panel, but their conflicts of interest were not reported.¹⁸ The chairman of the panel, Dr. Gilbert S. Omenn, a professor at the University of Michigan, resigned after it was learned that he served on the board of a company that had started developing a technology to clean up perchlorate. At least two other panelists have clear ties to Lockheed-Martin, a major defense contractor. Dr. Richard Bull of Washington State University and Dr. Charles Capen of Ohio State University also consulted for the company.¹⁹

The perchlorate problem is a prime illustration of the Bush administration's penchant for secrecy and willingness to set aside science and public health in favor of protecting polluters—in this case the Pentagon and defense contractors. In March 2004, NRDC filed a lawsuit charging the administration with violating the Freedom of Information Act (FOIA) by refusing to disclose documents regarding both the nature of industry involvement in federal assessments of perchlorate's safety and White House lobbying on behalf of industry.

A chemical used primarily in rocket fuel, perchlorate has polluted drinking water supplies.

INDUSTRY'S RAT POISON RACKET

In August 2003, internal documents obtained by NRDC through the FOIA reveal a shocking level of industry involvement in the EPA's assessment of the ecological risks of rat poisons. In the fall of 2001, the agency prepared a risk assessment for nine rat poisons and sent a copy to the rat poison industry for a courtesy error-only review. Purportedly, the purpose of this review was to allow the industry to identify any typographical or mathematical errors before the document was publicly released. Over the next 15 months, however, the rat poison industry abused this process to demand significant substantive changes and prevent public release of the document. After at least five separate closed-door meetings with the industry, the EPA complied with those demands.²⁰

One of the industry's major concerns was that the EPA's ecological review proposed certain safety measures intended to protect wildlife and the environment from rat poisons.²¹ After industry insisted that any reference to safety measures be removed, the EPA agreed not to do so without allowing any chance for public comment or other involvement.²² The end result of this backdoor process was a risk assessment that takes no position on what to do to protect wildlife and the environment from rat poisons.²³

These rat poisons are also a significant public health hazard, especially for children. The EPA has relied on data in the past showing that 15,000 or more children accidentally ingest rat poisons each year; the most recent rat poison exposure numbers are even higher. The agency previously backed away from requiring certain safety measures to protect children—again under industry pressure, even though the same safety measures are incorporated in the same manufacturers' rat poisons sold in other countries, and even though the safer rat poisons have been shown in industry-sponsored studies to be as effective.²⁴

The EPA's acquiescence to the demands of the rat poison industry is another disturbing example of the Bush administration allowing industry literally to rewrite the rules to benefit corporate special interests.

A NEW KIND OF SENIOR DISCOUNT

In 2003, the Bush administration quietly instituted a policy of devaluing the lives of older Americans when calculating the costs and benefits of environmental regulations. Derided by critics as the "senior death discount," the highly controversial computational method imposed by the White House Office of Management (OMB) distorts the health effect of pollution through methods such as valuing the lives of those older than 65 at 37 percent less than the lives of younger people.

In May 2003, a coalition of 22 environmental, health, and religious groups sent a letter to the OMB, accusing the administration of skewing the calculations to claim that the benefits of antipollution regulations are much lower so as to justify weaker pollution standards. The next day, EPA Administrator Christine Whitman, who bore the brunt of criticism due to the ramifications for air pollution standards, said her agency would stop using the calculation.

However, the OMB is still requiring the EPA to conduct another kind of senior death discount called the life-expectancy method, which estimates the value of saving a life

\$6 Estimated health care savings and improved worker productivity gained from every dollar spent on environmental regulations, according to the OMB.

in part on the number of years a person has left to live. One administration estimate used this method to lop the price tag on protecting the life of a 70-year-old person from \$6.1 million to only \$130,000.²⁵ Under this method, saving the life of an older American would count less than that of a younger person, even though recent studies have shown that the value of the elderly staying alive is as much, if not more, than anyone else.

WORTH EVERY PENNY

Much to the Bush administration's chagrin, word came in September 2003 that regulations meant to safeguard human health and the environment are worth more than their cost. In fact, environmental protections not only are crucial to ensuring cleaner air and water, but they are cost-effective, according to the most comprehensive federal study ever performed on the costs and benefits of regulatory decision making. Although conservationists and health advocates were not surprised by this news, they were surprised by the messenger. The OMB conducted the study, finding that the benefits of some major environmental rules actually outweigh the costs to industry by several times. According to the OMB, health and social gains resulting from tough new clean air regulations during the past decade were five to seven times greater than compliance costs. The OMB also admitted that it erred in its 2002 annual assessment by underestimating the benefits of environmental protections.²⁶

The Bush administration quietly instituted a policy of devaluing the lives of older Americans when calculating the costs and benefits of environmental regulations.

OMB SPIN CONTROL

In January 2004, the OMB put politics before public health by moving to exert control over emergency declarations rather than leave that authority with federal agencies. Currently, scientific experts within federal agencies, and not the OMB political appointees, are in charge of warning the public about health threats and safety concerns. The OMB is trying to usurp that authority under peer review.²⁷ The agency has issued a proposal that would require any scientific information relevant to regulatory policy to be reviewed by an OMB-approved panel.^{28,29}

Although peer review is routine, the OMB's proposed version is somewhat perverse. The new proposal discourages independent scientists who have received public funding from taking part in the peer review process, thereby slanting the playing field toward experts connected with industry.³⁰ It also grants the executive branch final word as to whether the peer review process was acceptable.³¹

Critics say the OMB's proposal could inject political considerations into scientifically based, nonpartisan statements from federal agencies. Or worse, the White House could downplay or delay the release of important information regarding diseases or dangerous situations in the name of national security. A nonpartisan group of former top agency officials, fearing the merging of federal science and politics as dangerous to both the public and environment, have joined environmental and health groups in opposing the OMB's efforts.³²

AIRING THE TRUTH

Nearly two years after the tragic events of September 11, 2001, an internal investigation by the EPA's inspector general revealed that the White House instructed the

agency to downplay the dangers of air pollution in the aftermath of the World Trade Center collapse. The IG report found that as a result of involvement by the White House Council on Environmental Quality (CEQ), “guidance for cleaning indoor spaces and information about potential health effects from W.T.C. debris were not included in the EPA’s issued press releases.”³³

In the absence of sufficient data, and citing national security concerns, the EPA repeatedly reassured the public that the air at ground zero was safe to breathe. In fact, high levels of dangerous substances such as benzene, lead, mercury, PCBs, asbestos, and fiberglass were present in the air on-site for weeks. As a result, thousands of people, including rescue workers, who were not warned about the need for respirators may now face serious health risks. Recently, several Manhattan residents and workers filed a class-action lawsuit in U.S. District Court against the EPA, claiming that the agency submitted to political pressure to return the area to “normalcy” by making misleading statements about air quality and by allowing residents to return home even though the air was not safe to breathe. The suit also accuses former EPA head Christine Whitman of displaying “a shockingly deliberate indifference to human health.”³⁴

KNEECAPPING NEPA

The Bush administration’s strategy to streamline the National Environmental Policy Act (NEPA) could amount to steamrolling environmental protections and public input, say critics. Signed into law in 1970 by President Richard Nixon, NEPA requires federal officials to assess the environmental impacts of proposed agency decisions and to give the public a say in those decisions. Incidentally, in September 2003, the White House Council on Environmental Quality (CEQ) issued a report that many fear could obstruct the public’s role in making key federal decisions affecting the environment.³⁵

Critics say recommendations in the report, “Modernizing NEPA Implementation,” would undermine NEPA’s guarantees of public participation and environmental review in two ways. First, the section on environmental assessments recommends scaling back the extent of required analysis of an activity’s environmental impact. Federal agencies often prepare environmental assessments in order to avoid having to prepare more detailed environmental impact statements, which require greater public participation in the process. Curtailing public input into the review process could open the door to more environmentally damaging projects.³⁶

Second, the task force’s recommendations for what are called categorical exclusions could allow more environmentally destructive activities to escape review and public input altogether. Federal agencies give categorical exclusions to activities that supposedly do not have an effect on the environment. That means that the activities are not subject to NEPA and can be initiated without public input. The administration has expanded these exclusions to encompass activities that will undoubtedly harm the environment, such as so-called forest thinning projects that will open up public lands to more logging.³⁷

11 NRDC Freedom of Information Act requests (in March 2003) for EPA documents related to perchlorate pollution.

1 Perchlorate documents the EPA has so far provided to NRDC.

EPA's inspector general revealed the White House instructed the agency to downplay the dangers of air pollution in the aftermath of the World Trade Center collapse.

POLLUTED PANEL

Earlier this year, the EPA was considering 24 candidates to serve on the Clean Air Science Advisory Committee, a panel that is charged with reviewing ozone data and pollution standards. Some of the prospective panel members are tied to industry groups that would be regulated by new ozone standards. Consider, for example, three of the nominees: George Wolff, Joe Mauderly, and Roger McClellan. Wolff works for General Motors; Mauderly lobbies for the oil, chemical, auto, trucking, and electricity industries; and McClellan has spoken out against ozone standards on behalf of industry since 1997. Many view these potential panelists as the latest example of attempts by the Bush administration to stack federal policy panels with industry representatives.³⁸

CORPORATE TAKEOVER

If the Bush administration has taught us anything, it is that you can take the lobbyist out of industry, but you can't take the industry out of the ex-lobbyist. Indeed, the administration has largely succeeded in its quiet quest to hand over the reins of federal environmental agencies to former corporate lobbyists. While the names may change, the story remains the same. Top political appointees at federal resource agencies are working behind closed doors with their industry friends (in some cases their former employees) to ensure that regulatory decisions primarily benefit the regulated community. Meanwhile, examples abound of dedicated public servants who pay a professional price for resisting the administration's efforts to undermine, rather than uphold, environmental safeguards.

AN INSIDER'S GAME: J. STEVEN GRILES

Deputy Interior Secretary J. Steven Griles is considered by many to be the prime example of the Bush administration's effort to fill agencies with former industry types and empower them to make regulatory decisions affecting the companies that once employed them. Griles, who has long been under scrutiny for maintaining cozy relationships with his former industry clients, became the focus of an investigation by his agency's inspector general (IG) in May 2003. The IG set out to determine whether Griles violated the agency's conflict of interest rules when he took part in regulatory decisions that benefited his former clients in the energy industry.

Griles's calendar, obtained through the Freedom of Information Act (FOIA), revealed that over the past two years he met at least three times with officials of the National Mining Association, while the industry group he had represented as a lobbyist was trying to persuade the administration to relax federal rules on mountaintop removal mining. Griles met with a dozen executives of another former client, the Edison Electric Institute, to discuss the administration's plans to ease clean air enforcement actions against polluting power plants. These actions suggest that Griles may have violated two recusal commitments that he signed when he joined the administration. In these documents he agreed to stop extensive contacts with his former clients and to stay out of agency decisions involving those industries.¹

In March 2004, the IG completed his 18-month investigation, concluding that Griles did not violate federal ethics rules. However, the IG qualified his ruling by noting that it was difficult to determine if direct ethics violations occurred because the investigation was forced to rely on Griles himself for significant amounts of



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information concerning his involvement with former industry associates. The IG noted also that Griles gave conflicting accounts about his relationship with those individuals since taking the number two job at the Interior Department.

Although no formal charges were filed against Griles, the IG criticized Griles for exhibiting poor judgment in his dealings with industry representatives, particularly a dinner that Griles set up with top Interior officials and his former lobbying partner (who pays Griles \$284,000 a year as part of a business settlement). The IG also raised concerns about a letter Griles sent to the Environmental Protection Agency (EPA) urging delay in the release of a study critiquing an Interior Department plan for energy development in the Powder River Basin. Griles sent the letter after he had withdrawn from the project citing a conflict of interest. Many remain unsatisfied with the IG's conclusions and have asked Interior Secretary Gale Norton to take corrective action against Griles for his highly questionable conduct.

TOO SOLICITOUS: WILLIAM GERRY MYERS, III

In August 2003, the Interior Department's IG launched a probe into allegations of conflict of interest involving former Interior Solicitor William Gerry Myers, III. A former lobbyist for ranching and grazing interests, Myers was accused of violating a recusal pledge he signed in May 2001, shortly after joining the administration, in which he agreed not to participate for one year in any matter involving his former law firm or clients. But, according to his office calendars, obtained by environmentalists through the FOIA, Myers met three times with cattle industry representatives, attended a reception held by his former law firm, met with three of the firm's attorneys, and took part in at least a dozen internal meetings on grazing issues.²

Throughout his tenure as the Interior's top lawyer, Myers spearheaded the Bush administration's efforts to ease environmental protections that restrict cattle grazing on public lands. In particular, Myers worked to limit preparation of environmental impact statements and to rein in public involvement in grazing decisions under the National Environmental Policy Act (NEPA), as well as to limit use of the Endangered Species Act to curb grazing on federal lands. In January 2004, the IG cleared Myers of alleged ethics violations, determining that despite his extensive contact with industry lobbyists, he had complied with the letter of the law.³ Myers, who resigned from the Interior in October 2003 in the midst of the controversy, currently awaits Senate confirmation on his nomination to the Ninth U.S. Circuit Court of Appeals.

LOUSY LAND DEAL: KATHLEEN CLARKE

Bureau of Land Management (BLM) Director Kathleen Clarke is under investigation for her possible ethics violations involving her role in a proposed federal land swap in Utah. The BLM whistleblowers scuttled the proposed San Rafael land exchange after revealing that it would have ripped off federal taxpayers to the tune of \$117 million. Clarke, former director of the Utah Department of Natural Resources, told federal ethics officials that she would remove herself from participation in any issues involving Utah upon taking over at the BLM in January 2002. She also filed a written recusal with the Office of Government Ethics excusing herself from all Utah matters.

27 Meetings between BLM Director Kathleen Clarke and industry interests since she signed a recusal statement vowing to avoid such contact.

However, her appointment calendar reflects more than two dozen meetings on Utah issues involving a variety of topics, including wilderness management and grazing matters. As for the San Rafael deal, Clarke's schedule shows meetings throughout 2002 with everyone from lobbyists and a chief negotiator for the deal to an oil executive. Investigators confirmed that Clarke never consulted with Interior's ethics officers on any potential conflicts regarding the Utah issues.⁴

MARK OF A TIMBER BEAST: MARK RUTZICK

In April 2003, President Bush appointed the timber industry's top lawyer, Mark Rutzick, in the industry's fight against the Endangered Species Act to oversee protection of those same imperiled species. Rutzick's responsibilities as a senior adviser with the National Oceanic and Atmospheric Administration (NOAA) cover Western natural resource issues, particularly legal issues involving the 27 species of West Coast salmon protected under the Endangered Species Act. Rutzick's long list of industry clients included the American Forest Resource Council, for which he filed lawsuits to fight logging limits necessitated by wildlife protections.⁵

SOUTHERN COMFORT: JOHN PEMBERTON

In September 2003, shortly after the Bush administration weakened the Clean Air Act's new source review (NSR) rules, John Pemberton, the EPA's assistant administrator for air and radiation, left the agency to take a top job with Southern Co., an electric utility. Southern, a major polluter and a current defendant in a federal clean air enforcement case, had lobbied the administration for the new source review provision to be weakened. Pemberton's career switch happened just days after another senior EPA official, Associate Administrator Edward Krenik, joined the Bracewell & Patterson law firm, which represents Southern Co. as part of the Electric Reliability Coordinating Council and other industry trade groups.⁶

BORROWING AIR POLLUTER'S PLAYBOOK

Several recent incidents have raised serious questions about the EPA's scientific credibility and independence. For example, internal electric utility documents made public earlier this year reveal that the industry has known for more than a decade that massive increases in air pollution from coal-fired power plants violate the Clean Air Act. According to a Justice Department brief, the documents contradict often-repeated complaints by industry officials that they were unaware they had violated the EPA's interpretation of the law until the agency filed the first of several high-profile enforcement lawsuits in 1999.

The disclosure also questions one of the reasons the administration used to justify its recent retreat from Clean Air Act enforcement and its attempts to weaken clean air rules.⁷ And because the utility industry documents were handed over to the government in November 2003, it is clear that the administration launched its effort to weaken the Clean Air Act with full knowledge that it would essentially pardon an industry that had been withholding potential harmful information from the public.⁸

2 Top EPA officials involved in weakening the Clean Air Act's power plant regulations who, days later, left the agency for top jobs with utility companies that benefited from the changes.

Correspondence obtained through the Freedom of Information Act shows that Bush officials and the power industry knowingly made false claims about the benefits of weakening clean air protections.

As with other disputed claims, Bush officials have defended the administration's NSR changes as necessary to improve the safety and reliability of the nation's electrical grid. However, NRDC recently uncovered correspondence between the Energy Department and the utility industry that confirms that the administration overstated the benefits of its NSR changes on electricity. The correspondence, obtained through the FOIA, also shows that Bush officials and the power industry knowingly made false claims about the benefits of weakening clean air protections.

Specifically, email messages in 2002 between Energy Department officials and American Electric Power (AEP) stated that relaxing NSR rules would "have very little if any effect on reliability." The email message from AEP adds, "There is very little if any reliability improvements being stopped today by recent politically motivated NSR interpretation revisions." The email message also suggests that it would be difficult to discredit environmentalists who claimed that efficiency improvements would be more beneficial than changing NSR rules.

It is worth noting the public comments made by Bush officials, including a letter written by then-Acting EPA Administrator Marianne Horinko to the *New York Times*. The letter said that the EPA "reformed" the NSR rule to "boost the reliability, efficiency, and safety of industrial power plants." Utility industry lobbyists made similar claims. For example, lobbyist Scott Segal said that the NSR changes would help "move us along the path of improving the efficiency and reliability of the electrical power industry."⁹

DUAL FUEL FRAUD

In February 2004, the Department of Transportation (DOT) decided to extend a regulation that rewards the auto industry for producing cars that use alternative fuels.¹⁰ The program, approved by Congress in 1988 and due to expire in 2004, was created to reduce gasoline consumption by providing consumers with cars that can operate on ethanol in addition to gasoline. However, because there are so few fueling stations that supply alternative fuels (only 182 of the nation's 176,000 stations offer ethanol fuel), the vast majority of drivers fill their dual-fuel cars with regular gasoline. The winners in this situation are automakers who receive mileage credits for producing fuel efficient cars—whether the cars decrease their gasoline consumption or not. Many consider the program one that lets automakers continue production of gasoline-using cars, which deepens U.S. dependence on foreign oil and increases global warming pollution.¹¹

PAYING THE PRICE

Some public servants make a conscientious decision to leave the Bush administration; others have no choice. Kevin Gambrell lost his job at the Interior Department in September 2003 after he criticized the agency for failing to protect Navajo Indians from being cheated by energy companies seeking to use tribal lands for oil and gas pipelines. Gambrell had headed the Indian Minerals Office in Farmington, New Mexico, since 1996. Speaking to an investigator appointed by a federal judge presiding in a class action lawsuit against the Bureau of Indian Affairs, Gambrell said

that, in some cases, payments to the Navajo Nation were only 1/20th the size of those to private landowners in the surrounding area. The department fired Gambrell shortly after the investigator filed a report confirming that the government had failed to ensure fair payment to Indian landowners.¹²

SHOOTING THE KLAMATH MESSENGER

In the wake of the massive salmon die-off on the Klamath River, the largest recorded fish kill in the West, Bush officials said that not enough science was available to determine whether the administration's policies were to blame. Not true, said a biologist with the National Fisheries Marine Service. Michael Kelly said he warned his superiors that diverting water from the river to farm fields could cause a fish kill. In October 2003, he filed a federal whistleblower complaint, alleging that the water diversion violated Endangered Species Act protections for salmon, and saying that his recommendations were rejected under political pressure. The administration denied his charges, and the U.S. Office of Special Counsel declined to investigate the matter.¹³

DIGGING UP TROUBLE

Jack Spadaro, superintendent of the National Mine Health and Safety Academy, was an outspoken critic of the government's investigation three years ago into a massive coal spill in eastern Kentucky, one of the biggest environmental disasters in the Appalachian region. In fact, Spadaro served on the panel investigating the spill until he resigned in protest in 2001.

Spadaro blamed the administration for failing to act on the panel's findings that Massey Energy, the coal company responsible for the spill, and federal regulators for years had been aware of potential problems at a huge lagoon of coal slurry in West Virginia. The panel found that Massey had ignored repeated requests to reinforce the barrier between the lagoon and an abandoned mine beneath it. As a result, on October 11, 2000, the coal slurry broke through the earth into the mine, spewing more than 300 million gallons of the thick, black wastewater into local streams, killing hundreds of thousands of fish, flooding homes, polluting wells, and blackening waterways along the Kentucky–West Virginia border. Spadaro and other panel members wanted to impose heavy fines against Massey for eight violations, but the final report recommended only two violations totaling \$110,000.

Spadaro also accused political appointees of largely absolving the company, failing to hold federal regulators accountable for weak oversight and curtailing the investigation. He alleged that senior mine safety officials, including the assistant secretary of labor for mine safety and health, handed out no-bid contracts to friends and former business associates.

Bush officials dismissed Spadaro's claims and denied that the White House had worked to weaken environmental and safety regulations to help big coal companies. In addition, senior mining officials claim Spadaro failed to follow orders and took an unauthorized cash advance that cost the government \$22.60 in bank fees, an offense they found serious enough to outweigh his 26 years of exemplary service.¹⁴ Earlier

50 Top managers at the Interior Department that White House Senior Adviser Karl Rove briefed on the political importance of pleasing agriculture interests in the Klamath River Basin, presumably by increasing water flow to nearby farms at the expense of endangered salmon.

1 Phone messages Vice President Dick Cheney left for a top Interior Department official urging the agency to move faster in diverting Klamath River water for irrigation.

this year, the administration demoted Spadaro, cut his salary, and relocated him to another office.¹⁵

SLUDGE FEST OVER FARM FERTILIZER

In February 2004, David Lewis, a microbiologist who worked for the EPA for 31 years, testified before Congress that the agency knowingly used unreliable data when denying a petition to stop the use of sewage sludge as farm fertilizer.¹⁶ The petition, filed by more than 70 environmental, labor, and farm groups called for a moratorium on the use of sewer sludge, which state agencies consider highly toxic and corrosive. In fact, sewer sludge is hazardous enough to sicken livestock and endanger the public.¹⁷ Regardless, the EPA denied the petition, citing data from two Georgia farms that had heavy metal levels in sludge within federally approved limits. That data, however, had already been reviewed and rejected by Georgia state officials, who described it as “completely unreliable, possibly even fraudulent.” While working at the EPA, Lewis raised concerns about sludge standards. He was fired shortly afterward. “This whole [sludge] process is a scam,” Lewis later testified.¹⁸

A federal whistleblower alleged that the [Klamath River] water diversion violated the Endangered Species Act protections for salmon, and that his recommendations were rejected under political pressure.

IN NEED OF AID AT USAID

In January 2003, the U.S. Agency for International Development (USAID) eliminated all environmental personnel from its policy bureau, weakened the authority of the agency environmental coordinator, and left in limbo several bureau environmental coordinators. Gone are people whose important functions included overseeing USAID’s environmental assessments and compliance; issuing annual assessments on USAID’s overall environmental performance; and reporting to Congress on multilateral development bank loans affecting the environment and indigenous peoples.

Presumably USAID jettisoned its environmental experts in retaliation for disclosures from environmental personnel about the violations of law, abuses of authority, and actions of the multilateral banks and the agency that put public health and safety at risk (disclosures that are supposed to be protected under the federal Whistleblower Protection Act). Unless these positions are restored, observers fear that U.S. foreign assistance, especially from the multilateral development banks—will be further removed from public scrutiny and implemented with less regard for public health and the environment. Even if these functions do return, the lesson to environmental staff in other bureaus is clear: Fulfilling USAID’s commitment to environmental protection may be hazardous to one’s career.¹⁹

WETLANDS DON’T POLLUTE

In October 2003, an EPA water quality specialist resigned in protest over the Bush administration’s controversial wetlands policy. According to Bruce Boler, a group composed largely of local developers in southwest Florida commissioned a report outlining how developers could address worsening water quality problems in the region while evading federal wetlands restrictions. Their resultant report concluded that (1) wetlands generate pollution, based on samples collected in wetlands next to highways and bridges, and (2) developers can overcome wetlands protection

obstacles by employing a tactic called rent-a-cow, whereby the land owner allows a few cattle to graze in the wetland so that it can be reclassified as improved pasture.

Florida's environmental agencies, no foes to development, voiced no objections to the report's astounding findings that, in effect, wetlands pollute. Boler, in his resignation statement, cited the stance taken by the EPA's regional administrator on the report that the agency "would not oppose state positions, so if a state had no water quality problems with a project than neither would the EPA."²⁰

"This whole [sludge] process is a scam."



REWRITING
THE RULES
3RD ANNUAL EDITION

*The Bush
Administration's
Assault on the
Environment*

April 2004

CHAPTER 4

INDUSTRY-DRIVEN ENERGY POLICY

Despite repeated claims by Bush officials that environmental laws are hindering energy development, a federal study released in January 2003 found that 85 percent of oil and 88 percent of natural gas in five major geological basins on federal land—covering 60 million acres from New Mexico to Montana—is open for leasing and development.¹ In these areas, only 15 percent of oil and 12 percent of gas is off-limits due to its location in national parks, wilderness areas, and other protected lands.²

The government's own findings, which Bush officials called "unexpected," have not thwarted the White House's aggressive plan to cede the crown jewels of the United States—our last remaining wild and open spaces—to the energy industry.³ The federal government owns half of the land in the eight non-coastal Western states, and the administration has made no secret of its plans for exploiting these areas. Thomas Power, an economist at the University of Montana, says Bush officials are "very explicit that they want to relax restrictions that either the courts or the previous administration put in place . . . on industry's access to a broad variety of natural resources on public land."⁴

PERMITTED TO PLUNDER

The Bush administration is committed to quickly approving energy development permits—and is looking to speed up the process even more. Since 2001, the Bureau of Land Management (BLM) has approved 34 percent more applications for drilling on federal land than it did under the Clinton administration, according to an independent review of thousands of applications since 1998. In April 2003, BLM Director Kathleen Clarke instructed agency staff to start using various new streamlining strategies, such as bundling drilling applications and conducting environmental assessments for entire oil or gas fields rather than for individual wells. Speeding up the permitting process means less time for thorough environmental review and public input, and that is why conservationists view streamlining as a way to steamroll drilling projects through on sensitive public lands.⁵

HEADING FOR THE HILLS IN WYOMING

Wyoming is a microcosm for the administration's seemingly unquenchable thirst for extraction. The BLM's field office there has received more than 4,000 drilling permit applications in the past three years.⁶

It appears that energy companies could soon be headed for the hills in Wyoming. Under a draft plan released by the BLM in February 2003, some 200 oil and gas wells would be allowed in Wyoming state's Jack Morrow Hills over the next few decades.⁷ Located in a corner of the Red Desert region—encompassing 662,000 acres of wildlands—the hills feature sand dunes, volcanic formations, colorful rocky buttes, and an array of endangered wildlife. The area is home to the largest elk herd in the world, the largest pronghorn antelope herd in the lower 48 states, some 350 wildlife species (including the dwindling sage grouse and ferruginous hawk), seven wilderness study areas, the Oregon-California and Mormon Pioneer Trails, and countless Native American sacred sites.

With 94 percent of Wyoming's public lands already open to leasing, conservationists had hoped the BLM would safeguard the hills' fragile landscape. Instead, the BLM is proposing to allow oil and gas drilling in the area.⁸ The public comment period on the agency's draft proposal ended in May 2003, but the publication date of the final plan has since been postponed several times. The current expected release date is spring 2004.

In early 2003, the BLM paved the way for the largest-scale oil and natural gas development project ever conducted on federal lands. The agency gave final approval to a project involving the drilling of tens of thousands of coal-bed methane wells and conventional oil and gas wells by 2011 in the Powder River Basin area of Wyoming and Montana.

Coal-bed methane extraction involves removing large volumes of groundwater to release pressure that holds the natural gas in underground coal seams. Typically, this water is discharged—untreated—either directly onto the ground or into unlined waste pits. The salty discharge damages crops, vegetation, and drinking water. The Powder River Basin project, spread across 12 million acres, could mean construction of nearly 80,000 miles of roads and pipelines and more than four trillion gallons of groundwater to be pumped to the surface.⁹

The project not only puts at risk public lands, but also threatens the livelihood and quality of life of ranchers, farmers, and private landowners in the basin.¹⁰ Despite these concerns, Interior Secretary Gale Norton announced in early 2003 the agency's intention to streamline the permit process in order to triple the number of gas drilling approvals in the Powder River Basin. Norton said she was responding to complaints from energy companies about long delays for permits.¹¹ Critics, however, argued that speeding up the process comes at the expense of environmental analyses and involvement by local residents, leading to rash decisions that could mar the West's fragile landscapes.¹²

DRILLING IS JOB ONE IN THE ROCKIES

In August 2003, the BLM announced a new policy to promote oil and gas development "in a timely manner" while supposedly still protecting the environment.¹³ The BLM's actions contradict the agency's statutory multiple use mandate. In effect, the agency is promoting a single use of public lands—energy development—at the expense of many other valuable uses such as farming, ranching, and recreation. Under this new policy, federal land managers throughout the Rocky Mountain region

\$3.4 million Campaign contributions for President Bush to date from oil and gas industries.

have been directed to cooperate with industry in identifying environmental protections that should be removed or relaxed to expedite drilling projects.¹⁴

The new policy also changed the rules to allow mitigation outside the areas where energy development actually takes place. The purpose of mitigation is to minimize the environmental harm caused by drilling. But the BLM now can avoid taking actions to reduce damage where there is energy development, as long as drilling is restricted on lands elsewhere that are not even in jeopardy. Conservationists say that such sleight of hand is completely inconsistent with the administration's stated goal of speeding up energy development while protecting the environment. The new BLM policy also strives for the "least restrictive mitigation necessary to accomplish the desired protection." Critics point out that it should not be difficult to set the mitigation bar lower when the desired protections already are so low.¹⁵

NO SAFE PLACE FROM DRILLING

It seems that no place, no matter how special or spectacular, is safe from the administration's aggressive effort to open the United States for drilling. For example, the BLM proposed in January 2004 to allow oil and gas drilling in Otero Mesa, New Mexico, one of the most biologically rich desert ecosystems in the world. Otero Mesa contains more than a million acres of Chihuahuan Desert grassland, which provides outstanding wildlife habitat and recreational opportunities. Otero Mesa also contains enough fresh drinking water to sustain half of the state's population. The land was protected under the Clinton administration when the BLM restricted oil and gas drilling to roadside areas—but that is about to change.¹⁶ Under the Bush administration, the agency has eased protections on the land to allow extensive drilling after limited environmental analysis or public review. This despite widespread local opposition to energy development that threatens the area's wildlife, water quality, and recreational value.¹⁷

One of the few beneficiaries of the administration's plans in New Mexico is George Yates, who has staked the fortunes of his oil and gas business on developing Otera Mesa. Over the last four years, Yates, with the help of his family and employees, has contributed more than \$250,000 to President Bush and the Republican Party. Yates has even hosted a fundraiser at his home for Vice President Dick Cheney. Deputy Interior Secretary J. Steven Griles formerly worked as a lobbyist for Yates Petroleum.¹⁸

FOSSIL FUELS THREATEN FOSSILS

Strange as it sounds, the Dinosaur National Monument could soon become synonymous with fossil fuels instead of just fossils. In February 2004, the BLM auctioned off 55 parcels of federal land in Colorado and Utah—totaling 45,000 acres—to energy companies for oil and gas drilling. The areas now open for development, some noted for having wilderness qualities, border the 210,000-acre monument. Drilling rigs are expected to be visible all along the 20-mile route to the entrance.¹⁹

As part of the administration's push to expand and accelerate energy development everywhere, BLM is moving ahead with plans to auction oil and gas leases on federal land in Utah and southwestern Wyoming. Much of the land now open to drilling

The BLM eased protections on land to allow extensive drilling after limited environmental analysis or public review.

encompasses critical wildlife habitat, sensitive floodplains, and even wildlife-worthy areas. Once the land is marred by development it cannot legally be designated for official wilderness protection. Perhaps that explains why more than 100 members of Congress wrote Interior Secretary Gale Norton in March 2004 in hopes of stopping the sale of some of the most pristine areas. Critics are also upset that the land, projected to be worth about \$80 per acre in annual revenue, has been leased for \$20 per acre per year, with some plots deeply discounted at \$5 per acre.²⁰

BLM'S ENERGY QUEST

For the second year in a row, the BLM has granted Questar Corporation a special exemption to drill in the Rocky Mountains in prime winter habitat for wildlife. The Pinedale Anticline, a 35-mile long, 6-mile-wide stretch of land nestled in Wyoming's Upper Green River Basin, is a natural wildlife corridor between the Wind River and the Wyoming mountain ranges. More than 100,000 mule deer, pronghorn antelope, moose, elk, and bighorn sheep congregate there in the winter months. Unfortunately for these animals, the area also contains pockets of natural gas.

During the Clinton era, the BLM authorized the construction of 700 well pads in this area over the next 10 to 15 years, but the agency banned drilling from mid-November through April to protect the herds. At the time, many considered this approach a model for how wildlife and energy development can coexist. Now, the BLM favors accelerating drilling and has authorized it to continue throughout the winter season regardless of the potential harm to wildlife. Biologists, hunters, and conservationists are concerned that this sweet deal for Questar threatens the herds that migrate through to Grand Teton National Park come summer.²¹

In March 2004, the BLM approved a request by Bill Barret Corp. to conduct seismic exploration for natural gas on the West Tavapust Plateau in Utah. Conservationists are concerned that seismic testing will damage not only the wilderness aspect of the lands but also the priceless treasures held within. The area in question is located on the southern edge of Nine Mile Canyon, which houses thousands of archeological artifacts ranging from fossils and American Indian rock art to ancient cliff dwellings.

BLM officials insist that only a minimal amount of land will be disturbed. But because the exploration involves the use of explosives, helicopters, vibrating thumper trucks, and other large vehicles, critics expect significant damage to occur on at least 11 acres of land, with an additional 200 acres impacted by off-road travel. And, of course, if significant gas reserves are found, the BLM could approve the company's request to drill wells throughout the area.

A CRUDE IDEA IN ALASKA

New decisions by the Bush administration threaten to turn the pristine northwest corner of Alaska's arctic into another Prudhoe Bay. In January 2003, the Interior Department proposed allowing energy development in as much as 9 million acres of wild areas on the state's north slope.²² Earlier this year, the agency gave the go-ahead for leasing in this area, often referred to as the Western Arctic Reserve. Energy development

300% Increase in natural gas drilling permits in Wyoming's Powder River Basin ordered by Interior Secretary Gale Norton.

77,000 Coal-bed methane drilling wells proposed for the Powder River Basin by 2011.

79,000 Miles of new roads and pipelines expected from proposed Powder River Basin drilling.

in the reserve's wetlands and fragile coastal areas would cause lasting damage to the habitat of polar and grizzly bears, seals, whales, migratory birds, and other wildlife.

The area to be drilled is part of the National Petroleum Reserve, a 23.5-million-acre chunk of Alaska first set aside in 1923 as an energy source for the U.S. Navy. In 1976, Congress reestablished it as a reserve to be tapped only in case of national emergency. Although four times as large as the adjacent Arctic National Wildlife Refuge, the reserve contains much less oil, according to U.S. Geological Survey estimates.²³ At the current rate of consumption, that amount of oil would provide roughly four to six months' supply, after taking 10 to 20 years to reach the market.²⁴

In addition, the Interior Department is considering a separate plan to expand oil development to sensitive wildlife areas within and adjacent to the reserve.²⁵ The plan would allow oil companies to construct new, permanent roads, airstrips, and drilling pads on nearly 900,000 acres previously placed off-limits to oil development. One of the places at risk is the 202,000-acre Teshekpuk Lake, the largest in Alaska's arctic area.²⁶

Critics blasted the administration's circumvention of the court's ruling, saying that the rule change represents an assault on the right of states to protect their coastlines.

THE COAST IS NOT CLEAR

In April 2003 the Interior Department invited oil companies to bid on leasing rights to drill in the Beaufort Sea off the Alaska's northern coast—within three miles of the Arctic National Wildlife Refuge.²⁷ Many people, including those who fish for a living, are concerned that an oil spill there could harm marine life and wildlife habitats, as well as threaten the shores of the refuge. But starting in September 2003, and continuing for the next five years, the Interior Department began holding eight oil and gas lease sales, affecting 10 million acres, in Alaska's coastal waters.²⁸

The Bush administration's strong push for expanded exploration off Alaska's coast comes despite a lack of viable oil repositories, mounting technological hurdles, and huge anticipated costs for drillers. To boost interest in offshore leasing, the government is offering tax breaks that could allow extraction of as many as 45 million barrels of oil royalty-free.²⁹

That approach is similar to another proposal to spur natural gas production by making it cheaper for energy companies to drill more and deeper wells in the Gulf of Mexico. Currently, the government manages more than a billion offshore acres and collects about \$10 billion in mineral revenues each year. In March 2003, Interior Secretary Gale Norton proposed royalty relief for companies that own gas drilling leases along the coasts of Alabama, Mississippi, Louisiana, and Texas.³⁰ Earlier this year, the Interior Department finalized the plan to waive for five years the royalties paid on natural gas extracted from shallow waters in the Gulf of Mexico. The energy industry welcomed royalty relief, with one executive saying, "Anything that can be done to get U.S. rigs working is worthwhile."³¹

In August 2003, the administration also began quietly attempting to rewrite federal rules that give states influence in decisions that impact their coastlines. The Coastal Zone Management Act (CZMA), passed by Congress in 1972, allows for a partnership between federal and state governments, giving the states increased authority over decisions beyond their beaches. Rather than appeal to the U.S.

Supreme Court a December 2002 court decision upholding the states' authority in offshore oil exploration, the administration proposed rule changes to CZMA that would eliminate the traditional deference given to state agencies on such decisions—shifting greater weight to the opinions of federal agencies. Critics blasted the administration's circumvention of the court's ruling, saying that the rule change is an assault on the right of states to protect their coastlines.³²

NOT WILD ABOUT WILDERNESS

It appears the Bush administration has abandoned the 1964 Wilderness Act's goal of setting aside lands "untrammeled by man" for future generations. In April 2003, the BLM reversed a long-standing policy that allowed federal land managers to assess the wilderness values of public lands.³³ In a sweetheart legal settlement with the state of Utah, the administration renounced the government's authority to conduct these inventories pending Congress's decision to include them in the National Wilderness Preservation System.³⁴

In effect, the administration ceded a quick and complete legal victory to Utah without a fight. The agreement opened millions of acres of wilderness-quality public lands to drilling, mining, roadbuilding, and other development activities. The settlement also cut off further review of millions of acres of wilderness-quality lands in Utah and other states that were never properly reviewed in the first place.³⁵ If the BLM permits development on these pristine lands, they will be disqualified from being designated as wilderness in the future.³⁶

Making matters worse, the BLM issued new guidelines in November encouraging its state offices to plan for values other than wilderness, including oil and gas drilling, mining, grazing, logging, and off-road recreation.^{37,38}

LIGHTS, CAMERA, BAD ACTION

Most public lands already available for filming movies and television commercials also feature drilling rigs, mining sites, or other industrial vestiges that depict negative environmental impacts on screen. Filmmakers complain that shooting a wilderness landscape backdrop requires working around aspects of development, something that can cause shooting delays and add to production costs. So, ironically, the film industry is clamoring for access to wilderness-quality areas in the West. Lumping filming in with other potentially damaging activities, the White House decided to settle a lawsuit with Utah that leaves millions of acres of wilderness-quality public lands open to mining, drilling, and roadbuilding. And with the stroke of a pen, these pristine areas were converted into a soundstage to film rugged SUV commercials.³⁹

CHENEY'S UNDISCLOSED VOCATION

In February 2003, the White House won a major legal victory—by default—as the General Accounting Office (GAO) decided to end its court battle to force Vice President Cheney to publicly disclose information about industry involvement in the Bush administration's secretive energy task force. By deciding not to appeal its lawsuit against the administration for withholding documents, the GAO in effect under-

\$0 Offshore oil drilling royalties from companies that own 2,400 federal oil leases in the Gulf of Mexico now that the Interior Department has waived their payments.

mined its own authority as an investigative arm of Congress and tipped the balance of power to the executive branch.

At the request of Congress in 2002, the GAO launched an investigation into the role played by energy lobbyists in formulating the White House's industry friendly energy plan. The vice president steadfastly refused to release records about the task force's operations, forcing the GAO to file its unprecedented lawsuit.⁴⁰ Even though the GAO backed down in the courts, however, a GAO investigation completed last August confirmed what many have long contended: Corporations played a significant role in formulating the administration's energy policy. According to the GAO report, industry lobbyists for oil and gas, electricity, nuclear, coal, and chemical companies gave detailed recommendations to the task force while environmentalists and other experts were largely shut out of the process.⁴¹

NRDC won an initial legal victory against the Energy Department that forced the disclosure of thousands of previously unreleased documents, many of which revealed dealings between policy makers and industry.⁴² Meanwhile, Sierra Club and Judicial Watch are pressing forward with a suit that would force the administration to make the details of its meetings with industry officials available to the public. The U.S. Supreme Court is slated to hear this case soon.

Corporations played a significant role in formulating the administration's energy policy.

EFFICIENT AT DELAYS

One of the few action items from the Bush administration's national energy policy that focused on saving energy rather than producing more of it concerns energy efficiency standards for appliances. The policy called for the Energy Department to upgrade existing standards and to consider standards for new products.⁴³ In late 2003, the National Petroleum Council, which represents the oil and natural gas industries, weighed in to support new efficiency standards identifying action items needed to help achieve greater stability in natural gas markets. That report called for the federal government and states to "review and upgrade efficiency standards."⁴⁴ However, despite the continued broad-based support for advancing standards, progress at the Energy Department has remained stalled.

Despite naming several pending standards as high priorities over the past three years, including crucial standards for residential furnaces and boilers, commercial air conditioners, and electric distribution transformers, the agency has failed to issue even preliminary proposals.

The Energy Department has published schedules three times, and has failed three times to meet a single, self-imposed deadline for advancing these standards. In doing so, the administration has fallen farther behind in meeting legal deadlines set by Congress in the National Appliance Energy Conservation Act. Every missed deadline means that significant savings available from new, cost-effective efficiency standards are further delayed.⁴⁵

WASTED ENERGY

In July 2003, Energy Secretary Spencer Abraham kicked off the administration's campaign to urge American homeowners to install high-tech thermostats and to buy

more efficient light bulbs. Abraham also toured the National Renewable Energy Laboratory in Golden, Colorado, citing the nation's impending natural gas shortage as a reason Americans must reduce energy use. Abraham expressed support for increased federal tax breaks for renewable energy and energy efficiency programs rather than for traditional fossil fuel industries.⁴⁶ And the secretary recommended, among other things, that the government adopt efficiency measures for heating and cooling homes and offices.⁴⁷

The day before Abraham's visit to Colorado, however, the administration slashed funding by one-third for one of the EPA's most successful and popular energy efficiency programs: the Energy Star program, which provides a federal seal of approval for energy efficient consumer products. Created in 1992, Energy Star is a voluntary labeling program, administered jointly by the EPA and the Energy Department. The program identifies and promotes energy efficient products, such as air conditioners, refrigerators, washers and dryers, computers, and other household appliances.⁴⁸

Ironically, the Bush administration has praised the Energy Star program as a successful model for alternatives to strict command-and-control regulations by giving industry incentives for achieving energy conservation goals. EPA Air Chief Jeffrey Holmstead said that Energy Star, "has been a tremendous success in spurring the adoption of energy efficient technologies and practices across this country and delivering enormous environmental and economic benefits for every taxpayer dollar."⁴⁹

In October, the administration also inexplicably let the Energy Savings Performance Contracting (ESPC) program expire. ESPC, enacted by the first President Bush in 1992, encouraged private companies to help taxpayers shoulder the expense of powering the federal government—\$4 billion per year—in exchange for a share of the cost savings. The energy efficiency program was so successful that President Clinton extended it to all federal agencies in 1999, resulting in a dramatic reduction in the federal government's energy use. The program, popular in both the private and the public sectors, had helped cut government energy bills by roughly \$300 million a year.⁵⁰ Unless ESPC is saved, those energy savings will be no more.

The Energy Department failed three times to meet a single, self-imposed deadline for [energy efficiency] standards.



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CHAPTER 5

LAUNDERING DIRTY AIR

In the environmental policies of the Bush administration, politics seems to routinely trump science, especially with regard to air quality. In this important area, analysis by the Environmental Protection Agency (EPA) often gets buried, dumped, or ignored when it runs counter to the administration's pro-industry agenda.

Consider the administration's decision in January 2003 to approve a 780-megawatt coal-fired power plant on federal land in central Montana. In green-lighting the proposal, Craig Manson, assistant secretary of the Interior Department for fish, wildlife, and parks, reversed a determination made by National Park Service experts who had found that the plant would adversely affect air quality and visibility at Yellowstone National Park, which is located 112 miles downwind.¹ Without informing Park Service staff about the turnaround, Manson told Montana environmental officials that weather, and not pollution, was to blame for the visibility problems at Yellowstone.² This case illustrates the hollowness of President Bush's mantra that environmental policy must be based on sound science.

NSR: NEW SOURCE REVIEWED

In August 2003, the Bush administration finally delivered its reform of the Clean Air Act's new source review (NSR) program. The NSR program was designed to curb air pollution from industrial facilities by requiring them to install up-to-date pollution controls whenever they make physical or operational changes that increase air pollution. However, through a loophole, many of the nation's older power plants have operated long beyond their expected lifespan, polluting at excessively high levels. Often, companies have modified these facilities in ways that increased air pollution without complying with Clean Air Act requirements to install modern emissions controls. The EPA launched enforcement lawsuits against utility and refinery violators during the Clinton administration, lawsuits that reduced air pollution by millions of tons.³

In an effort to derail these enforcement suits and forestall future actions, the Bush administration decided to change the rules to allow companies to virtually rebuild their facilities, and boost pollution levels, without having to meet NSR requirements. The loophole created by the new EPA rule would allow more than 17,000 power plants, refineries, and other industrial facilities to replace old equipment with "functionally equivalent" new equipment without undergoing the clean air reviews required by the NSR program if the cost of the replacement does not exceed 20 percent of that of the entire process unit.^{4,5}

In late October, two studies—one completed by the General Accounting Office (GAO) and another by the Environmental Integrity Project and the Council of State

Governments—concluded that the administration’s NSR changes would adversely affect ongoing Clean Air Act enforcement cases and would allow more than a million more tons of air pollution to be emitted.⁶ And according to a recent GAO survey, most state environmental officials also expect the NSR changes to lead to greater air pollution.⁷

These studies contradict congressional testimony by the EPA’s top air official, who claimed that the NSR changes would not affect the government’s pending enforcement cases. In July 2002, EPA Assistant Administrator Jeffrey Holmstead testified before the Senate that the administration’s proposed changes to the Clean Air Act would not impede pending lawsuits against old, dirty coal-fired power plants. But, in fact, top EPA enforcement officials had repeatedly told Holmstead just the opposite. Three former EPA officials—former acting chief of the agency’s Office of Enforcement and Compliance Assurance Sylvia Lowrance, former head of the same division Eric Schaeffer, and former head of the EPA’s Clean Air Act enforcement Bruce Buckheit—all say they warned Holmstead and other Bush officials that the administration’s efforts would inevitably undermine dozens of ongoing clean air suits against polluters.⁸ Holmstead denies that he gave false or misleading testimony.⁹

The administration’s smoke screen began to evaporate after environmentalists unearthed a secret memo from former EPA Administrator Christine Whitman to Vice President Dick Cheney. The memo, dated May 2003, warned the Bush administration of both political and environmental pitfalls surrounding its air pollution policies. Whitman’s memo stressed to Cheney that “the real issue for industry is the enforcement cases.”

At stake are the dozens of Clinton-era enforcement cases against power plants and refineries flouting clean-air standards. In the memo, Whitman predicted that the administration “will pay a terrible political price if we undercut or walk away from the enforcement cases,” because it will then “be hard to refute the charge that we are deciding not to enforce the Clean Air Act.” Whitman also echoed the concerns of many people that “settlements will likely slow down or stop” if Clean Air Act regulations are changed. Cheney and the White House failed to heed Whitman’s warnings.¹⁰

In February, Bruce Buckheit, the recently retired director of EPA’s air enforcement, testified during a Senate hearing that, as predicted, the NSR changes have had a devastating effect on enforcement. By Buckheit’s account, the changes have frozen the agency’s pending investigations against electric utility air polluters and have undermined ongoing settlement negotiations with industry violators.¹¹

Fortunately, in December 2003, a federal court dealt a major blow to the administration’s plan to cripple the Clean Air Act. The U.S. Court of Appeals granted the motion by a coalition of environmental groups to stay implementation of the NSR changes. If the court had not issued a stay, the new rules would have gone into effect on December 26 in at least 17 states and U.S. territories. Instead, the administration’s new rule will not take effect unless the court, in an unlikely event, were to reverse its position that the proposed Clean Air Act changes are harmful to public health and air quality.

137 million Americans breathing unhealthy amounts of smog, according to the American Lung Association (nearly half the U.S. population).

CLEARING THE AIR ABOUT CLEAR SKIES

“The Bush administration remains committed to coal as the country seeks energy independence,” said Deputy Interior Secretary J. Steven Griles in an appearance before industry executives at the National Western Mining Conference in February 2003.¹² “The future of coal,” said Griles, “is dependent on passage of the President’s Clear Skies legislation.” Clear Skies legislation would reduce three pollutants from coal-fired power plants: nitrogen oxide (which causes smog), sulfur dioxide (which causes acid rain), and mercury. However, Griles neglected to mention that carbon dioxide, the main global warming pollutant, would not be regulated at all under the president’s air pollution plan. Nor did he explain that, overall, the Clear Skies legislation would reduce far less pollution—and take longer to do so—than simply enforcing current Clean Air Act standards.¹³

Some of the benefits asserted for Clear Skies are based on flawed data. According to internal agency documents revealed in March 2003, the EPA claimed that the president’s air pollution plan would reduce sulfur dioxide in Washington State by 87 percent, with nitrogen oxide and mercury pollution remaining stable. But the EPA’s regional office questioned the data for months. “I am also concerned that Region 10 (Seattle) data is still wrong,” read a July 1, 2002, email message from a senior EPA regional official to agency headquarters in Washington, D.C. It turns out that sulfur dioxide reductions had been achieved the year before when the state’s largest power plant installed state-of-the-art pollution control equipment under a preexisting agreement with state and federal air officials.¹⁴ The EPA eventually corrected its analysis but continued its defense of Clear Skies.¹⁵

“The future of coal is dependent on passage of the President’s Clear Skies legislation.”

Also in March 2003, the EPA scuttled a planned meeting of the agency’s citizen advisory committee on mercury, thereby avoiding public comparison of Clear Skies with other proposals for controlling mercury emissions from coal-fired power plants. The agency did this after learning that Clear Skies would fall short of the EPA mercury-reduction goals. Subsequent computer studies showed that Clear Skies would allow anywhere from 1.5 to 30 times as many tons of mercury pollution as the four proposals drafted by the citizen advisory committee.¹⁶ Even plans developed by coal companies and utilities themselves would have reduced mercury pollution more than the President’s plan. Although the EPA pledged to consider the four competing plans and report back in April 2003, the agency ended up disbanding the citizen advisory committee, leaving only one proposal on the table: Clear Skies.

According to news reports in July 2003, this was not the first time the EPA has delayed or refused to analyze proposals that conflict with the administration’s air pollution agenda. Apparently, the agency withheld key findings indicating that legislation sponsored by Sen. Tom Carper (D-DE) would be much more effective in combating harmful power plant pollution than the Clear Skies plan.¹⁷ A month later, the EPA claimed broad bipartisan support for Clear Skies. But after an agency press release identified several national, state, and local organizations as strong supporters of the President’s plan, many of the groups mentioned blasted the EPA’s statements as flawed at best, and false at worst. Although all the groups were on record as supporting clean air

objectives, those disputing the EPA's claims had not taken an official position on Clear Skies, had refused to endorse the plan, or had actually opposed it.¹⁸

To cap things off, President Bush visited a Michigan power plant in September 2003. Using it as a backdrop to urge Congress to pass his Clear Skies legislation, the president visited the Detroit Edison plant in Monroe—one of the nation's dirtiest polluters. Under the President's Clear Skies plan, Detroit Edison would not have to reduce pollution at its Monroe plant for the next 17 years.¹⁹

In March 2004, EPA Administrator Mike Leavitt ordered new studies of the Clear Skies initiative after internal agency analysis revealed that the plan's cap-and-trade approach will not meet the goal of reducing mercury emissions by 70 percent by 2018, as claimed by the Bush administration. In fact, the EPA data shows that mercury emissions will be reduced by just half that amount, and that the 70 percent reduction goal may not be reached until 2025—if ever. Critics say the new information confirms that Clear Skies would needlessly delay reductions in mercury levels for decades at risk to public health, while saving the utility and coal industries billions of dollars.²⁰

MERCURY NOT GREAT FOR LAKES

Fish consumption advisories are now in effect in the Great Lakes and surrounding water bodies. In late October 2003, the EPA established a new standard for particulate matter but failed to limit mercury emissions released by plants that process taconite, a palletized rock from which iron ore is extracted.²¹ The plants, which are based on Lake Superior near Duluth, Minnesota, and on Michigan's Upper Peninsula, release 700 pounds of mercury each year, making them the largest source of mercury pollution in that lake basin.²² But according to the EPA, enforcing limits on mercury emissions from the plants would be impossible "because there is no standard that can be duplicated by different [taconite plant] sources or replicable by the same source."²³

DON'T HOLD YOUR BREATH FOR NEW SMOG STANDARDS

If tough new health standards for smog were put into effect as scheduled, dozens of polluted urban areas throughout the country would find themselves in violation of federal health standards for clean air. Instead of forcing those areas to reduce smog, the Bush administration has moved to weaken pollution control requirements. In May 2003, the EPA proposed easing and delaying smog cleanup requirements for 35 metropolitan areas, compromising the health of the 47 million Americans living in those places where asthma and other respiratory problems are on the rise.²⁴

Smog levels in the affected metro areas are not in violation of the 25-year-old standard. But in 1997, the EPA proposed a new standard based on more recent studies of the health impacts of pollution—a standard 33 percent tougher than the present standard. This spring, the EPA is supposed to issue its list of the areas not meeting that standard, but the agency is planning to omit many polluted areas based on vague cleanup promises by the responsible state and local governments. Under the EPA's plan, areas with unspecific cleanup plans might be exempted from the current tougher controls required in the nation's smoggiest cities.²⁵

21 million tons Increase in soot and smog pollution over the next 10 years under "Clear Skies," as compared to enforcing current Clean Air Act protections.

100,000 Premature deaths—along with two million more asthma attacks—between now and 2020 under "Clear Skies," as compared to enforcing current Clean Air Act protections.

\$61 billion Estimated health costs (in one year alone) for citizens under "Clear Skies," while power plant owners save \$3.5 billion in compliance costs.

In the meantime, EPA Administrator Leavitt signed off on a rule in December to reduce soot and smog-forming pollution slowly over the next decade, a much longer time period than under previous standards. Based on a cap-and-trade model that was used in the 1990s to combat acid rain, the new Interstate Air Quality Rule allows power plants to buy and sell pollution credits.²⁶ Critics say the new rule falls short of the EPA's previous plan to reduce pollutants more dramatically and more quickly in order to protect public health.²⁷

STILL FUMING OVER TOXIC FUMES

Between May 2003 and February 2004, the EPA issued final rules exempting pulp mills, auto factories, steel mills, and other industries from rules requiring these industries to curb their toxic fumes to the maximum extent possible.²⁸ The new rules, many of which were contained in so-called white papers drafted by industry, also allow businesses to self-regulate their operations using less rigorous controls.²⁹ If these rules are not struck down in court, critics say their net effect will be increased emissions that can lead to public health risks associated with these pollutants.

A typical, large commercial port in the United States receives 16 oceangoing vessels per day that emit as much smog-forming pollution as a million cars.

PLAN OVERBOARD FOR SHIP POLLUTION

U.S. seaports are the largest and most poorly regulated sources of urban pollution in the country.³⁰ The EPA agrees that both midsize and large marine vessels are a significant source of local ozone, carbon monoxide, hydrocarbon, and particulate matter emissions along coastal areas. A typical large commercial port in the United States receives 16 oceangoing vessels per day that emit as much smog-forming pollution as a million cars.³¹

In January 2003, the EPA narrowly beat a court-ordered deadline to issue a rule for controlling emissions from oil tankers, cruise ships, and cargo freighters.³² Under an agreement reached between the agency and engine manufacturers, however, new engine designs are encouraged but not required on U.S.-flagged vessels. Foreign-flagged ships are not subject to the rule, although they cause the bulk of such air pollution. It is clear that this voluntary approach to reducing the staggering amount of ship pollution is off-course.³³

EXEMPTING FARM POLLUTION

In March 2003, less than a month after the EPA publicly urged state officials in California to crack down on air pollution from large farms, the agency changed course. Instead of repealing a law that would exempt farms from having to obtain air pollution monitoring permits, the EPA switched to supporting the agribusiness industry's position that tougher standards should apply only to major farm-based pollution sources.

Farms are responsible for as much as 20 percent of the smog in the San Joaquin Valley, but for decades they have been exempt from the kinds of pollution controls that apply to power plants, refineries, and other major industrial pollution sources. In 2002, the EPA settled an environmental lawsuit by agreeing to enforce the permit program on farms. But now most large farms in California, including some of the state's biggest polluters, are no longer large enough to be considered major sources of pollution requiring a federal air permit under the Clean Air Act.³⁴

CROSS-BORDER POWER PLAY

On May 5, 2003, a federal judge in San Diego ruled that the Energy Department acted illegally when it found that two Mexican power plants located in Mexicali, posed no significant threat to air and water quality between northwestern Mexico and southwestern California. The judge found that the agency's cursory review of the plants did not adequately assess the health and environmental threats posed by the plants. The risks include increased salinity in the Salton Sea and emissions of carbon dioxide, nitrogen oxide, particulate matter, and ammonia.³⁵

In July, however, the judge ruled that the power plants could continue operating while the Energy Department worked to come into compliance with the National Environmental Policy Act. In November, the agency announced that it would prepare a full environmental impact statement for the new power plants. The agency has until May 2004 to do so, after which the judge will make a final decision. The court case calls into question the permits granted to the power companies and could ultimately derail plans by energy companies to build as many as 20 power plants in Mexico to sell electricity to the United States.

GOING WHOLE HOG

Under a proposal by the Bush administration, polluting factory farms will benefit at the cost of clean air. The proposed agreement would allow large, corporate-run farms to escape prosecution for air pollution violations for two years if they pay a \$3,000 fee and allow the EPA to monitor air pollution emitted from their feedlots. Factory farms raising cows, hogs, and chickens produce billions of pounds of manure per year. The waste, stored in open-air lagoons, emits large amounts of soot, ammonia, and smog-forming chemicals. Many concerned citizens oppose the plan, insisting that the EPA already has authority under the Clean Air Act to require air pollution monitoring without sacrificing enforcement options.³⁶

WHAT WOULD TEDDY DO?

As a young man, Theodore Roosevelt went to live for a time in the West in order to cure his asthma. Ironically, the EPA is relaxing air pollution standards at Theodore Roosevelt National Park in North Dakota. In the summer of 2003, EPA officials argued that the air over the park is so dirty it violates the Clean Air Act. Sulfur dioxide pollution there contributes to a hazy skyline, ruining the views and harming public health. It also causes acid rain, which damages trees and waterways. In a reversal that many fear could lead to reevaluation in other national parks, the EPA decided in early 2004 to simply change the way it estimates the amount of air pollution over the park. Although the haze is the same, the air will be cleaner on paper. The deal will eliminate the need for development restrictions, allowing new coal-fired power plants to be built in the area as planned.³⁷

70% U.S. power companies currently in violation of the Clean Air Act.

30,000 Deaths caused each year—along with 603,000 asthma attacks—by pollution from America's oldest and dirtiest power plants, according to the EPA.



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CHAPTER 6

GLOBAL WARMING HEATING UP

Scientists know that the Earth today is already warming, and that it is warming faster than at any time in history. Since 1990, the world has seen all 10 of the warmest years on record, and 19 of the 20 warmest since 1980. Most experts, including the National Academy of Sciences (NAS), agree that man-made, heat-trapping pollution is the main cause for the unprecedented shift.¹ The predicted results of global warming are already appearing. Droughts and water shortages are becoming a common problem in many areas, including the southwestern United States. Since 1979, 20 percent of the ice cap over the North Pole has melted away. In 2003, Europe and Asia experienced lethal heat waves unlike anything they had ever seen.²

To date, President Bush has rejected mandatory requirements to address global warming. He reversed a campaign pledge to regulate emissions of carbon dioxide from coal-fired power plants, and pulled the United States out of international negotiations to reduce greenhouse gases. The White House position is full of ignorance.

ANALYSIS PARALYSIS

Experts agree it is important to learn as much as possible about global warming and its solutions. But an overwhelming consensus among scientists is that enough is already known about global warming to begin fixing the problem. Part of the solution is to start holding polluters accountable for cleaning up global warming pollution. Instead, the Bush administration is using research as an excuse to put off sensible action.

In November, a State Department official tried to convince the rest of the world to abandon meaningful limits on global warming pollution in favor of the administration's "research only" approach. Writing in the *Financial Times* on the eve of international talks in Milan, Undersecretary of State Paula Dobrianksy claimed that countries had to choose between implementing existing technologies to reduce emissions and investing in research to develop "breakthrough" technologies.³ Fortunately, this false choice did not fool anyone. Establishing sensible standards now to limit carbon dioxide emissions will both accelerate deployment of available technologies and create the incentives needed for private companies to invest in developing better solutions in the future.

The Bush administration may prefer to fiddle while the Earth burns, but that attitude is not stopping the Pentagon from taking global warming seriously. In

January, *Fortune* magazine uncovered a report commissioned by the Pentagon that details the national security threat posed by global warming.⁴ In one worse-case analysis, Pentagon officials warn that abrupt climate change over the next 20 years could throw the world into a state of anarchy—dwarfing the threat of terrorism to the United States. In this doomsday scenario, widespread droughts, famine brought on by food shortages, and reduced energy supplies could spark riots around the globe that could culminate in nuclear warfare. White House officials have refused to comment on the report, but it is worth noting that Pentagon advisor Andrew Marshall commissioned the analysis. Marshall, a protégé of Defense Secretary Donald Rumsfeld, has influenced top U.S. military thinking for more than 30 years and is considered by many to be the Pentagon's "guru of long-term threat assessment."⁵

MORE HOT AIR

The good news is that we know how to reduce global warming: put better, more efficient technology in our cars, trucks, and sport utility vehicles (SUVs), and use cleaner renewable energy sources such as wind and solar power. What we need are sensible standards that get these environmental technologies into the marketplace as quickly as possible. Each day of delay means higher costs and greater risks.

The Bush administration opposes concrete rules for cutting emissions, and instead favors voluntary corporate pledges. The administration held a press conference in February 2003, in which representatives from industries ranging from automakers to paper mills signed on to the administration's voluntary initiative. The aim of the "Climate Leaders" program is to improve efficiency and to curtail global warming pollution through 10 percent cuts in the participants' carbon dioxide emissions over 10 years.⁶ But research shows that voluntary pollution measures have proven to be ineffective, and critics say the voluntary program simply allows polluters to continue doing business as usual. Only a real cap on greenhouse gas emissions would ensure a reduction in global warming.

Although participating companies in the voluntary program pledge to help the administration reach its goal of cutting greenhouse gas intensity (emissions relative to economic output) 18 percent by 2012, global warming pollution will still increase under the Bush plan by about 14 percent.⁷ That is about the same rate of growth in carbon dioxide emissions that has occurred over the past 12 years, according to the Energy Department. Redefining the statistics and calling them by a different name, greenhouse gas "intensity," does not fool anybody. Even the administration acknowledges that its plan allows an increase in the amount of carbon dioxide and other greenhouse gases going into the atmosphere.

WHITE HOUSE WHITEWASH

Climate change has global consequences for human health and the environment. This factual and straightforward statement appeared in a draft report by the Environmental Protection Agency (EPA) last year. The White House removed the sentence, along with other references to global warming's causes and risks, from the final version, leaving intact only a few vague paragraphs on climate change.⁸ A confidential EPA memo

25% Global carbon dioxide emissions produced by the United States, which has only 4% of the world's population.

25% Wildlife species estimated to go extinct within 50 years if global warming is not curtailed (1 million species).

80% Amount of Arctic ice cap expected to melt by the end of the century due to global warming.

confirms that some information was deleted and that other material was watered down to the point that agency staff warned that the section “no longer accurately represents scientific consensus on climate change.”⁹ In the end, the EPA opted to say nothing about global warming in the report rather than put out incomplete information.

Upon the release of the report in June 2003, outgoing EPA Administrator Christine Whitman said she was comfortable with the sanitized Report on the Environment, which was billed as the first-ever comprehensive statistical overview of environmental problems facing the United States.¹⁰ The resulting controversy, however, sparked skepticism over the report’s findings that the nation’s air, water, and land are cleaner and better protected than they were 30 years ago. Critics pointed out that none of the improvements touted in the EPA report reflected actions taken by the Bush administration.

BLOWING SMOKE

News reports in July revealed that the EPA hid key information about congressional legislation the administration opposed. Bush officials claimed that legislation by Sens. John McCain (R-AZ) and Joe Lieberman (D-CT) to limit greenhouse gas emissions would reduce the economic output by \$106 billion in 2025, according to an Energy Department estimate. However, an internal EPA analysis showed that the bipartisan plan would reduce carbon dioxide pollution, the key cause of global warming, with only a \$1–\$2 billion economic loss. The EPA never released its preliminary study (dated May 23, 2003) even though the senators had requested it. In June, then-EPA Administrator Whitman said her agency’s analysis was no longer necessary because it probably would not differ significantly from the Energy Department’s research. This was not the case.¹¹

CARBON POLLUTERS BREATHING EASIER

The EPA ruled in August that it lacks any authority to require automakers and utility companies to reduce global warming pollution under the Clean Air Act. The agency rejected a petition filed by environmental organizations in 1999 urging the agency to regulate carbon dioxide and other global warming gases due to public health threats caused by climate change. The EPA’s decision favored automakers and utility companies, two industries with plenty at stake:— Vehicles produce 20 percent and power plants produce 40 percent of carbon dioxide pollution in the United States. However, twelve states, two cities, and more than a dozen environmental groups have sued the EPA as a result of this decision.¹² Critics contend that the EPA’s new position contrasts with its view during the Clinton era, when the agency determined that it has the power to regulate carbon dioxide as a global warming pollutant.

10 Years the Bush administration says is needed to research global warming before action can be taken to begin fixing the problem.

BROMIDE OF FRANKENSTEIN

In September 2002, the EPA celebrated the fifteenth anniversary of the Montreal Protocol, an international treaty to protect the ozone layer by phasing out the use of certain harmful substances. In a statement released by the agency, then-EPA Administrator Whitman said, “The Montreal Protocol proves that market-based approaches

to environmental protection work—and work well. Scientists, government, and industry have cooperated to create commercially viable alternatives to ozone-depleting chemicals—often faster, better, and cheaper than originally anticipated.”¹³

In February 2003, the Bush administration abruptly reversed course and began seeking exemptions from the treaty’s ban on the use of methyl bromide, the most powerful ozone-depleting chemical still in use. This is the first time any country has proposed to reverse the phaseout and increase production of an ozone-destroying chemical.

Under the Montreal Protocol, the United States and 182 other countries began an orderly phaseout of methyl bromide a decade ago. This pesticide is a clear, odorless gas used mostly by tomato and strawberry growers in California and Florida to kill worms, insects, rodents, and diseases. The treaty required a 50 percent reduction in the chemical’s use by January 1, 2003, after which a 70 percent reduction took effect. Methyl bromide production is to end after January 1, 2005, except for “critical uses” for which there are no safer alternatives.¹⁴

Agribusiness interests lobbied the administration, arguing that banning methyl bromide threatens to reduce harvests. In response, the administration is seeking dozens of exemptions for farmers in this country from the methyl bromide phaseout required by the treaty. Last year, Bush officials argued that U.S. businesses should be allowed to apply 21.9 million pounds of the pesticide in 2005, and 20.8 million in 2006 for “critical uses.” Now the administration wants to add 1.1 million pounds to the 2005 request. The total exemptions sought by the United States exceed all other requests combined and would increase the chemical’s production one-third over current levels.¹⁵

Continued use of methyl bromide would widen the hole in the ozone layer, which in turn would increase ultraviolet radiation harmful to humans and the environment. Ultraviolet radiation has been known to contribute to skin cancer, cataracts, and other serious illnesses, as well as environmental damage. More methyl bromide also means more health risks for farm workers and others directly exposed to this dangerous chemical. Other pesticides and crop management techniques are available to eliminate most of the methyl bromide still in use. In fact, methylbromide use has dropped by 70 percent in industrialized countries since 1999. Allowing U.S. farmers to continue using it would punish responsible businesses that have invested in safer alternatives as required by the treaty.

The administration’s demands for methyl bromide exemption forced a deadlock at an international conference on the Montreal Protocol in Nairobi, Kenya, last November. Negotiators scheduled a special meeting of treaty parties in the spring of 2004. In preparation for this meeting, the administration has increased its exemption demands, pushing for continued methyl bromide use for flowers, hams, and tobacco.

50 American companies (out of thousands) that have signed up for President Bush’s “Climate Leaders” program to voluntarily reduce global warming pollution.

14 Industry “Climate Leaders” that have actually established targets to reduce their global warming pollution.



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CHAPTER 7

CLEAN WATER AT RISK

Almost every aspect of clean water protection from wetlands to sewage control to efforts to reduce factory farm pollution is under siege by the current Environmental Protection Agency (EPA). For example, in October 2003, the EPA accepted a study, financed by land developers, concluding that wetlands discharge more pollution than they absorb. The implication is that developers could actually improve water quality by destroying wetlands to build golf courses and other projects.¹ It is absurd to think that wetlands, often called nature's kidneys because of their proven ability to flush waterways of pollutants, could be considered a source of pollution and therefore unworthy of protection under the Clean Water Act. This kind of twisted logic defines much of the Bush administration's water policies.

A PLAN THAT'S ALL WET

In the face of overwhelming opposition, from conservationists, hunting and fishing groups, 39 states, and a bipartisan group of congressional lawmakers—the Bush administration dropped its controversial plan to further reduce Clean Water Act protections for 20 million acres of wetlands and as much as half of the nation's stream miles. In December 2003, the EPA announced that it would not issue a new rule on federal regulatory oversight of so-called isolated wetlands and streams.²

The plan to narrow the scope of the Clean Water Act stirred dissent even within the EPA. Internal agency documents, obtained through the Freedom of Information Act (FOIA), warned that the plan would have "profound and far-reaching impacts" and "serious effects on the progress made during the last 30 years to restore and maintain the chemical, physical, and biological integrity of the nation's waters." Lifting federal protections for streams and wetlands would leave the drinking water of more than 3 million people unprotected by pollution regulations and would drive up water treatment costs, according to the EPA's analysis. The EPA's concerns came on the heels of a U.S. Fish and Wildlife Service analysis that also questioned the merits of the administration's proposal.

The rulemaking is no more, but the fight is far from over. The administration's yearlong crusade to weaken Clean Water Act protections through rulemaking is still in effect. Until that pressure is reduced, federal protections for U.S. waters remain weakened, and the administration's stated commitment for "no net loss" of wetlands will remain rhetorical.

COAL MOUNTAIN

There is no question that mountaintop removal mining is a dirty business. This technique involves blasting off the tops of mountains to get at underground

coal seams and then dumping the resulting dirt and rock into the valleys and streambeds below, creating enormous valley fills. This practice has buried more than 1,200 miles of streams, flattened nearly 400,000 acres of forests, and destroyed Appalachian communities.³

In May 2003, the Bush administration released a draft environmental impact statement (EIS) assessing the effects of mountaintop removal mining. The EIS confirmed that the resulting environmental and social harms are severe and mostly irreversible. Rather than suggest ways to limit the damage, however, the EIS proposed just the opposite: It would allow mountaintop removal mining to continue at an accelerated rate and would even make it easier for companies to obtain the permits to do it. The effort to speed up and expand the permitting process for mountaintop removal mining is not sitting well with some federal officials, according to internal documents obtained by environmentalists. A U.S. Fish and Wildlife Service employee complained, “All we’ve proposed is alternative locations to house the rubber stamp that issues the permits.” An EPA official said the public would want to know, “Where’s the beef?”⁴

The administration’s actions indicate it is willing to move mountains to please the mining industry, and it also appears eager to sacrifice streams. Earlier this year, the Interior Department proposed lifting restrictions on coal mining near streams, restrictions that were put in place by the Reagan administration.⁵ This purported “clarification” would end an existing ban on mining activity within 100 feet of these fragile waterways unless a company can prove that it will not affect water quality or quantity.⁶ Bush officials claim that it is impossible for coal companies to comply with the so-called buffer zone rule; its new proposal would instead direct companies to prevent damage to streams “to the extent possible, using the best technology currently available.”⁷ Critics contend that the buffer zone rule is one of the last protections standing in the way of mining companies legally being able to use the mountaintop removal technique to bury hundreds more miles of streams throughout Appalachia.

MUDDY WATERS

For more than 30 years the government’s water pollution control efforts have been guided by the fundamental goals of the Clean Water Act: rivers, lakes, estuaries, and coastal waters must be safe for swimming, boating, and providing aquatic habitat and drinking water. Although progress has been made, nearly half of the nation’s assessed waterways are too polluted for fishing or swimming, up from 40 percent a few years ago.⁸ In March 2003, the Bush administration withdrew a Clinton-era rule that provided for federal oversight of states’ efforts to clean up some 20,000 “impaired” or polluted waterways.⁹

The key provision of the Clean Water Act governing the cleanup of these dirty 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. However, federal and state governments largely failed to initiate cleanups until a wave of citizen lawsuits forced them to begin doing so.

300,000 Miles of U.S. rivers and shorelines—along with 5 million acres of lakes nationwide—designated as “impaired” (or polluted) by the EPA.

274 Mountaintop removal mining operations that the EPA estimates have illegally buried several hundred Appalachian streams.

Instead of allowing the Clinton-era TMDL rule to take effect, the EPA scrapped it and is now developing a new rule that defers oversight to the states and emphasizes voluntary efforts to clean up pollution. By making it easier for states to remove waterways from the cleanup list and more difficult for additional waterways to be added, the administration's approach would ensure that U.S. waters remain dirty for decades to come.¹⁰

Florida provides a case in point. There, the EPA went along with the state's decision to disregard all water quality data showing mercury contamination data more than seven-and-a-half years old. As a result, the state removed mercury-contaminated waters from the federal cleanup list based on a lack of reliable data. The EPA said nothing about Florida's failure to take samples and update its old data. The result is that Florida's waters are teeming with fish that are unsafe to eat, and yet numerous polluted water bodies are no longer designated for cleanup.

POTOMAC SLUDGE

Under a permit issued by the EPA in March 2003, the Army Corps of Engineers will face tough restrictions on dumping sludge in the Potomac River—but not for several more years. For a decade, the Corps has routinely dumped tons of sludge at various points along the river, including one spot over a spawning ground for endangered fish. After intense criticism from environmentalists and members of Congress, the EPA agreed to stop the process. The Corps says it will take at least seven years to meet the tough new standards, and until then the EPA will allow dumping to continue.

SEWAGE SAFEGUARDS FLUSHED

When it rains, sewage can pour into the nation's waterways. At least that is the potential effect of cities and towns allowed to pump sewage without full treatment into rivers, lakes, and coastal waters during heavy rains. Current federal law mandates that sewage treatment plants send waste through several treatment steps before discharging it into waterways. However, in heavy rainfall, high flows of wastewater often exceed the capacity of treatment plants. Rather than fix the sewers that collect the wastewater, the EPA proposed in November 2003 to allow largely untreated waste to be discharged directly into rivers and streams if it is mixed with treated waste through a process the EPA has euphemistically labeled blending.¹¹

WHAT GOES DOWN MUST COME UP

Even though 90 percent of Floridians rely on groundwater for their drinking water, many places in the state dispose of their sewage wastewater by using underground injection wells. The state Department of Environmental Protection (DEP) has allowed cities and counties to rely heavily on this relatively inexpensive disposal method, opening the door to very rapid growth in south Florida without careful planning for growth management and water resource protection.¹²

Instead of addressing this problem by taking enforcement action, however, the Bush administration is moving forward with plans to weaken federal drinking water

The EPA proposed in November 2003 to allow largely untreated waste to be discharged directly into rivers and streams.

protections. In April 2003, the EPA published a new report that supports a proposed rule change that would allow the continued, and potentially increased, injection of treated sewage into underground municipal wells.¹³ Although state officials had claimed that the wastewater—containing industrial chemicals and pathogens—would not migrate from the injection wells for at least 100 years, drinking water supplies in south Florida have already been contaminated with giardia and cryptosporidium, two life-threatening pathogens.¹⁴ This water pollution migration is currently illegal under federal law, and that may explain why the EPA is working to relax the regulations.

Florida is not alone in facing a troubling situation down under. Despite overwhelming opposition from Michigan citizens and state officials, in March 2004 the EPA approved a controversial plan by a company to store toxic waste in two underground wells in the city of Romulus. Environmental Disposal Systems, which is now exempt from federal restrictions on land disposal of hazardous waste, has tried for more than a decade to get permission to inject wells with millions of gallons of industrial waste each year. Though the waste would be stored in sponge-like rock thousands of feet underground, the potential for environmental damage and ground water contamination remains. A state committee voted against the proposed wells in December 2000, but the panel's findings were dismissed by Russ Harding, then-director of the Michigan Department of Environmental Quality (DEQ). The wells—which would be the first of their kind in the state—still must be approved by the DEQ before injection could begin.¹⁵

TRADING AWAY CLEAN WATER

In January 2003, the EPA announced a controversial pollution credits trading program. The proposed “National Water Quality Trading Policy” is a voluntary plan that would allow industrial, agricultural, and wastewater treatment plants to increase their pollution discharges by buying pollution credits from facilities that promise to reduce their own discharges.¹⁶ Rather than the government enforcing clean water protections, the EPA's new scheme let industries pay to pollute. As a result, water quality in some of the nation's lakes, streams, and rivers could be traded away for the benefit of other waterways. 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 penalties can be enforced. That is how the Clean Water Act protects all waterways, not just some of them, from pollution.¹⁷

A SLICK CLEAN WATER ACT EXEMPTION

In March 2003, the Bush administration exempted the oil and gas industry from a new water regulation aimed at reducing polluted runoff.¹⁸ Under the EPA's phase II storm-water pollution rule, issued during the Clinton administration, construction sites between one and five acres are supposed to obtain a National Pollution Discharge Elimination System (NPDES) permit. But the EPA gave oil and gas companies two more years to comply while it studies whether a permanent exemption is warranted.

5.6 million Tons of dioxin-tainted sewage sludge annually used or disposed of in the United States, most of which is applied as fertilizer on crops.

Several members of Congress promptly fired off a letter to EPA Administrator Christine Whitman, saying there was “voluminous evidence” of the need for controls on oil and gas industry construction sites before the rule was created in 1999.¹⁹

THE CORPS’ SECRET SPILLS

The Army Corps of Engineers refuses to share information with state environmental officials on pollution from its hydroelectric dams in the Pacific Northwest. In January 2003, the Washington Department of Ecology sent a letter to the Corps warning that it could be violating state and federal water quality laws by failing to report oil spills that occur inside the agency’s dams. Equipment failures have resulted in several spills, ranging from a few ounces to more than a thousand gallons. The Corps disagrees that the state has jurisdiction over water after it is inside a federal dam, and so the agency insists it is not legally obligated to report spills to state environmental officials. After the state pressed its case, the Corps claimed that providing spill information would “create a national security risk” because the dams “are considered potential terrorist targets.”²⁰

SPRAY AT YOUR OWN RISK

In September 2003, the EPA refused to comply with a federal court ruling that the agency must protect lakes, streams, and wetlands by requiring that pesticide applications be subject to Clean Water Act permits. Essentially, the agency rejected the court’s decision that the Forest Service violated the Clean Water Act by spraying a bacterial pesticide directly into U.S. waters without a permit.²¹ EPA officials apparently are not bothered by the possibility that without federal oversight (through permits) discharges of pesticides into waterways could kill other aquatic life besides unwanted weeds, and could contaminate drinking water.

37% Proposed funding cut in President Bush’s budget (FY05) for the federal revolving loan fund, which helps states upgrade sewage/septic systems and implement storm-water runoff projects to curtail water pollution.

218 Members of the U.S. House of Representatives (including 26 Republicans) who signed a letter urging President Bush not to eliminate existing Clean Water Act protections for wetlands and waterways.

HARBORING SHIP WASTE

Bays and seaports in the United States are being invaded by exotic ocean species. Billions of these creatures are sucked into ships’ ballast tanks in foreign harbors and then simply discharged into the nation’s waterways. Because most of these aquatic species have no natural predators, they end up outcompeting native species for food and habitat. Despite the danger to our waters, horrific costs to U.S. taxpayers, and countless pleas by environmental and fishing groups, the EPA announced in September 2003 that it will not regulate ballast water discharges from ships.

The problem is pervasive: A 1998 study found that there are more than 200 exotic species in San Francisco Bay already, and a new foreign organism gaining a foothold in the bay every two weeks. The problem is also pricey. Eradicating the zebra mussel in the Great Lakes alone will cost U.S. taxpayers \$5 billion, according to federal estimates. In addition to wildlife threats, invasive species are difficult to get rid of and can lead to problems with water treatment systems and pipes, costing millions of dollars to fix. Yet it remains legal for the shipping industry to continue dumping ballast water into our waterways because the EPA refuses to regulate these discharges as a pollutant under the Clean Water Act.²²

EVER(FAILING)GLADES RESTORATION

In November 2003, almost a year past the deadline, the Army Corps of Engineers released its new and improved strategy for saving the Florida Everglades. Although the Corps touted the final programmatic regulations as a big step forward in accomplishing the massive \$8 billion restoration project, conservationists said the new rules lack teeth and clear goals.²³ Most troubling, the regulations fail to ensure that the River of Grass will be restored to its natural flow instead of allowing water to be diverted for development and agriculture. Critics insist that Everglades restoration is unlikely to become a reality with these weak rules, which were watered down to please Florida's politically powerful land developers and farmers.²⁴

The Everglades, and other waters everywhere, face additional threats from a pending court case that deals with a federal Clean Water Act permit.²⁵ Recently, the U.S. Supreme Court heard the case but sidestepped a major decision by ordering the lower court to reconsider the case. The Bush administration filed an amicus brief supporting the water district's right to dump polluted water into America's waterways without a federal permit.

The case concerns water contaminated by pesticides, herbicides, and fertilizer (as well as oil, grease, and heavy metal runoff) that the South Florida Water Management District pumps across a levee between urban and agricultural areas and the Everglades. The pumping station—located about 27 miles west of Fort Lauderdale—moves water from developed parts of the county into the Everglades. The local district is arguing that no permit is necessary because its pumps do not actually pollute the water being discharged into the Everglades. Two lower courts disagreed, siding with the Miccosukee Indian Tribe and a local environmental group, who argued that pumping dirty water into clean water meets the definition of a discharge of pollutants under the law, and therefore requires a National Pollution Discharge Elimination System (NPDES) permit.²⁶

U.S. bays and seaports are being invaded by exotic ocean species.



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*The Bush
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Assault on the
Environment*

April 2004

CHAPTER 8

HAZARDOUS HEALTH POLICIES

Every day, Americans are exposed to thousands of toxic chemicals, hundreds of which are known to pose serious harm to human health and the environment. Policy decisions regarding these chemicals should place a priority on the protection of public health. Under the Bush administration, however, toxic chemicals are presumed innocent until proven guilty—a process that can take many years. Moreover, it has become clear that when White House officials argue for “sound science” in determining federal policy, they usually mean science that sounds good to corporate special interests.

NOT SO SUPER ANYMORE

Some 70 million Americans live within four miles of a Superfund site, but these toxic dumps are unlikely to be cleaned up any time soon. The Bush administration has consistently underfunded Superfund by an average of more than \$300 million per year.

Superfund was established in 1980 to enable the EPA to clean up toxic waste sites when the party responsible was not readily identifiable. Nearly 900 toxic waste sites have been cleaned up since then and more than 1,200 remain unfinished. Superfund was supported primarily by a tax on polluting industries until 1995, when Congress let the industry cleanup tax expire. The first President Bush and President Reagan both supported this so-called polluter-pays-fee when they were in the White House. However, President Bush refuses to reinstate the polluter-pays-fee, leaving taxpayers—and not polluting industries—to pay for future cleanup costs. Perhaps it is not surprising that the Superfund program went bankrupt last October.

Since President Bush took office, Superfund cleanups have plunged by nearly half. In 2001, the EPA began 79 cleanups and completed only 47. A year later, the agency cleaned up only 42 sites, the fewest since 1991.¹ In 2004, the number of completed Superfund cleanups dropped to an all-time low—this time, only 40.² By contrast, the Clinton administration completed an average of 76 cleanups each year.³

In 2003, for the second year in a row, the Superfund program faced a massive budget crunch that delayed or prevented cleanups at toxic sites around the nation. A report by the EPA's inspector general, released earlier this year, found that a \$174.9 million shortfall prevented the government from beginning cleanups at

11 Superfund sites and slowed the cleanup of at least 29 other contaminated sites in 17 states during fiscal year 2003.⁴

MERCURY RISKS RISING

Roughly 1,100 coal-fired power plants make up the largest unregulated industrial source of mercury contamination in the country, spewing 48 tons of the poison—roughly 40 percent of U.S. industrial mercury emissions—into the air each year. Toxic mercury emissions from these plants have contaminated 12 million acres of lakes, estuaries, and wetlands—30 percent of the national total—and 473,000 miles of streams, rivers, and coastlines. Nearly every state has issued warnings about eating mercury-contaminated fish. Seventeen states have mercury warnings for every inland water body, and eleven states have issued warnings for mercury in their coastal waters.⁵

Adults, as well as children, suffer from mercury exposure; it can damage their cardiovascular and immune systems. Eight percent of American women of child-bearing age have mercury in their blood at concentrations higher than EPA's safe level. Recently, the Food and Drug Administration (FDA) warned pregnant and nursing women and young children to limit the amount of canned albacore "white" tuna they eat because of potential hazards from mercury contamination.⁶ Under the new guidelines, these people should eat no more than six ounces of tuna (or one meal) per week. Chunk light tuna, which is derived from smaller fish that have had less time to absorb mercury pollution, is limited to 12 ounces (or two meals) per week.⁷

Despite the fact that mercury pollution puts well over half a million newborns at risk for neurological impairment every year, the EPA is poised to loosen mercury safeguards for power plants.⁸ In December 2003, the agency proposed slowing the pace of mercury reductions at the plants, signaling a retreat from a Clinton-era decision to make industry reduce its mercury emissions by 90 percent by 2007.

Specifically, the EPA's new rules call for no mercury reductions in the near terms except for those that would otherwise occur, and they ask power plants to make only modest improvements by 2018.⁹ More recent EPA analysis shows that a 70 percent reduction in mercury pollution might not happen until 2025, if ever, prompting EPA Administrator Mike Leavitt to call for additional studies. As part of its plan, the EPA wants to create a cap-and-trade program that would permit utilities to buy pollution credits from cleaner facilities to meet an overall industry target. This approach would result in little net reduction of mercury emissions and would allow the utility industry to continue polluting in greater quantities for longer periods of time.¹⁰

Bush officials have defended this proposal as an emissions trading program similar to the one that has reduced acid rain. A close examination, however, reveals that by emphasizing a cap and trade program, the proponents are trying to deflect attention from the heart of the proposal: It would regulate power plant mercury emissions as a run-of-the-mill pollutant that requires less stringent pollution controls, rather than as a hazardous air pollutant. In fact, the EPA's "cap" would allow nearly seven times as much annual mercury emissions over a period that is five times as long as that allowed by current law. Moreover, the emissions trading program would

79% Superfund cleanup costs to be paid by U.S. taxpayers this year; corporate polluters will pay 21 percent. (In 1995, the year the Superfund corporate tax expired, polluters paid 85% of cleanup costs.)

70 million Americans living within four miles of a toxic dump.

allow “hot spots” of mercury contamination in areas near plants that buy pollution credits instead of reducing their mercury emissions.¹¹

LOST AND FOUND

In a second December 2003 retreat on mercury, the EPA issued a new rule that fails to adequately address mercury pollution from another industry sector.¹² The Clean Air Act amendments of 1990 require the EPA to issue stringent standards for 188 hazardous air pollutants from facilities that reflect “the maximum degree of reduction in emissions” that an industry can achieve. But the EPA’s new regulation for chemical plants ignores probable “lost” mercury pollution, meaning that at least 65 tons of mercury is released into the environment each year from unknown industrial sources.¹³

Evidence suggests that chlorine manufacturers are major sources of mercury pollution. These facilities, called mercury chlor-alkali plants, produce chlorine by using “cells” filled with thousands of pounds of mercury.¹⁴ The industry uses about 100 tons of mercury annually to replenish the amount lost in the manufacturing process but cannot identify where the “lost” mercury goes. Apparently, neither can the EPA, which concluded in its new rule that “the fate of all the mercury consumed at mercury cell chlor-alkali plants remains somewhat of an enigma.”¹⁵

According to critics, not only does the new rule fall short in tackling mercury cell pollution, but it also weakens prior controls on mercury cell plants. Regulations issued in the early 1970s placed a cap on these facilities, requiring them to keep their mercury emissions below 2,300 grams per day. The new rule, however, allows them to emit unlimited amounts of the toxin. The EPA says the rule requires companies to do a better job of identifying and fixing mercury leaks, but the agency cannot quantify any emission reductions from these changes, much less assure the public that routine cell activities, especially maintenance, will not push emissions over the old limit.¹⁶

In February 2003, NRDC and the Sierra Club filed a lawsuit challenging the EPA’s rule for doing nothing to curb mercury use at chlorine plants, for failing to protect public health, and for violating the Clean Air Act.

SNEAK ATTACK ON DRINKING WATER

In July 2003, the EPA quietly issued four major drinking water rules that will have profound and long-lasting effects on the health threats posed by America’s drinking water. First, the EPA disregarded pleas from health experts in deciding that all current drinking water rules are fully protective of public health, and therefore need no revision.¹⁷ Second, after nearly seven years of review, the EPA decided not to regulate any new contaminants in tap water that pose health risks, including perchlorate.¹⁸ This thyroid toxin, which is especially harmful to infants, is found in the drinking water consumed by millions of people. The agency’s decision is likely to delay any new enforceable standards until 2010 to 2015.¹⁹

Third, after more than a decade of negotiations, the EPA, NRDC, health experts, and the water industry reached an “agreement in principle” that the EPA would issue rules to protect fetuses against miscarriages and birth defects from the by-products of chlorination (known as disinfection by-products, or DBPs).²⁰

Research reveals alarmingly high levels of perchlorate in the nation’s drinking water.

However, after industry pressure, the EPA opted not to address these risks. Instead, the EPA decided to let states make case-by-case decisions—effectively eviscerating the rule.²¹

In the same package of rules, the EPA decided against requiring water suppliers to fully disclose the health risks posed by contaminants in their drinking water.²² For example, water companies are not required to inform pregnant women (and other customers) that DBPs in their tap water may cause miscarriages or birth defects. Because the chlorine and water industry is fearful of public outcry and possible lawsuits filed by families affected by DBPs, the EPA has apparently compromised the public's right to know about such health risks.

BETWEEN A ROCKET FUEL AND A HARD PLACE

The Bush administration's actions have prevented the EPA from protecting Americans from perchlorate, a toxic rocket fuel found in tap water and the food supply.²³ The administration's actions ranged from ignoring and suppressing scientific information about the dangers of perchlorate pollution to refusing to set safe drinking water standards concerning the chemical.

According to EPA scientists, perchlorate is dangerous in drinking water, even in trace amounts. The chemical poses a cancer risk and is especially harmful to thyroid and brain development in infants. Research has revealed alarmingly high levels of perchlorate in the nation's drinking water and food supply.²⁴ The contamination is widespread, affecting at least 30 states where the chemical is manufactured and handled.²⁵ Based on the known evidence, more than 20 million Americans drink tap water with perchlorate levels higher than the EPA's draft scientific assessment found safe.

In January 2003, Marianne Horinko, the EPA's assistant administrator for toxic waste cleanup, instructed agency personnel to continue using the existing standard of 4 to 18 parts-per-billion (ppb) of perchlorate in drinking water, overruling EPA scientists who found that the toxin is hazardous in drinking water above 1 ppb. The Pentagon, along with defense contractors—which face billions of dollars in potential cleanup liability for perchlorate pollution—insists that the chemical is harmless in drinking water at levels 70 to 100 times as high as what the EPA says is safe. Horinko also instructed her staff to base site-specific cleanup benchmarks on the average body weight of adults instead of those deemed most at risk from perchlorate ingestion—infants, pregnant mothers, and fetuses.²⁶

In April 2003, as the perchlorate controversy began to heat up, Bush officials imposed a gag order on EPA scientists. The order barred any public discussion of perchlorate until the National Academy of Sciences (NAS) could complete its own review of the public health risks of the pollutant, a process that may not be completed until at least 2006.²⁷ After escalating media scrutiny, the administration lifted the gag order. Bush officials called it a “misunderstanding.” Even so, the EPA scientists remain reluctant to publicly discuss the perchlorate issue.

The Pentagon also came under fire for concealing the results of a 2001 survey that sought detailed information about the magnitude of perchlorate contamination at

7 million

Approximate number of Americans who get sick each year from drinking contaminated tap water.

120 million

Americans who live in an area with unhealthy air, according to the EPA.

The Bush administration insists that environmental protections hamper military training and readiness, although it has not produced any evidence to support this claim.

military sites. Last May, members of Congress sent a letter to Defense Secretary Donald Rumsfeld accusing the Pentagon of failing to abide by its agreement two years ago to furnish results of its national survey to the EPA. According to news reports, the Defense Department's nationwide perchlorate survey stated that "early identification is critical in order to help evaluate potential risks to soils, groundwater, and drinking water." Unnamed EPA officials confirmed that they never received the expected data or the maps.²⁸ Lawmakers criticized the Pentagon for stalling the process to avoid paying billions of dollars in cleanup costs. Some accused the EPA of hiding information on the extent of the perchlorate threat to the nation's drinking water supply.

In June 2003, John Paul Woodley, assistant deputy undersecretary of defense for the environment, circulated draft guidelines for testing perchlorate levels at all active, inactive, and closed U.S. military sites. But the Defense Department abruptly dropped plans to do the testing after senior military officials complained that the plan was too costly and the science on perchlorate dangers too uncertain.²⁹

Apparently alarmed at the EPA's heightened concern over perchlorate pollution and the fact that many states are moving toward adopting their own standards to address this widespread problem, the Pentagon has said it will again lobby Congress for legal exemptions to delay or avoid cleanups that could cost hundreds of billions of dollars.³⁰ Provisions proposed by the Pentagon in the 2003 environmental exemptions legislation were worded in a way that masked their intent but would have shielded the military and defense contractors from liability for perchlorate or other pollution caused by any bases deemed to be "operational," whether or not the bases are in use.

EXEMPTING PENTAGON POLLUTERS

After persuading Congress last year to exempt the Defense Department from the nation's wildlife protection laws, the Pentagon now wants immunity from federal pollution safeguards. In early 2004, Pentagon officials asked the White House to lobby Congress to rewrite the rules to exempt the military from the Clean Air Act, the Resource Conservation and Recovery Act, and Superfund requirements. The specific changes being sought by the Pentagon include extending federal deadlines for hazardous waste cleanup on military installations, waiving Clean Air Act violations, and bypassing state environmental protection regulations. Many believe that changing those laws will endanger the U.S. environment and will threaten the health of those facing pollution problems in their communities—particularly drinking water contamination—caused by military activities. Still the Bush administration insists that environmental protections hamper military training and readiness, although it has not produced any evidence to support this claim.³¹

KEEP KIDS SAFE

In March 2003, the EPA attempted to update its cancer risk assessments to include supplemental guidelines that would consider the vulnerability of children to mutagenic carcinogens. The new guidelines, which dictate how the EPA regulates cancer-causing chemicals, acknowledged for the first time that children under two years of age are generally 10 times as likely to get cancer from certain chemicals as adults

who are similarly exposed.³² But after an outcry from the chemical industry, the Bush administration delayed finalizing these protective guidelines, leaving the EPA to continue using outdated guidelines that fail to adequately protect children. Until the new guidelines are released, the agency will be unable to make sound rulings to protect the public—especially children—from cancer.³³

CHEMICAL INSECURITY

The Bush administration has yet to take action to reduce the risk of terrorist attacks on the nation's 15,000 chemical plants. There is no question that the facilities around the country that produce, use, or store significant quantities of toxic chemicals present attractive targets for terrorists. More than 100 of these plants, if attacked, could release clouds of toxic gas that put the lives of a million or more Americans in danger, according to the EPA.³⁴ In 2002, the U.S. Army surgeon general ranked the risk of chemical plant attacks second only to a widespread biological attack. The National Infrastructure Protection Center also warned that Al Qaeda might target chemical facilities in the United States as part of its terror campaign. And Homeland Security Secretary Tom Ridge acknowledged that, without question, the administration is concerned about the possibility that terrorists could turn a chemical facility "into a weapon."³⁵

In March 2003, the General Accounting Office (GAO) released a report warning that chemical facilities are a highly vulnerable area of homeland security. The GAO report found that the extent of preparedness is unknown, especially since the administration and Congress have not acted to require national security and safety standards for chemical facilities. To date, the administration has relied only on voluntary efforts by industry to secure its plants—an approach the GAO found insufficient.³⁶ The GAO recommended that the administration propose legislation "to require these facilities to expeditiously assess their vulnerability to terrorist attacks and, where necessary, require these facilities to take corrective action."³⁷ And the report recommended reducing the levels of toxic chemicals on site and noted that the EPA could invoke its statutory responsibilities (under the Clean Air Act) to gather much-needed vulnerability information and reduce the risk at these facilities.³⁸

In May 2003, the Bush administration lent its support to a chemical security bill championed by Sen. James Inhofe (R-OK). That bill earned the endorsement of the chemical industry but scorn from critics, who said it fell short of what is required to make Americans safer.³⁹ Neither Sen. Inhofe's bill nor a meaningful chemical security measure—such as the one introduced by Sen. Jon Corzine (D-NJ)—has passed either house of Congress. Meanwhile it is business as usual at most plants; they continue to deal with high volumes of dangerous chemicals even when safer materials or processes are readily available.⁴⁰

HAZY ON HAZARDOUS WASTE

In a quiet reversal of a long-established environmental safeguard, in September 2003 the EPA lifted a 25-year-old ban on the sale of land contaminated with polychlorinated biphenyls (PCBs). Congress banned the sale and use of PCBs in 1978. Scientists have linked this toxic substance to cancer and neurological disorders. In an internal memo, the EPA offered a new interpretation of an existing law, thereby avoiding having to

44 States with fish advisories warning people not to eat locally caught fish due to mercury contamination (a 63% jump from 1993).

1 in 12 Childbearing women in the United States (or 4.9 million) who have mercury in their blood at a level above the EPA's safe health threshold.

1 in 6 Babies born in the United States each year (or 630,000) that the EPA estimates are at risk from exposure to mercury pollution.

notify the public or solicit input. In the new rule, only the sale of “severely poisoned” land is prohibited. The agency claimed that the old policy created “an unnecessary barrier to economic redevelopment” of the more than 1,000 pieces of contaminated land nationwide. (Nearly one-third of the nation’s more than 1,200 Superfund sites contain PCBs.) Critics, including some EPA staffers, worry that the new policy will make it difficult to track the sale of polluted sites and to ensure that buyers do not develop land before it is cleaned up. They also criticized the agency for making its decision without providing opportunity for public input.⁴¹

In October 2003, the agency began a rulemaking process to reclassify industrial materials as recyclable in order to exempt more hazardous waste from the Resource Conservation and Recovery Act (RCRA). Many people worry that rewriting the rules to allow recycling of these materials will result in more hazardous waste being released into the environment. Without a clearly defined disposal protocol, dangerous exempted solvents also could be left sitting or go missing during transport. As the rule itself notes, many early Superfund sites became contaminated when stockpiles of materials waiting to be recycled leaked into the soil or water near industrial facilities.⁴²

EPA’S RIGHT TO NO

In February 2003, the EPA restricted the public’s right to know about dangers posed by industrial facilities in their backyard. The new changes affect the Clean Air Act Risk Management Plan, which was designed to provide citizens with information on the dangers posed by local industrial plants to their communities in the event of a chemical accident. The EPA claims that the changes do not restrict public access to any information; however, key information already has been removed from the agency’s website. Environmentalists, concerned citizens, and journalists disagree with the EPA’s rationale; they argue that people need more information to keep themselves and their families safe in the event of a catastrophe at local industrial facilities.⁴³

The EPA also appears poised to accept industry’s suggestion to weaken the reporting process for the Toxics Release Inventory (TRI) program. TRI is the federal right-to-know program that requires businesses to disclose their toxic emissions. In November 2003, the agency presented a series of “burden reduction” options—ranging from increasing exemptions for small businesses, to allowing more companies to fill out a shortened reporting form, to permitting organizations to inventory ranges rather than exact amounts of pollutants.⁴⁴

Many observers are concerned that the EPA will buckle under industry pressure to reduce reporting requirements. Of particular concern is the mining industry, which recently has filed two lawsuits against the EPA in an attempt to evade responsibility for reporting toxic mining wastes. Truly small businesses are already exempt from reporting requirements, but relatively small companies can emit large amounts of toxic materials. People have a right to know which pollutants are being released into their environment.

PROTECTING PESTICIDE MAKERS, NOT PEOPLE

In October, the Bush administration moved to shield chemical manufacturers from lawsuits alleging that their products cause illness in humans or environmental

Nearly one-third of the nation’s more than 1,200 Superfund sites contain PCBs, a toxic substance.

damage. Until then, the government generally supported people's right to sue the manufacturer of a pesticide or herbicide in such cases. But in a sharp reversal of federal policy, the EPA took the position that federal law bars lawsuits against the makers of faulty insect- and weed-killers. As a result, farmers who might seek damages on claims that a pesticide did not work as its label indicated—including cases in which a chemical harms crops that it's supposed to protect—will have no recourse. The EPA's reinterpretation of the Federal Insecticide, Fungicide, and Rodenticide Act represents a huge victory for the pesticide industry, which lobbied the administration for product liability protection. Critics warn that the agency's decision to immunize pesticide makers from legitimate damage claims could be disastrous for small farmers and for public health.⁴⁵

In another pro-industry decision, the EPA announced in October 2003, that it would not restrict the use of the pesticide atrazine—despite evidence that the chemical may cause cancer, and even though it has been detected at unsafe levels in the water consumed by a million Americans. The agency disputes that atrazine, the most widely used weed-killer in the nation, poses health risks to humans. Each year, approximately 60 million pounds of the chemical is sprayed on corn and other crops throughout the Midwest, eventually making its way into water supplies. Research initially funded by Syngenta, the primary manufacturer of atrazine, found that the chemical causes sexual abnormalities in frogs. Another study found that workers in the company's Louisiana plant suffered prostate cancer at more than three times the normal rate.

NRDC and health groups urged the administration to follow the European Union in banning the pesticide's use and to immediately begin monitoring more than 1,000 watersheds that the EPA identified as being at high-risk for atrazine contamination. Instead, the administration is allowing Syngenta to continue selling the chemical as long as the company agrees to monitor atrazine pollution in a few of the high-risk watersheds.

Each year approximately 60 million pounds of atrazine is sprayed on corn and other crops throughout the Midwest, eventually making its way into water supplies.

DOLING OUT DIOXIN IN SEWAGE SLUDGE

The EPA announced in October 2003 that it will not regulate dioxins found in land-applied sewage sludge.⁴⁶ NRDC filed a lawsuit against the agency more than a decade ago, successfully arguing that the Clean Water Act requires the agency to limit toxic pollutants such as dioxins that may harm human health and the environment. But on the eve of a court-mandated decision deadline, the EPA decided that dioxins from sewage sludge do not pose significant health or environmental risks.

Land-applied sewage sludge is the second-leading source of dioxin exposure in the United States. Of the nearly 6 million tons of sewage sludge used or disposed of each year, 85 percent is used to grow crops that enter the food chain. Americans already have an increased risk of cancer from eating food containing dioxin that is about 100 times above the level at which the EPA usually takes regulatory action. Dioxin, one of the most toxic substances on earth, can build up in the fatty tissues of humans, contributing to neurological and immune system damage and behavioral disorders. In 2002, the National Institute of Medicine issued a report urging the public to limit their dioxin exposure by eating less meat and dairy.

The EPA's decision not to restrict the use of sewage sludge represents a reversal of the agency's 1999 position and contradicts the views of health advocates and scientists. In 2002, a panel of the National Research Council determined that the government was using outdated science to determine risks from the use of sludge.

"I can't answer it's perfectly safe; I can't answer it's not safe."

Currently, land application of sludge is being blamed for the deaths of a 26-year-old man in New Hampshire and two boys in Pennsylvania, as well as scores of illnesses across the country. A recent National Academy of Sciences report cited "persistent uncertainty" about the health effects caused by the EPA's sludge policies, and the agency's inspector general found that the "EPA cannot assure the public" that its current regulations for handling and applying sewage to fields "are protective of human health and the environment." An assistant administrator at the agency, Paul Gilman, was forced to admit on *CBS Morning News* last October, "I can't answer it's perfectly safe; I can't answer it's not safe."⁴⁷

PULP FICTION FOREST POLICY

The U.S. Forest Service's surveys indicate that people value forests most for their protection of clean water and wildlife habitat. Yet under the mantle of wildfire prevention, the administration's policy has weakened environmental protections and has curtailed public participation in order to boost logging in national forests. In addition, the administration has removed legal barriers to logging old-growth trees and building roads in pristine forests in Alaska, and is now poised to open more forestlands nationwide to drilling, mining, and other destructive activities.¹

NO TREE LEFT BEHIND

The Bush administration claims that reducing the risk of forest fires necessitates increasing and accelerating the pace of logging. Critics contend that argument is a smoke screen through which the administration can justify reductions in environmental review and public participation in forest decisions.

In 2003, the Forest Service established two new categorical exclusions (CEs) from the National Environmental Policy Act (NEPA), a law that requires environmental analysis, consideration of alternatives, and citizen input.² One CE exempts almost any project having the stated purpose of "hazardous fuel reduction" from NEPA-required environmental review and public participation. This type of project is so broadly defined, it will affect 165 million acres of forests. Whereas this CE can be invoked for logging projects up to 1,000 acres, a second CE exempts from NEPA any so-called post-fire rehabilitation project up to 4,200 acres. By comparison, categorical exclusions used to be limited to 10 acres. As a result, many logging projects can be excluded from NEPA.³ Moreover, subsequent rules put forth by the Forest Service will exempt all CE timber sales from appeal.⁴

The administration has repeatedly exploited fear of fire to justify weakening other environmental safeguards. In January 2003, the Interior and Commerce departments issued guidance on evaluating the net benefit of projects that reduce hazardous fuels on public lands. The underlying goal is for agencies to expedite forest thinning, supposedly for the benefit of endangered species. But the kind of intense logging proposed by the administration does a questionable job of reducing fire risks and can have a devastating effect on wildlife and their habitat. In May 2003, the Forest Service went a step further by exempting logging projects up to 1,000 acres from mandatory



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environmental reviews, making it optional for timber companies to consult with federal wildlife agencies over logging effects.⁵

These changes are unnecessary because federal agencies already have ample authority to do what Forest Service science has shown is the best way to protect homes and communities from wildfires: remove small trees and underbrush and thin the areas around homes. Moreover, according to the EPA's own studies, logging larger trees not only threatens water quality, fish, and wildlife and forest health, but also can increase fire risks.⁶

UNHEALTHY FOREST LAW

Critics of the Bush administration's effort to loosen logging restrictions in the name of fire prevention were vindicated by a General Accounting Office (GAO) report issued in May 2003.⁷ The administration claims that expediting thinning projects is necessary because the public's right to review and to appeal logging plans was interfering with fire prevention. But the GAO's analysis found that the overwhelming majority of so-called hazardous fuel-reduction or thinning projects are not hampered by public participation.⁸

Citing the report, conservationists criticized the administration and congressional champions of industry for exploiting fears of wildfires to forward a plan that would boost logging deep in U.S. national forests—while cutting citizens out of the process—instead of devoting scarce resources to start protecting communities at risk from forest fires.⁹

But after a long, hard legislative fight, President Bush signed into law the so-called Healthy Forests Restoration Act in December. As the first major forest management legislation in a quarter-century, this new law reduces environmental review, limits citizen appeals, and pressures judges to quickly handle legal challenges to logging plans, all of which will likely speed up and increase commercial logging on federal forestlands. Moreover, the law offers no guarantees of money or help for at-risk communities clearing flammable brush from the immediate areas around homes and property, an essential task for reducing the risk of fire. Instead, the bill allows increased logging of mature, fire-resistant trees deep in the backcountry, far from homes and communities.¹⁰

Earlier this year, the Forest Service issued its first rule under the Healthy Forest law.¹¹ In the supposed pursuit of streamlining the logging approval process, new changes under this rule will undermine the public's legal right to meaningful participation in decisions affecting public lands by barring appeals after final decisions are made. This new rule also will severely restrict who can appeal logging projects or challenge them in court. When combined with other aspects of the Healthy Forests initiative—such as eliminating environmental review on many logging projects—the new rule will facilitate damaging logging in national forests throughout the country.¹²

97% Timber projects that proceeded on schedule without legal challenge last year—undercutting the Bush administration's (and the timber industry's) claims that environmental lawsuits hamper logging projects.

ROADLESS RULE BAIT-AND-SWITCH

A highly popular Clinton-era roadless rule protected 58.5 million acres of national forest from road construction and logging. In fact, the Forest Service received more than 2 million comments from citizens supporting its enactment, a record for comments

on a federal environmental measure. It is all the more disappointing then that the Bush administration opted not to appeal a court ruling that struck down the rule.

The decision came in September 2003, only three months after Bush officials had promised to uphold the roadless rule.¹³ Bush officials had taken a similar action in 2002, when a different federal judge suspended the rule. In that case, environmentalists stepped into the government's shoes and got the rule reinstated on appeal. That experience may be repeated this time around. Environmentalists again have vowed to continue their appeal of the ruling—with or without the government's involvement.

20 million Acres opened to increased logging—with fewer environmental safeguards—under the recently enacted “Healthy Forests” law.

TONGUE-TIED OVER TONGASS LOGGING

In December 2003, the Bush administration dealt another blow to roadless areas by temporarily removing roadless area protections from the Tongass National Forest in Alaska—the largest national forest in the United States and the world's largest intact temperate rainforest.¹⁴ This action followed the Forest Service's decision in February 2003 to withhold wilderness protection from millions more acres of the Tongass.

The administration's decision to open the Tongass to logging and roadbuilding on a grand scale came despite overwhelming public support for protecting roadless areas and for creating more wilderness in those areas.¹⁵ Now loggers could be free to log millions more acres of old-growth forests, tearing open new roads in the process. Although the Forest Service claims that only 4 percent of the Tongass will be affected (roughly 676,000 acres), the logging could spread to 2.5 million acres.¹⁶

By the Forest Service's own estimates, tourism and recreation accounted for more than 4,000 jobs in the region in 2001—six times as many as in the timber industry. At the same time, salmon harvesting and seafood processing, which depend on a healthy and productive environment, produced 3,000 jobs in southeast Alaska. In contrast, Tongass logging is subsidized by taxpayers to the tune of tens of millions of dollars every year.¹⁷ In September 2003, the Forest Service estimated that the first of several planned timber sales will cost taxpayers more than \$2 million.¹⁸

It seems that no amount of economic loss—or environmental harm—will stop the Bush administration from moving their agenda forward. Already, 50 Tongass timber sales are planned over the next decade. The proposed sale of 27 million board feet of Madan Bay timber, for example, will punch 18 miles of new logging roads into a huge portion of pristine forest. The Madan Bay region includes Virginia Lake, a popular recreation spot and one of the last homes of large stands of Sitka spruce, hemlock, and yellow cedar.¹⁹

SEQUOIA'S UNDER SIEGE

Although President Clinton dedicated a 327,769-acre preserve for some of the world's largest and oldest trees as the Giant Sequoia National Monument, the sequoias are by no means safe. Last year, the Forest Service, citing the threat of wildfires, proposed a resumption of commercial logging in the Giant Sequoia National Monument. The agency finalized that plan early this year.²⁰

The Forest Service's management plan sidesteps wildlife and watershed protections to allow timber companies to cut down enough trees to fill 3,000 logging

trucks every year. Loggers will be allowed to fell large, mature trees up to 30 inches in diameter, and more than 100 years old. This includes some of the majestic sequoias.²¹ In addition, loggers can cut as much as 10 million board feet of lumber per year in the Giant Sequoia National Monument—about as much as was logged in the entire 1.1-million-acre Sequoia National Forest before the monument was established.²² NRDC has appealed this plan.

QUE SERA, SIERRA

It is not only sequoias endangered in California these days. Also on the chopping block are several million acres contained in 11 national forests spanning the Sierra Nevada mountain range. Soon expanses of old-growth trees throughout the region, currently off-limits to logging to protect forest health and wildlife habitat, could fall victim to the ax. This is thanks to the Forest Service's new management plan finalized earlier this year, which calls for tripling the amount of logging allowed in the Sierra Nevadas.²³

The agency's rollback of wildlife habitat protections undermines the objectives of the Clinton-era Sierra Nevada Framework. That sweeping restoration plan, adopted in January 2001 after more than a decade of public and scientific input, limited logging in forests comprising a total of 11.5 million acres to protect old-growth trees and the wildlife whose survival depends on that habitat. But now, under the Forest Service's revision, logging will be allowed in the backcountry, where the California spotted owl nests and forages—without setting aside a compatible area nearby for the owls to move to. The plan also reduces the canopy cover goal from 50 percent to 40 percent and it allows the removal of trees up to 30 inches in diameter.²⁴

The plan will reduce emphasis on protecting homes and communities from wildfires by shifting logging to the backcountry, where it could actually increase fire risk.

In a telling incident, a secret memo obtained by environmentalists revealed the Forest Service paid a San Francisco public relations firm \$90,000 to help the agency promote its controversial logging plan for the Sierra Nevadas. In the memo, One World Communications—emphasizing that “perception is king,” advised the agency to keep the details of its business deal confidential. The Forest Service also accepted the firm's suggestion to simplify the plan into one message—wildfire reduction around small communities—and to give the plan a slogan: “Forests With a Future.”²⁵

Meanwhile, back east, thousands of public comments calling for increased protections for clean water, old-growth forests, roadless areas, and endangered species were not enough to dissuade the Forest Service from unveiling new management plans in 2004 to boost logging across more than 3 million acres of national forests in five states along the Southern Appalachian range.²⁶ The agency says more logging is necessary to address threats posed by invasive species and disease, and wildfires. Critics say that the plan is tilted to favor timber companies and will not safeguard wildlife or protect nearby communities from wildfire.²⁷

OPEN UP, ORE ELSE

After 10 years of public negotiations, the people of Alabama thought they had a forest plan that would protect national forests within their state. Not so fast, said the Forest

The Forest Service paid a San Francisco public relations firm \$90,000 to help the agency promote its controversial logging plan for the Sierra Nevadas.

Service. Early in 2004, the agency released a final management plan, which contains surprise provisions for drilling and mining in more than 90 percent of the national forests in the state.²⁸ Local environmental leaders were surprised that none of the oil, gas, and mineral development language underwent any analysis or public review as required by NEPA. Critics say the plan negatively affects forest ecology, drinking water, and nearby aquatic life, and it fails to safeguard old-growth areas or to set aside any new wilderness areas.²⁹

Meanwhile, in California, politicians, conservationists, hunters, anglers, and even local businesses teamed up to fight the Bush administration's new plan to promote oil and gas development in the Los Padres National Forest. The forest is home to 20 threatened or endangered plants and animals, including the California condor. In February 2004, the Bureau of Land Management (BLM) announced plans to open 140,000 acres of the forest to drilling in the hope of tapping approximately 13 million barrels of oil—less than what is consumed in a single day in the United States. Worse yet, close to three-fourths of the land is remote and not easily accessible, so development would involve digging miles of roads and right-of-ways into the forest. Legislation pending in Congress calls for setting aside at least one-third of the forest for wilderness protection. Now, in response to the Bush proposal, Rep. Lois Caps (D-Santa Barbara) has proposed the Los Padres National Forest Conservation Act, which, if passed, would ban exploration and drilling within the forest.³⁰

PRIVATIZING FOREST JOBS DOESN'T ADD UP

Studies initiated by President Bush to examine whether outsourcing federal jobs to private companies would save money actually cost taxpayers millions of dollars while producing few useful results.³¹ After spending \$18.6 million on privatization studies, the Forest Service concluded that very few of its positions could be filled more cost-effectively by private contractors. Of 969 positions studied, the agency determined that only 47 should be privatized.³² The BLM had similar results, spending nearly \$2 million on five studies that found that zero jobs should be turned over to private companies.³³

Despite these findings, the Bush administration ordered the Forest Service to proceed with full-blown competitions, complete with formal bids from the private sector, to determine whether contractors should take over certain jobs in national forests. Critics say the move is part of the administration's attempt to hand over stewardship of U.S. public lands to corporations.

248,000 Public comments the Forest Service received supporting roadless protections in the Tongass National Forest. (Only 2,000 comments opposed Tongass roadless protections.)

1,000 Miles of new roads expected to be built in the Tongass now that the Forest Service has rejected roadless protections.

\$34.8 million Cost to U.S. taxpayers for roadbuilding in the Tongass in 2002. (That year timber companies paid just \$1.2 million for the trees they cut in the Tongass.)



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CHAPTER 10

MINING PROFITS, GRAZING THE RANGE

Mining and grazing threaten millions of acres of public lands. The laws governing these destructive practices are outdated. For example, hard-rock mining releases more toxics than any other U.S. industry, according to the Environmental Protection Agency (EPA). This industry produces twice as much solid waste as all other U.S. industries and cities combined, according to federal estimates. Cleaning up only the abandoned mines scattered across the country will cost U.S. taxpayers between \$32–\$72 billion.¹

Taxpayers are also saddled with the cost of livestock grazing on federal rangelands, a cost that is estimated to be as high as \$250 million annually. That price buys Americans overgrazing, which results in severe degradation of sensitive grassland environments. Grazing also greatly contributes to the destruction of wildlife habitat and the fouling of springs, creeks, and rivers throughout the West. In fact, overgrazing is the number one threat to Western trout streams. Unfortunately, the Bush administration is working to reverse nearly all of the favorable mining and grazing policy that took place over the last decade—leaving many of our most special places at risk.²

ALL THAT GLITTERS

In October 2003, the hard-rock mining industry had reason to celebrate, as Interior Secretary Gale Norton overturned a Clinton-era regulation that limited the amount of public land that could be used for waste from mining operations. The decision effectively reversed the agency's 1997 ruling that the 1872 Mining Law limits each individual 20-acre mining claim on federal lands to one 5-acre waste site. According to the Bush administration's interpretation, there is no longer a restriction on the number of 5-acre waste sites—meaning that gold and silver mining operations can dump unlimited amounts of toxic waste on public lands.³

Mining practices have become much more destructive over the years, but the 1872 Mining Law remains unchanged. In the old days, mining by use of shafts left relatively little waste. Today's mines, however, create huge open pits and leave behind massive cyanide waste heaps that have polluted thousands of stream miles throughout the West. Critics say the administration's reversal of the Clinton-era policy gives industry an open invitation to dump more toxic waste on our lands and to pollute our waterways.

In November 2003, in a win-lose decision for the environment, a federal judge lambasted the White House for its pro-mining policies but did not rule against them.

Saying he had no legal grounds to strike down Interior Department regulations that will allow more mining on public lands, the judge upheld the rules but chastised the administration for favoring industry over environmental protection. Despite agreeing that the Interior's pro-industry interpretation of federal mining law "may well constitute unwise and unsustainable policy," the judge ruled against the environmentalists who brought the lawsuit. He also criticized the new rules for failing to require that mining companies pay the government full market value when their activities degrade public lands and devastate the environment.⁴

GILA MONSTER

The Bush administration moved a step closer to allowing what would be one of the nation's largest open-pit mines, in the foothills of Arizona's Gila Mountains. The Bureau of Land Management (BLM) issued its final environmental impact statement in December, claiming that the proposed copper mine, which would cover 3,360 acres (two-thirds on federal lands), would have no ecological impacts. The agency based its finding on Phelps Dodge Corporation's pledge to use impermeable plastic to prevent toxic materials from leaking into the Gila River water system. Critics are skeptical that a plastic liner would provide adequate protection for Arizona's limited water supply. Conservationists are concerned about other potential damage from the mine, which they note would annually generate a 450-foot pile of crushed ore and pump 1.8 billion gallons of water.⁵

There is also the question of a land exchange that would accompany the mining project, giving Phelps Dodge 16,297 acres of federal land near the mine in exchange for only 3,867 acres of company-owned land spread out on 11 parcels around the state. The BLM officials defend the land swap, arguing that the government will obtain important habitat areas in exchange for desert land.⁶

A LOSING BATTLE

A long-simmering dispute between the BLM and the EPA reached its boiling point in March 2004. The interagency dispute involves a request by the Newmont Mining Corp. to restart a huge gold-mining operation near Battle Mountain, Nevada. The mine could produce enough acid to pollute groundwater for hundreds, even thousands of years, according to an environmental impact statement. Federal regulations require that mining companies establish a trust fund to cover future cleanup costs. Newmont officials have offered to put up \$408,000, with an additional \$1 million bond. That amount pales in comparison with the EPA's estimate that it would cost \$33.5 million to prevent environmental damage. Unfortunately, the EPA does not have final authority over mining issues on federal lands. The final decision rests with the BLM, which has indicated that Newmont's proposal is sufficient.⁷

PUTTING PROTECTIONS OUT TO PASTURE

Speaking at a National Cattlemen's Beef Association meeting in Nashville in January 2003, BLM Director Kathleen Clarke touted upcoming changes that would require federal officials to factor local culture and economy into grazing decisions. She also

\$600 million Budget shortfall for the National Park Service.

\$110 million Amount of the National Park Service's budget the agency is required to use over the next three years for President Bush's initiative to "outsource" park jobs to the private sector.

expressed support for streamlining the appeals process for grazing decisions and allowing ranchers to hold property rights in fences, stock ponds, and other projects constructed on public land.⁸

As promised, the BLM proposed new rules in February 2004 to overturn Clinton-era rangeland management reforms.⁹ The new regulations would give ranchers greater influence over decisions affecting 160 million acres of public lands, while limiting public participation and the government's ability to intervene and prevent environmental damage.¹⁰ Conservationists warn that the changes now being considered would promote overgrazing and other unsustainable grazing practices that have already imperiled wildlife, fish, and plants; degraded water quality and quantity; and harmed archeological, historical, and Native American treasures. The BLM has acknowledged that its new rancher-friendly livestock grazing management plan could have short-term negative impacts on rangeland and wildlife habitat. Internally, agency experts have concluded that the impacts could be much worse.¹¹

Critics accuse the administration of trying to turn back the clock to a time when ranching interests held sway over federal land use decisions. In addition to undoing years of effort to safeguard public lands from overgrazing and other destructive practices, many decry the administration's efforts to shut the public out of the process, to emphasize economics over environmental concerns, and to bolster private property rights claims on public lands.

A LOT OF BULL

Environmentalists have had some success invoking federal laws to force review of grazing permits on national forests because cattle grazing causes an array of ecological degradations, including eroded streambanks, decreased plant diversity, and compacted soils.

In April 2003, a federal district judge ruled that the Forest Service had violated the Endangered Species Act and the National Forest Management Act when it approved livestock grazing in New Mexico's Lincoln National Forest. The permit issued by the agency allowed grazing by up to 533 cows over 10 years, even though the agency had evaluated only the effects of up to 412 cows over a three-year period. The Forest Service's own records show that grazing has ravaged 90 percent of streams in the area, and yet the agency still had no qualms about changing the paperwork to allow even more cows on public lands and for even longer. The judge chided the Forest Service for not consulting the U.S. Fish and Wildlife Service on the long-term impacts of the permit, particularly to the Mexican spotted owl and other federally protected species.¹²

In November 2003, the Forest Service was slammed again for issuing a federal grazing permit after ignoring long-term impacts to endangered species. A federal judge issued a ruling against the agency for insufficient environmental review and nullified a 10-year permit for grazing on 140,000 acres in the Cibola, Coconino, Tonto, and Coronado national forests in Arizona and New Mexico.¹³

Earlier this year, the Forest Service, citing a permitting backlog, began an effort to streamline grazing approvals under the National Environmental Policy Act (NEPA).

80% Public comments (out of 360,000) in support of a snowmobile ban in Yellowstone National Park.

84% Surveyed National Park Service employees who say that Bush administration policies favor corporate interests at the expense of parks.

The proposed changes involve extending the terms of permits while reducing consideration of alternative management options. Agency officials say the changes are intended to speed up the permitting process by providing decision makers with greater flexibility. Critics, however, say the proposal would undercut NEPA requirements by reducing environmental review, limiting public input, and endangering the health of public rangelands. The administration's actions are likely a response to federal judges citing inadequate environmental studies in rejecting three Forest Service grazing permits in the last 15 months.¹⁴

3,939 Tons-per-year of sulfur dioxide pollution (which contributes to acid rain and soot) from a coal-fired power plant near Yellowstone National Park.



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CHAPTER 11

EMPTY PROMISE ON PARKS

The White House understands the political significance of U.S. national parks, as evidenced by its frequent use of these majestic places as natural backdrops in efforts to shore up President Bush's environmental image. In 2003, while visiting California's Santa Monica Mountains national recreation area, the president reiterated his pledge to fix up our deteriorating parks. Wearing work boots and gloves, and wielding a shovel, the president took time for a bit of hands-on trail restoration before making brief remarks to the assembled journalists. But talk is cheap, and political photo ops cannot hide the fact that the administration's record on national parks is nothing to celebrate.¹

SPEAKING OUT FOR PARKS

At a dramatic press conference in November 2003, two National Park Service employees, shielded behind a curtain with their identities disguised, criticized the Bush administration for "enacting policies and laws that will destroy the grand legacy of our national parks," as one put it. The two anonymous public servants presented the results of a recent survey of their agency, which suggests there is broad dissatisfaction among Park Service employees over administration policy.² Of 1,361 respondents, 84 percent expressed a "great deal of concern" about the effect of current policies on national parks, some 59 percent said the situation had worsened over the past few years, and 79 percent said morale had declined over the same period.³

That survey, and the steady stream of resignations by federal employees in various resource agencies, speak volumes about the conditions under this administration. Earlier this year 183 former park officials, calling themselves the Coalition of Concerned National Park Service Retirees, echoed this sentiment when they signed a letter to President Bush scolding him for tarnishing the natural treasures of the United States. The group accused the Bush administration of managing the parks "as if they were arbitrary parcels of public land available to be exploited for any purpose favored by corporate interests." The group wrote similar letters to Bush in May and August 2003.⁴

A WHITE FLAG OVER YELLOWSTONE

In April 2003, via a letter declaring, "Yellowstone is no longer in danger," the Bush administration urged the United Nations to remove the park from a list of endangered World Heritage sites. The U.N. World Heritage Committee is charged with con-

serving hundreds of humankind's most extraordinary natural and cultural treasures. Nineteen of those wild places, including Yellowstone, have been elevated to the committee's in-danger list, which helps trigger action when a World Heritage site is threatened with destruction or serious degradation.

In yet another example of the White House's troubling practice of editing scientific assessments to downplay environmental concerns, the administration diluted or deleted key information in its report to the U.N. committee. As originally written, the reports by park staff highlighted myriad continuing threats to Yellowstone's water quality, air quality, and wildlife—the same problems that had put the park on the endangered list in the first place, back in 1995.⁵

The administration's policies threaten to make more problems for parks. After lobbying by oil giants, cattle barons, mining companies, and other special interests, the administration unleashed a series of potentially devastating attacks on Greater Yellowstone. The Interior Department is permitting energy and logging companies to despoil pristine wildlife habitats that surround and buffer the park; the agency is moving to strip wolves and grizzly bears of endangered species protection, a decision that would leave those animals vulnerable to hunting if they wander outside park boundaries; and the agency continues to round up hundreds of Yellowstone's wild bison in the winter and send them to a slaughterhouse.⁶ As mentioned, the administration overruled a national Park Service plan to ban thousands of snowmobiles that roar through the park every winter, spewing air pollution and harassing wildlife.⁷ Meanwhile, a decision is pending on a coal-fired power plant to be located just upwind of the park. According to the Park Service's own data, the plant would harm air quality and reduce visibility in the park. But the Interior Department suppressed this data, paving the way for the permitting of the plant.⁸

With the administration routinely acting in ways that put corporate interests ahead of our oldest national park, Yellowstone needs more worldwide attention and action, not less. In fact, earlier this year the National Parks Conservation Association named Yellowstone as one of the nation's 10 most endangered parks.⁹

THE SNOWMOBILING SAGA

The Bush administration's decision to settle a lawsuit with the International Snowmobile Manufacturers Association and to overturn a snowmobile ban in Yellowstone and Grand Teton national parks flies in the face of the government's own scientific evidence that snowmobiles harm the parks. Internal government documents, obtained by environmentalists in January 2003, showed that the administration ignored findings by the National Park Service that blamed snowmobiles for spoiling the natural integrity of parks. The agency's 10-year, \$2.4 million study of environmental impacts concluded that banning snowmobiles "best preserves the unique historic, cultural, and natural resources," in the parks and "yields the lowest levels of impacts to air quality, water quality, natural soundscapes, and wildlife."¹⁰ The agency's findings mirror a growing body of research showing that motorized, mechanized outdoor recreation is the second-leading cause of the decline of federally listed threatened and endangered species—only behind development.¹¹

The Coalition of Concerned National Park Service Retirees sent a letter to President Bush, scolding him for tarnishing the natural treasures of the United States.

After months of hedging the issue and mulling several options, the Park Service finally proposed a draft plan in March 2003.¹² It called for allowing only “cleaner and quieter” engine-powered snowmobiles in Yellowstone and Grand Teton parks and requiring that riders be trained or accompanied by a guide. Snowmobile access would be capped at 1,100 per day—roughly the typical amount of traffic anyway—and riders would be distributed to different park entrances to reduce congestion. Bush officials acknowledged that this so-called preferred alternative was not the best option for protecting the environment and public health.¹³

Allowing continued snowmobile access comes at a price, paid by the Yellowstone’s wildlife, by the millions of winter visitors denied the park’s serene surroundings, and by the park staff, who are forced to don gas masks to protect their health. (In winter of 2003, tens of thousands of snowmobiles descended on the park, producing more pollution in a single weekend than all the cars in Yellowstone produce during a full year.) In June, the EPA raised concerns that the plan might cause more pollution than predicted. The agency determined that the Bush proposal could allow twice as much hydrocarbon and carbon monoxide emissions and five times the nitrogen emissions, which create haze and harm human health, than an outright snowmobile ban.¹⁴

Caribou will abandon prime habitat, increasing the risk of death, when heavy snowmobile use occurs.

Despite more than 100,000 public comments supporting the Clinton-era plan to phase out snowmobile use in the parks, the Park Service’s final plan, issued in early December 2003, called only for limiting the number of off-road vehicles allowed in the park.¹⁵ A few days later, just before the parks were to open for the winter season, a federal judge in Washington, D.C., blocked the agency’s plan, ruling that the administration’s decision to overturn the ban was “completely politically driven.” Starting in December 2004, the judge ordered the agency to adhere to the Clinton administration’s planned phaseout of snowmobiles over three years, replacing them with environmentally friendly snowcoaches.¹⁶

But the legal battle rages on. In a conflicting court decision, another federal judge in Wyoming issued a February 2004 injunction allowing snowmobiles back into the parks. The next day, the Park Service announced a 60 percent increase in the number of snowmobiles allowed in Yellowstone and tripled the allowable number in Grand Teton. However, the federal judge who had earlier decided to uphold the snowmobile ban has threatened to issue his own injunction until the case can be resolved.¹⁷

ELSEWHERE, THE SNOWMOBILES ROAM

In October 2003, the Forest Service decided not to restrict snowmobiling around Idaho’s Priest Lake despite the impact on the last remaining herd of woodland caribou in the lower 48 states. According to the agency’s own study, caribou will abandon prime habitat, increasing the risk of death when heavy snowmobile use occurs. Even so, the agency opted to forgo further restrictions in favor of better monitoring and enforcement of recreation rules at 11 sites in the Selkirk Range where snowmobile use and prime caribou habitat overlap. Listed as endangered since 1983, only 41 caribou are left at Priest Lake, down from an estimated 400 in years past. Logging has severely reduced the herd’s range, and with the development of

400 miles of groomed trails around the lake, wildlife habitat is further threatened. U.S. Fish and Wildlife Service biologists fear that any loss is significant for the dwindling caribou herd.¹⁸

In December 2003, the Forest Service issued a permit to allow a local snowmobile club to build a temporary bridge over a creek in the Flathead National Forest in Montana. Critics said the decision violates the forest's management plan by extending snowmobiling season past the winter months and allowing snowmobiles into prime grizzly habitat at a time when the bears begin to emerge from their hibernation in search of food. The agency issued the permit without public comment and without consideration of the harm to wildlife. Fortunately for the grizzlies, the Forest Service backed down in the face of a lawsuit by the Swan Valley Coalition. As part of the settlement agreement, reached in March 2004, the agency agreed to immediately remove the bridge, which will make it harder for snowmobiles to access the areas where the bears reside.¹⁹

GETTING HOSED

The American public may own the national parks, but what about the water in the parks? In what amounts to a major policy shift and an unprecedented federal giveaway, the Bush administration negotiated a secret deal in April 2003 to cede federal control over the waters in Colorado's Gunnison National Park to the state. The water is to be sold to Colorado cities facing a drinking water shortage, leaving little for park wildlife.

The Gunnison River slices through the soft volcanic rock of the park's 14-mile-long Black Canyon, creating a breathtakingly scenic gorge dotted with sandbars, surging with rapids and teeming with trout. Under the arrangement, the government will give up its 70-year-old water rights, which put the park's wildlife needs ahead of other users. Under the Clinton administration, the federal government exerted its authority to prevent states from diverting water away from national parks, forests, wildlife refuges, and other federal lands for urban and agricultural uses.

Interior Secretary Gale Norton said the decision to hand over control of the river reflects the administration's intent to let states set natural resource policies on federal lands.²⁰ Conservationists warn that this policy retreat sets a precedent that could spell disaster, not only for the Gunnison River but also for other waterways in parks.

GET YOUR MOTOR RUNNING

In May 2003, the National Park Service took a second look at personal watercrafts and decided that they pose little harm to water quality or wildlife habitat, and therefore should be allowed on Lake Powell in Utah. The lake had been closed to jet ski users under a temporary agreement with environmental groups seeking to ban the small crafts in the park. However, the agency's final analysis called for immediately reopening the lake to motorized users, with minor restrictions, until a final decision could be reached.²¹

Also in May 2003, the Park Service rescinded a ban on the use of personal watercrafts off Maryland's Assateague national seashore. Assateague is one of 21 national

51% Increase in acres of U.S. public lands opened to oil and gas drilling and coal mining from 2000 to 2003.

parks formerly off-limits to vehicles before being subjected to a new review by the Bush administration. Park officials lifted the ban despite receiving 7,600 public comments, of which 90 percent supported a complete ban on motorized recreation along the shores of Assateague.²² Now that jet skis are allowed in most of the 22,000 acres of water (up to a half-mile offshore) surrounding the 37-mile-long island, Assateague is the first national seashore on the East Coast to allow personal watercraft.

PARADISE LOST ON PADRE ISLAND

In 2002, Padre Island, located off the Texas coast, became the first national park to be drilled during the Bush regime. Earlier this year, the National Park Service approved BMP Petroleum's second request to drill a natural gas well off Padre Island National Seashore—a place visited by 500,000 people each year and home to 11 endangered species. At 69 miles long and encompassing 130,000 acres, Padre offers the world's longest stretch of undeveloped barrier island. The 130-foot drilling derrick coming soon will join a 156-foot rig that now sits above the dunes. In an effort to minimize environmental and visitor impacts, the agency will limit the number of round-trips that trucks may make to 20 per day. But these restrictions are hardly comforting to conservationists and others, who remain concerned about the fate of endangered wildlife. One example is the Kemp ridley sea turtle—the world's smallest and most imperiled sea turtle.²³

SO LONG, SEASHORE

In April 2003, after four years of study, the Bush administration killed a proposal to designate one of the last undeveloped stretches of Southern California's coast as a national seashore, dashing any hopes of preventing real estate developers from gobbling up the state's largest remaining piece of pristine coastland. With its mild Mediterranean climate, the 46-mile-long Gaviota Coast is home to nearly 150 unique plant and animal species, including 13 that are endangered. While lauding its cultural, natural, and scenic qualities, the National Park Service cited intense local opposition from property rights activists and severe federal budget constraints as the driving forces behind the decision not to preserve the 200,000-acre area. Seashore proponents were disappointed but not surprised by the decision. In August 2002, Assistant Interior Secretary Lynn Scarlett expressed her opposition to federal control of the Gaviota Coast, saying that "land acquisition is not a priority for this administration."²⁴

In the wake of the administration's decision, local conservationists have waged an uphill battle to preserve the Gaviota Coast. So far, they have not had much luck blocking the construction of several beachfront trophy homes, some exceeding 15,000 square feet, along that pristine coastline.

PAVING THE WAY FOR DEVELOPMENT

In a move that could spur development on millions of acres in U.S. national parks and wilderness areas, the Bureau of Land Management (BLM) issued a rule in January 2003 to make it easier for state and local governments to claim ownership of

\$2 billion–\$4 billion

Annual value of minerals produced from U.S. public lands.

\$0

Royalties the U.S. Treasury receives from mining on public lands.

12,000

Miles of U.S. rivers polluted by mining.

rights-of-way along roads, trails, paths, and rivers on federal lands.²⁵ The rule created a streamlined procedure to resolve title disputes, allowing the BLM to more easily relinquish federal jurisdiction over specified rights-of-way. Ceding control over the parcels would enable state and local officials to build or expand new roads through wildlands without any opportunity for public review or appeal.

Western states have already laid claim to tens of thousands of roads and trails on our public lands—including countless wagon tracks and illegal off-road vehicle routes defined as roads under an obsolete provision of federal law (RS 2477). In many cases, they have done so to prevent the lands from becoming permanently protected as wilderness. By mapping illegitimate or nonexistent roads in wilderness study areas, for example, states or counties may be able to block them from being designated as wilderness. The BLM's new rule will accelerate this process.

Critics say the Bush administration's new rule gives away public lands, including national parks. According to an analysis completed a decade ago by the National Park Service, RS 2477 claims could affect 17 million acres of national park lands by allowing roads to cross many miles of undisturbed fish and wildlife habitat, and archeological resources. Other studies have found that roads and vehicle use lead to fragmentation of wildlife habitat, soil erosion, and increased off-road traffic in adjacent undeveloped areas.²⁶

The state of Alaska already has claims under RS 2477 affecting more than 2,700 miles of potential roads in national parks and preserves there, including 24 routes covering 350 miles in Denali National Park. San Bernadino County officials have identified nearly 5,000 road claims, including trails, wagon roads, and horse paths—in the Southern California desert. More than half of them are in the Mojave National Preserve and Death Valley National Park. According to the National Park Service, Arizona officials may use the new rule to lay claim to 56 primitive roads, totaling 110 miles within the boundaries of Grand Canyon National Park, in an attempt to force the government to remove 231,000 acres of the park from wilderness consideration. These examples reinforce the notion that this new rule is another way for the Bush administration to hand over the keys to our last wild places to those who want to exploit public lands for private gain.²⁷

OUT WITH OUTSOURCING

As part of the Bush administration's campaign to privatize as many as 850,000 federal jobs, 70 percent of National Park Service jobs, ranging from biologists and historians to museum curators and maintenance workers, were up for grabs. All told, more than 11,000 of 16,000 jobs were eligible to be competitively sourced—or outsourced—under a plan kicked off by the administration in January 2003.²⁸

Over the past 25 years, the park system has grown substantially, both in size and in the number of park units, and the number of visitors each year has climbed to 290 million. At the same time the Park Service's budget has dropped by 20 percent, adjusting for inflation. The parks' fiscal crisis has resulted in massive problems, ranging from weather-worn facilities and damaged roads to staffing shortages and cutbacks in visitor services.²⁹

Over 250 million

Acres of U.S. public lands available for livestock grazing.

19–22%

Threatened and endangered species harmed by grazing on public lands.

18,000

Grazing permits that the BLM expects could have “negative environmental impacts” on public lands due to recent regulatory changes.

In 2003 it looked as though the cash-strapped agency was going to be forced to cut its seasonal workforce and curtail visitor services to pay for public-private job competitions required by the administration.³⁰ Under orders to sponsor competitions for 808 jobs, with an additional 900 set to be outsourced, the Park Service was facing \$3 million in private consultant fees alone. In April 2003, the head of the Park Service, Fran Mainella, sent a memo warning senior Interior Department officials, “The costs are too significant to be covered by the affected parks. [C]overing these costs would have serious consequences for visitor services and seasonal operations.”³¹

By May 2003, the situation went from bad to worse for the agency budget as the administration redirected millions of dollars from the agency’s repair and maintenance budget to cover anti-terror of the 2004 fiscal year.³² The bleak situation prompted a large group of retired Parks Service professionals, including many former park superintendents, to send a letter to President Bush. “We are dismayed,” they wrote, “to see that [the parks] are being turned over . . . to well-connected special interests whose foremost concerns are maximizing profit and personal gain.” That letter gained the attention of congressional lawmakers, who also started questioning the administration’s commitment to protecting the nation’s natural treasures.

“[The parks] are being turned over . . . to well-connected special interests whose foremost concerns are maximizing profit and personal gain.”

By July, the Park Service had lost 859 jobs by keeping positions vacant or not taking on new work. Of the agency employees at risk of being replaced by private contractors, nearly 100 archeologists found themselves on the chopping block. These specialists preserve and promote, with the help of thousands of volunteers, the history and cultural heritage of 122 national parks and 780 national landmarks in 22 states, Puerto Rico, and the U.S. Virgin Islands. The administration considered eliminating the agency’s two archeological centers, in Lincoln, Nebraska, and Tallahassee, Florida, where most of the archeologists work takes place. Critics feared the loss of resources, institutional memory, and watchdog function if private firms were tapped to fill archeological responsibilities for the government.³³

Another controversy erupted over reports that the administration planned to divert Mount Rainier National Park’s maintenance funding to help pay for outsourcing consultants. NPS Director Fran Maniella had ordered staff at Mt. Ranier, already strapped with a \$101 million repair backlog, to absorb a 40 percent cut in maintenance funding. Park employees also learned that 67 of 112 positions there could be privatized. After members of Congress sharply criticized the misuse of repair funds, the administration hastily retreated on the consultant fees.³⁴ A few days later, amid media scrutiny and public backlash, the White House abandoned its plan to entrust the vital work of Park Service employees to the lowest bidder.

PARKS CLOSED FOR BUSINESS

The National Park Service’s budget crisis is getting worse. The added expense over the past few years of beefing up homeland security and fixing damage caused by natural disasters is still taking its toll. In fact, two reports issued in March 2004 by the National Parks Conservation Association and the Coalition of Concerned National Park Retirees contend that the fiscal crunch is crippling the Park Service, leaving America’s parks understaffed and underserved. In fact, the groups warn that the

agency could be forced to slash wildlife management programs and other services. Worse, visitor hours could also be scaled back. Just as a record number of Americans are gearing up to visit national parks across the country this summer, some parks could be closed on holidays and on Sundays and Mondays.

Instead of being up-front about the park system's problems, a Park Service memo recently obtained by the media reveals that the Bush administration wants park managers to keep quiet about the agency's budget crunch and to avoid any cutbacks that might "cause a public or political controversy . . . end up in the media or result in congressional inquiries." Bush officials also advise park staff on using terminology to disguise scaled-back services, such as referring to closed visitor centers as "service level adjustments."³⁵

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



REWRITING
THE RULES
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*The Bush
Administration's
Assault on the
Environment*

April 2004

CHAPTER 12

TAKING AIM AT WILDLIFE PROTECTIONS

The Bush administration has an abysmal record for protection of imperiled wildlife. Just ask Jan Goodall, the world's most renowned wildlife conservationist. Furious over the administration's effort to loosen federal wildlife rules, Goodall blasted the White House for leading an "onslaught" against the Endangered Species Act (ESA).¹ What set her off was the administration's recent proposal to lift the ESA's ban on importing endangered wild animals—dead or alive—as hunting trophies, pets, commercial products, and attractions at unaccredited zoos.

Bush officials insist that legalizing the trade of some 500 endangered species worldwide, including chimpanzees and elephants, is a good idea because the profits will provide less-developed countries with an economic incentive to expand their conservation programs. Hundreds of the world's most prominent scientists disagree. Recently, they sent a letter to President Bush warning that the proposal "poses a significant threat to the very species it is designed to benefit."² Many believe that loosening import restrictions on endangered species (or their parts) is meant to please wealthy big-game hunters at the expense of wildlife already hovering on the brink of extinction. Unfortunately, the administration's hostile agenda toward federal wildlife protections is also threatening the survival of threatened and endangered species.

ENDANGERED, NOW MORE THAN EVER

Conservationists view the ESA critical habitat designation process, which assures protection of key areas where threatened wildlife lives, as a proven way to ensure the survival of federally listed threatened and endangered species. The administration disagrees and has done everything it can to avoid setting aside critical habitat, even when ordered by the courts to do so. In April 2003, the Fish and Wildlife Service announced that in a matter of months it would run out of funds to meet court-ordered deadlines to protect critical habitat and endangered species.³

Subsequent internal agency documents showed that the administration intended to seek extensions of those court-ordered deadlines to propose or designate critical habitat for two-dozen of species facing extinction. Although Fish and Wildlife Service officials acknowledged being financially strapped by the administration's budget, Bush officials blamed the delays on excessive litigation by environmentalists.⁴ In May, the administration officially abandoned what it called a "broken" law and, in effect, the wildlife that depend on the ESA for survival.

Assistant Interior Secretary Craig Manson said the agency would request delays of months, possibly years, in court orders directing the government to designate wildlife habitat.⁵ Again, Manson blamed excessive litigation over critical habitat as the reason why federal protection has not been granted to any imperiled wildlife during President Bush's tenure. (The Fish and Wildlife Service faces a backlog of 259 candidates for listing as endangered or threatened species.) Manson failed to mention that the president has consistently underfunded federal wildlife programs.⁶ For example, the administration's current budget proposal slashes funding for endangered species recovery by almost \$10 million—the lowest level since President Bush took office.⁷

Adding insult to injury, the Interior Department announced that new language would be inserted into all future critical habitat designations arguing that these protections have “no value” in species protection. Environmentalists debunked that myth, noting that the government's own studies indicate species with critical habitat designations are less likely to decline than species without it.⁸ They say that the ESA works, and it is more important to the survival of wildlife than ever. After all, no species can live without a home.

PESTERED BY PROTECTION

In February 2003, the Environmental Protection Agency (EPA) proposed a rule change to shield itself from litigation under the ESA's “Section 7” consultation process for pesticides.⁹ That provision requires federal agencies to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service when their actions may have an effect on a federally listed threatened or endangered species.¹⁰

Early this year, the EPA admitted that it routinely violates the ESA's consultation requirement when approving pesticides that could harm imperiled plants, fish, and wildlife. Rather than abide by the law, however, the EPA wants to be allowed to continue skipping consultations if its own scientific review determines that licensing a pesticide “probably” will not adversely affect species' survival. Many people have decried the EPA's loophole as a rule change that would benefit pesticide makers at the expense of wildlife.¹¹

A GRIZZLY FUTURE

In January 2003, the Bush administration indicated it may seek to remove grizzly bears in Yellowstone National Park from the endangered species list. “Delisting” the bears would allow the administration to renew bear hunting and remove millions of acres of grizzly habitat—mostly in Montana, Idaho, and Wyoming—from ESA protections.¹² In turn, that could lead to opening those areas to mining, logging, oil and gas drilling, development, and other activities. As part of this effort, grizzly experts contend, federal agencies are using incomplete data to show that the bear population is recovering.¹³

In 1975, the government listed grizzly bears as threatened in the lower 48 states because they had been reduced to 1 percent of their historic numbers and their remaining habitat was fast dwindling. The bear numbers have recovered somewhat, say government scientists, who determined the grizzly population has increased

68 Average number of species added each year to the federal threatened and endangered list between 1991 and 2000.

0 Species voluntarily added to the federal threatened and endangered species list since President Bush took office. (This administration has listed a total of 25 species, but only under federal court order.)

between 1 percent and 4 percent per year for the past five years. However, environmentalists say that research on grizzly bears is incomplete and lacks critical information needed to determine whether the omnivores are in good shape. Moreover, too much emphasis is placed on counting the number of bears in the wild, and not enough is placed on preserving the habitat that bears need to survive and thrive.¹⁴

In a possible first step to remove grizzly bears from the federal endangered and threatened species list, the U.S. Forest Service in July 2003 began revising its management plans for the six national forests around Yellowstone National Park.¹⁵ In lieu of continued ESA protection, the Forest Service intends to adopt a conservation strategy whereby the estimated 500 or so Yellowstone bears would continue to enjoy a level of protection on some public lands surrounding the park. Outside that zone, including 3.5 million acres of occupied grizzly habitat, federal protections for the bears would be loosened, allowing them to be hunted. Yellowstone Park has probably reached its carrying capacity for grizzlies, say experts. Therefore, the key to survival for the remaining Yellowstone bears is to allow them more room to roam, not less.¹⁶

Grizzlies elsewhere also face a bleak future. For example, about 50 grizzly bears that make their home in Montana's Cabinet Mountains are boxed in by nearby human development—and are slowly but steadily dying out as a result. Instead of safeguarding these bears, the agency signed off on a huge copper and silver mine in their habitat in May 2003. Saying the Rock Creek Mine poses no threat to the survival of the last remaining grizzly bears in the area, the agency gave its blessing to Sterling Mining Company's proposal to dig out 10,000 tons of copper and silver ore per day over 35 years.

Federal wildlife biologists acknowledge that the mining operation would result in a complete die-off of these grizzlies within 20 years. This is inevitable because as the 1,500-acre mining operation brings miles of new roads and associated infrastructure, more people moving to the area will increase the likelihood of encounters between bears and humans. In those situations the bears always lose—by being killed or removed. Even so, federal biologists concluded that the mine and its associated development would not “substantially degrade” grizzly habitat, and that the mitigation plan required by the government—including the purchase of 2,400 acres of now privately owned land nearby—could benefit the bears.¹⁷

SOMETHING TO HOWL ABOUT

Just as gray wolves are beginning to recover out West, the Fish and Wildlife Service wants to strip federal protection to make it easier to kill them. In March 2003, the agency proposed downgrading the wolves' protected status from “endangered” to “threatened,” a shift that would let ranchers kill wolves that attack their livestock.¹⁸ As with grizzly bears, wildlife advocates believe this is the first step in the Bush administration's effort to eventually remove ESA protections for wolves—putting them under the control of states where politicians favor eradicating the species.

Wolves once roamed throughout the lower 48 states, but now survive on less than 5 percent of their historic range. Nearly extinct 50 years ago, the animals were declared endangered in 1974. The species began a comeback in the 1970s when a few wolves migrated from Canada.

Federal wildlife biologists acknowledge that the mining operation would result in a complete die-off of these grizzlies within 20 years.

Thanks to federal recovery efforts in the mid-1990s, which involved transplanting 35 wolves into Yellowstone National Park, the population quickly began to rebound. Today, about 660 wolves in 41 packs inhabit the northern Rocky Mountains. Without full federal protection, however, the wolves will have little or no chance of returning in healthy numbers in the West.

Recently, the Fish and Wildlife Service moved forward with its plans to relax the ESA to make it easier to kill wolves in Idaho and Montana that threaten big game or livestock on private land. Although wolves would not lose ESA protection under the administration's proposal, state officials would gain the right to kill wolves in order to protect elk, deer, moose, and other wildlife, as well as livestock and household pets. And whereas current law allows federal officials to move wolves if they are causing an "unacceptable impact" on big-game herds, the new rule would let states kill wolves if wildlife populations are not meeting their population goals—even if the decline is not caused by wolves.¹⁹

State officials have been negotiating for a year with the Interior Department on their new wolf management plans. The rhetoric has been hostile. For example, Wyoming's state wildlife agency has gone on record in support of allowing wolves to be killed like skunks or jackrabbits, and Idaho's legislature has voted to remove wolves from the state "by any means necessary."²⁰ Even so, the Bush administration plans to hand over wolf management to officials in Idaho and Montana. Wolves will continue to enjoy federal protection in Wyoming because that state's plan failed to win approval. (In response, Wyoming has announced its intention to file a lawsuit in federal court challenging the Fish and Wildlife Service's rejection of the state wolf management plan.) After a 60-day public comment period, the new state-based wolf management rules could take effect as the summer of 2004.

Meanwhile, the Fish and Wildlife Service recently gave Montana ranchers, whose livestock were attacked by wolves, permission to "shoot on sight." And the agency dispatched federal trappers by helicopters to locate and wipe out two wolf packs. "They can shoot 50 wolves if they catch them," said Ed Bangs, wolf recovery leader for the Fish and Wildlife Service.²¹

PRAIRIE DOGS PRONE ON THE RANGE

In February, the Forest Service rescinded a ban on the practice of poisoning prairie dogs on five national grasslands in South Dakota, North Dakota, Nebraska, and Wyoming—areas where ranchers have complained that prairie dogs can damage rangelands and roadways. Environmentalists noted that permitting the killing of prairie dogs contradicts the agency's previous position that the black-tailed prairie dog should be listed as a federally protected threatened species. They also warn that the decision could backfire, ensuring that the prairie dog eventually ends up as a candidate for the endangered species list.²²

KLAMATH CALAMITY

In January 2003, an investigation by the California Department of Fish and Game concluded that the Bush administration's controversial decision to divert water

\$9.8 million Reduction in President Bush's enforcement funding (FY04 budget) for the Endangered Species Act.

from the Klamath River for irrigation resulted in the die-off of tens of thousands of endangered fish the previous fall. State biologists also noted a “substantial risk” of more kills if the government continues to divert water from the river, which straddles the California-Oregon border.²³

In 2002, the Interior Department reversed a decision that limited the amount of water released to irrigators; the decision’s original intent had been to protect endangered suckerfish. After the government pumped the full supply of water from the river to farmers, leaving less water in the river than at any time since 1951, more than 33,000 chinook salmon, coho salmon, steelhead trout, and sturgeon died in the lower reaches of the river.²⁴

Environmentalists won a big victory in July 2003 when a federal judge in Oakland, California, ruled that the administration’s water distribution plan for the Klamath River must be revised because it violates the ESA. The court agreed that the Bureau of Reclamation’s management plan for the river set aside too much of the river’s flow for irrigation, threatening endangered salmon. Finally, in November, the Fish and Wildlife Service admitted that government policy to aid agriculture interests was what led to the Klamath fish kill.²⁵

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ROLLED ON THE RIVER

For decades, upstream and downstream states in the Missouri River Basin have engaged in a standoff over the way the Army Corps of Engineers has managed the river. Upriver states, including Montana and the Dakotas, want more water kept in their reservoirs during the summer to support recreation. Downriver states, including Nebraska, Iowa, Kansas, and Missouri, favor higher water flows during the summer to support barge shipping. The conflicting water needs have played out over several years in a lawsuit brought by environmentalists. The suit charges that the government is violating the ESA by refusing to lower water flows in the summer so that the threatened pallid sturgeon can spawn and the endangered least tern and piping plover can nest.

In April 2003, the Bush administration released its long overdue operating plan for the Missouri River, a plan that favored barge operators.²⁶ In July, days after a federal judge ordered that water levels on the Mississippi be dropped to protect endangered birds and fish, the Corps refused to comply.²⁷ The Corps instead offered to work with the Fish and Wildlife Service to develop and implement a new “master manual” for the river’s flow.²⁸

Environmentalists, who favor restoring the river to a more natural spring rise and low summer flows to encourage fish spawning and bird nesting by federally protected species, said the Corps’ proposal was too little, too late. Politicians from upriver states, who say restoring the river to its natural conditions will benefit the lake recreation industry, also decried the Corps’ refusal to obey the court order.²⁹ The judge eventually held the Corps in contempt of court.

In August 2003, another federal judge in Minnesota upheld the July court decision requiring the Corps to lower flow levels to protect imperiled wildlife. That ruling should have ended the legal wrangling, forcing the Corps to finally drop its resistance to managing the river for the benefit of the environment, not the barge

industry. However, the legal saga resumed in September when the Corps defied the court order by saying it would not lower flows on the Missouri River next year.³⁰

In December, a team of federal biologists affirmed the need to change the river's flow regime. What was surprising about their position was that a month before, the administration had abruptly disbanded a panel of Fish and Wildlife Service biologists that was expected to rule against the Corps' management doctrine for the Missouri. The administration replaced those scientists with a new, hand-picked team of biologists who many expected would bolster the White House's stance that the river should be managed to benefit the barge shipping industry. But the new scientists agreed with the service's previous biological opinion, which recommended that the Corps change course and manage the river for the benefit of wildlife.³¹

Unfortunately, the Corps once again rocked the boat when it released its long-awaited draft management plan in March 2004. The Corps insists that the plan balances the needs for barge navigation, recreation, and wildlife protection despite the fact that it does not call for returning the Missouri River to its natural flow—spring rise and shallow summer water levels. The Fish and Wildlife has told the Corps that its plan does not comply with the ESA.

COOKED SALMON

Despite a campaign promise to ensure the survival of salmon in the Pacific Northwest, President Bush has ignored the plight of the endangered fish. In fact, the administration has failed to implement three-quarters of the Federal Salmon Recovery Plan adopted in 2000.³² The plan outlines 199 specific measures to be implemented over 10 years to protect and restore salmon and steelhead in the Columbia and Snake river basins.

Since taking office, the Bush administration has provided less than half the estimated \$900 million per year needed to fund the plan. The administration also has failed to reduce water temperatures or secure sufficient water flows in rivers to levels safer for salmon. And only 25 percent of habitat improvements have been completed.³³ The biggest adverse effect on the fish is a series of federal dams, which salmon supporters want removed. Last year, a federal judge ruled that the plan, which leaves the dams intact, is inadequate because it fails to ensure that endangered and threatened salmon populations will not become extinct.

In addition, if the administration gets its way, hundreds of dams in Oregon could be released from federal water quality protections, overriding Clean Water Act safeguards on nearly all of the state's dammed rivers and imperiling large populations of salmon. Reservoirs created by dams are warmed by the sun, creating an aquatic environment that is too warm for salmon and other cold-water native fish. Under the rule proposed last October, federal dam operators, such as the Army Corps of Engineers, could seek the EPA's approval to raise allowable temperatures.³⁴ Waiving those standards to permit warmer rivers would harm salmon, as well as trout and other fish. The administration's exemption for Oregon waterways is seen as a pre-

\$900 million Estimated federal funding necessary for endangered salmon recovery in the Pacific Northwest.

\$110 million President Bush's proposed funding (FY05 budget) for federal salmon recovery efforts.

cursor to a nationwide watershed rule to exempt federal dams and other entities, not only from river-temperature standards, but also from those concerning pollution and sediment.³⁵

CLEARCUTTING WILDLIFE SAFEGUARDS

The Bush administration is weakening wildlife protection rules to make it easier to log old-growth forests on 24 million acres of public land in Washington, Oregon, and California. In March 2004, the Forest Service made two major changes to the Northwest Forest Plan. Whereas federal agencies were required to review the impacts of logging on salmon-bearing streams, the Forest Service has exempted some logging projects from the requirements of the Aquatic Conservation Strategy.³⁶ Now, only whole watersheds, not individual streams, will be monitored by federal agencies for ACS compliance. This proposed change paves the way for increased logging and will allow destructive practices such as clearcutting on steep slopes, a technique that washes sediment into streams and degrades the habitat of endangered fish.³⁷

In another blow to wildlife in Northwest national forests, timber companies no longer have to ensure the protection of rare plants and animals that inhabit more than a million acres of old-growth habitat.³⁸ The Forest Service dropped the “survey and manage” rule, which required forest managers to look for and ensure the protection of nearly 300 imperiled species not yet listed under the Endangered Species Act. Scraping this rule to boost logging could leave dozens of rare and little-known species at high-risk of extinction, according to a federal analysis. The administration decided to drop this crucial safeguard as part of a legal settlement with the timber industry, which considers the “survey and manage” rule too expensive and time-consuming.³⁹

In addition, the Healthy Forests Restoration Act, enacted in 2003, undermines critical protections for endangered species. Federal law requires federal forest managers to consult with the Fish and Wildlife Service before approving any action that could harm endangered plants or animals. However, the Bush administration’s new logging law exempts the Forest Service from federal wildlife safeguards.

For example, last summer the Bush administration settled a lawsuit against the Fish and Wildlife Service on terms favorable to the timber industry. The administration agreed to industry’s demand to reconsider federal protection for the northern spotted owl and marbled murrelet. Federal protections for these birds have led to tighter controls on logging in Northwest forests because their survival is heavily dependent on old-growth habitat. Among other things, the government agreed to revisit critical habitat designations for both birds, this time placing a higher priority on economic concerns.⁴⁰

In September 2003, for the first time in the history of the Fish and Wildlife Service, the government hired a private business to determine whether the northern spotted owl and the marbled murrelet should continue to receive ESA protection. Bush officials defended the decision to pay private contractors \$800,000 to review the status of the birds, noting that logging advocates consider the agency’s decisions to be too favorable toward wildlife. The move followed another proposal by the administration to require federal agencies to conduct a “scientifically rigorous peer review”

Timber companies no longer have to ensure the protection of rare plants and animals that inhabit more than a million acres of old-growth habitat.

for studies or assessments that lead to decisions to protect wildlife that have an economic impact of more than \$100 million.⁴¹

OFF THE ROAD AGAIN

In November 2000, off-road recreation was banned on roughly one-third of the 160,000-acre Imperial Sand Dunes Recreation Area when a lawsuit forced the Bureau of Land Management (BLM) to close the area to protect habitat for the endangered desert tortoise and the threatened milk vetch plant. But under the agency's new plan, Southern California's most popular off-road destination threatens to attract even more riders while providing less of a refuge for imperiled wildlife and plants.⁴² That is because the BLM plans to open 49,000 acres that had been closed to off-road vehicles, expanding total dune access to more than 100,000 acres.

In April 2003, after the BLM had proposed expanding off-road vehicle access in the dunes, the Fish and Wildlife Service green-lighted the controversial proposal—concluding that increased motorized traffic would not pose harm to endangered species.

In its biological opinion, the Fish and Wildlife Service acknowledged that the growing number of visitors, as many as 1.6 million by 2012, could mean that more animals and plants will be run over, damaged, or killed. But the agency recommended that the BLM only conduct a four-year study of the effects of off-roading, rather than continue to protect sensitive dune habitat.⁴³ Critics accused the agency of sandbagging endangered species.

In July 2003, in a similar situation of misplaced priorities, the BLM asked off-road vehicle drivers at Nevada's Sand Mountain recreation area to voluntarily comply with restrictions meant to safeguard sensitive wildlife habitat. The BLM is letting the off-roaders loose despite a recommendation by one of the agency's own biologists to close 1,000 acres in order to avoid further habitat damage. The dune vegetation serves as food for the only known population of blue butterfly, a federally listed sensitive species.⁴⁴

WAGING WAR ON THE ENVIRONMENT

In January 2003, the Pentagon renewed its drive for sweeping exemptions from six of the nation's primary environmental laws, including the Endangered Species Act, which protects endangered species and critical habitats on millions of military ranges across the country, and the Marine Mammal Protection Act, which safeguards whales, dolphins, porpoises, and other ocean mammals.⁴⁵ The Pentagon, claiming the exemptions were needed to maintain "wartime readiness," indicated it would ask Congress for relief. Sure enough, as war with Iraq loomed in March 2003, the Pentagon rolled out its legislative proposal asking to be exempt from the nation's environmental laws.⁴⁶ A broad coalition of environmental groups countered that no government agency should be above the law. They argued that new exemptions are unnecessary because there is no evidence that laws adversely affect military preparedness. In addition, the laws under fire by the Pentagon already allow case-by-case exemptions for national security. EPA Administrator Christine Whitman agreed, testifying before the Senate that she had "been working very closely with the

300 Rare plants and animals threatened with extinction in Northwest forests now that the Forest Service has waived federal wildlife safeguards for timber companies.

Department of Defense, and I don't believe that there is a training mission anywhere in the county that is being held up or not taking place because of environmental protection regulation."⁴⁷

Less than two weeks later, another EPA official contradicted Whitman by testifying before Congress in support of the Pentagon's proposal. EPA's Enforcement Chief J.P. Suarez told the House Armed Services Committee, "We believe the [Bush] administration's bill appropriately takes account of the interests of the American people in military readiness and in environmental protection."⁴⁸ Whitman then fell in line, saying she was "comfortable" with exempting the military from federal protections. "We believe we will still have the ability to be proactive in protecting the public's health and the environment while still allowing the military to do the work they need to do," she said.⁴⁹

After a hard-fought battle, environmentalists succeeded in persuading Congress to strip most of the environmental exemptions from the Pentagon's proposal before it was tucked inside the defense authorization bill that passed in November 2003. Unfortunately, exemptions from the Marine Mammal Protection Act and Endangered Species Act remained. These exemptions allow the military to threaten whales, dolphins, and other marine mammals with sonar and underwater explosives, and destroy the habitat of the endangered birds and mammals that live on the 25 million acres the military controls across the country—with almost no environmental review.

The Pentagon rolled out its legislative proposal asking to be exempt from the nation's environmental laws.

ALL NUKED UP, NO PLACE TO GO

Over the past few decades, the United States slowly emerged as a world leader on the path toward nuclear nonproliferation, arms control, and nuclear safety. The overarching goal is the reduction and ultimate elimination of unacceptable risks to people and the environment from the exploitation of nuclear energy for both military and peaceful purposes. That steady progress has been halted and is being reversed by the Bush administration's nuclear policies.

WASTE NOT, WANT NOT

In July 2003, a federal judge in Idaho ruled that the Energy Department acted illegally by attempting to abandon millions of gallons of highly radioactive waste in underground storage tanks at three nuclear weapons facilities by reclassifying it as "incidental" waste. The agency had hoped to avoid a massive cleanup by reclassifying the highly radioactive waste, stored inside hundreds of corroding tanks at government facilities in Idaho, Washington, and South Carolina, and burying it—beneath a layer of concrete-like grout.

NRDC, two Native American tribes, and other environmentalists filed suit to stop the effort. They argued that the waste would eventually leach into the groundwater near the Columbia River in Washington, the Snake River Aquifer in Idaho, and into the water table near the Savannah River. The court agreed, refusing to let the Energy Department simply redefine and abandon the radioactive waste.

Unfortunately, the Bush administration will not take no for an answer. Less than two weeks after suffering a legal defeat, the Energy Department asked Congress to legislatively reverse the court's ruling. Critics are incredulous over the agency's attempt to convince Congress to legalize a method of handling nuclear waste that has been declared illegal. They point out that the government would be better off spending its resources cleaning up the mess rather than asking Congress to allow the government to abandon potentially millions of gallons of highly radioactive waste next to important drinking water supplies. But the Energy Department refuses to back down. Unless Congress grants it the power to reclassify radioactive waste, the agency has threatened to withhold federal funds allocated for states to use in radioactive-site cleanup.¹

COMING SOON TO A LANDFILL NEAR YOU

Apparent efforts by the Bush administration to save its nuclear industry pals some money may come at the expense of public health and the environment. In November



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\$350 million Federal clean-up funds the Energy Department is threatening to withhold from states in an effort to win congressional approval for the agency to abandon radioactive waste at several military installations.

\$2–\$4 million Federal funding proposed by the Bush administration in 2003 for a new Energy Department facility that will build “bunker busters” and other so-called low-yield nuclear bombs by 2020.

2003, the Environmental Protection Agency (EPA) proposed letting the nuclear industry dump low-level radioactive waste, which now must be stored in closely monitored facilities, ordinary landfills, and hazardous waste sites that were not designed to handle these dangerous substances.² The rule change, which could open landfills to deadly radioactive materials such as cesium, strontium, cobalt, and plutonium, would substantially reduce the nuclear industry’s waste-disposal costs at great expense to public health.³

AS YOU LIKE IT

The Bush administration is trying to waive government safety standards at dozens of federal nuclear weapons plants and research labs—that is, if contractors do not like the standards. Members of Congress have complained that the Energy Department’s new rule, proposed earlier this year, is intended to circumvent legislation passed in 2002 ordering fines against contractors for nuclear safety violations.⁴ Agency officials argue that the rule change would allow the government to fine contractors who violate what would be contractor-written safety plans dealing with industrial hazards. Critics say that is precisely the problem.⁵

ARMED AND DANGEROUS

When George W. Bush first ran for the presidency, the *New York Times* quoted him as saying, “The point is . . . that I want America to lead the nation—lead the world—toward a more safe world when it comes to nuclear weaponry.” A lot has changed since then. It does not take a nuclear physicist to see that the development and possible use of nuclear weapons are on the fast track under the Bush administration.

Since taking office President Bush has spurred major developments in U.S. nuclear weapons policies—with more looming. In January 2003, a series of Pentagon and White House documents came to light that together spelled out an elaborate new national security strategy that gives priority to preemptive strikes against enemies of the United States.⁶

In May, Bush officials complained that the current U.S. nuclear arsenal is not adequate for the future.⁷ Consequently, the Pentagon intends to significantly modify current nuclear weapons or design new ones to accomplish specific military missions, such as destroying deeply buried targets. As part of this effort, the administration began planning to revitalize the nuclear weapons complex so that it could, if directed, design, develop, manufacture, and certify new warheads. One essential activity in this process is testing new warhead designs. In expectation of that possibility, the administration has recommended that the Nevada Test Site drastically reduce the amount of time it would take to resume testing.⁸

As part of this policy shift, Energy Department officials met in the summer of 2003 to begin mapping out a strategy to revive development of so-called low-yield weapons—also known as “mini-nukes”—and perhaps even new versions of the neutron bomb.⁹ The administration’s rationale is that because these smaller bombs have less power, they might be more easily used. Critics argue that any lowering of the nuclear threshold is dangerous and misguided.

In June, a month after Congress approved a controversial study of these mini-nukes, the Energy Department cited national security concerns in announcing a plan to spend billions for a new facility to build as many as 250 to 900 “pits” annually. A pit is a plutonium shell that is combined with other components to make a fission (atomic) bomb.¹⁰ Critics warn that developing a new generation of nuclear weapons, especially those that could be more easily used, is contrary to the nation’s nonproliferation policy and sets a bad (and dangerous) example for the rest of the world.

ROGUE REPROCESSING

In October 2003, the Energy Department’s Office of Nuclear Energy, Science, and Technology began pursuing two research programs that could pose a significant threat to U.S. national security. These programs—Generation IV (Gen IV) and the Advanced Fuel Cycle Initiative (AFCI)—will identify, design, and ultimately deploy new and advanced commercial nuclear power reactor and fuel cycle technologies.

Critics warn that these programs could enable nonnuclear weapons states to develop a capability to rapidly produce large quantities of nuclear weapon-usable materials. It is possible, for example, that rogue nations could construct pilot reprocessing plants, train experts in plutonium and actinide chemistry and plutonium metallurgy, and encourage them to reprocess nuclear fuel to recover plutonium. In the case of an unstable political regime, the new research programs could encourage the spread of nuclear weapon materials to other states, or even terrorists.¹¹

10,000 Federal workers jeopardized by the Bush administration’s proposal to waive safety standards at U.S. nuclear weapons and research facilities.



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APPENDIX

*Letter to President Bush
from Scientific Community
February 18, 2004*

Science, like any field of endeavor, relies on freedom of inquiry; and one of the hallmarks of that freedom is objectivity. Now, more than ever, on issues ranging from climate change to AIDS research to genetic engineering to food additives, government relies on the impartial perspective of science for guidance.

President George H.W. Bush, April 23, 1990

RESTORING SCIENTIFIC INTEGRITY IN POLICY MAKING

Successful application of science has played a large part in the policies that have made the United States of America the world's most powerful nation and its citizens increasingly prosperous and healthy. Although scientific input to the government is rarely the only factor in public policy decisions, this input should always be weighed from an objective and impartial perspective to avoid perilous consequences. Indeed, this principle has long been adhered to by presidents and administrations of both parties in forming and implementing policies. The administration of George W. Bush has, however, disregarded this principle.

When scientific knowledge has been found to be in conflict with its political goals, the administration has often manipulated the process through which science enters into its decisions. This has been done by placing people who are professionally unqualified or who have clear conflicts of interest in official posts and on scientific advisory committees; by disbanding existing advisory committees; by censoring and suppressing reports by the government's own scientists; and by simply not seeking independent scientific advice. Other administrations have, on occasion, engaged in such practices, but not so systematically nor on so wide a front. Furthermore, in advocating policies that are not scientifically sound, the administration has sometimes misrepresented scientific knowledge and misled the public about the implications of its policies.

For example, in support of the president's decision to avoid regulating emissions that cause climate change, the administration has consistently misrepresented the findings of the National Academy of Sciences, government scientists, and the expert community at large. Thus in June 2003, the White House demanded extensive changes in the treatment of climate change in a major report by the Environmental Protection Agency (EPA). To avoid issuing a scientifically indefensible report, EPA officials eviscerated the discussion of climate change and its consequences.

The administration also suppressed a study by the EPA that found that a bipartisan Senate clean air proposal would yield greater health benefits than the administration's proposed Clear Skies Act, which the administration is portraying as an improvement of the existing Clean Air Act. "Clear Skies" would, however, be less effective in cleaning up the nation's air and reducing mercury contamination of fish than proper enforcement of the existing Clean Air Act.

Misrepresenting and suppressing scientific knowledge for political purposes can have serious consequences. Had Richard Nixon also based his decisions on such calculations, he would not have supported the Clean Air Act of 1970, which in the following 20 years prevented more than 200,000 premature deaths and millions of cases of respiratory and cardiovascular disease. Similarly, George H.W. Bush would not have supported the Clean Air Act Amendments of 1990 and additional benefits of comparable proportions would have been lost.

The behavior of the White House on these issues is part of a pattern that has led Russell Train, the EPA administrator under Presidents Nixon and Ford, to observe, "How radically we have moved away from regulation based on independent findings and professional analysis of scientific, health and economic data by the responsible agency to regulation controlled by the White House and driven primarily by political considerations."

Across a broad range of policy areas, the administration has undermined the quality and independence of the scientific advisory system and the morale of the government's outstanding scientific personnel:

- ▶ Highly qualified scientists have been dropped from advisory committees dealing with childhood lead poisoning, environmental and reproductive health, and drug abuse, while individuals associated with or working for industries subject to regulation have been appointed to these bodies.
- ▶ Censorship and political oversight of government scientists is not restricted to the EPA, but has also occurred at the Departments of Health and Human Services, Agriculture, and Interior, when scientific findings are in conflict with the administration's policies or with the views of its political supporters.
- ▶ The administration is supporting revisions to the Endangered Species Act that would greatly constrain scientific input into the process of identifying endangered species and critical habitats for their protection.
- ▶ Existing scientific advisory committees to the Department of Energy on nuclear weapons, and to the State Department on arms control, have been disbanded.
- ▶ In making the invalid claim that Iraq had sought to acquire aluminum tubes for uranium enrichment centrifuges, the administration disregarded the contrary assessment by experts at the Livermore, Los Alamos, and Oak Ridge National Laboratories.

The distortion of scientific knowledge for partisan political ends must cease if the public is to be properly informed about issues central to its well-being, and the nation is to benefit fully from its heavy investment in scientific research and education. To elevate the ethic that governs the relationship between science and government, Congress and the Executive should establish legislation and regulations that would:

- ▶ forbid censorship of scientific studies unless there is a reasonable national security concern;
- ▶ require all scientists on scientific advisory panels to meet high professional standards; and

► ensure public access to government studies and the findings of scientific advisory panels.

To maintain public trust in the credibility of the scientific, engineering, and medical professions, and to restore scientific integrity in the formation and implementation of public policy, we call on our colleagues to:

- bring the current situation to public attention;
- request that the government return to the ethics and code of conduct which once fostered independent and objective scientific input into policy formation; and
- advocate legislative, regulatory, and administrative reforms that would ensure the acquisition and dissemination of independent and objective scientific analysis and advice.

SIGNATORIES

National Medal of Science *

Nobel Laureate †

Crafoord Prize #

Philip W. Anderson *†

Condensed Matter Physics, Superconductivity, Princeton University

David Baltimore *†

Molecular Biology and Medicine, President, California Institute of Technology

Paul Berg *†

Molecular Biology and Medicine, Stanford University School of Medicine

Rosina Bierbaum

Dean, School of Natural Resources and Environment, University of Michigan

Nicolaas Bloembergen *†

Nonlinear Optics, University of Arizona

Lewis M. Branscomb

Former Director, National Bureau of Standards; Science and Public Policy, Harvard University

Eric Chivian †

Psychiatry, Harvard Medical School

Joel E. Cohen

Human Population Studies, Rockefeller University

James Cronin *†

Experimental Particle Physics, University of Chicago

Margaret Davis

Ecology, Evolution and Behavior, University of Minnesota

Paul M. Doty

Biochemistry, National Security Policy, Harvard University

Paul Ehrlich #

Population Biology, Stanford University

Thomas Eisner *

Chemical Ecology, Entomology, Cornell University

Christopher Field

Global Ecology, Carnegie Institution of Washington

Gerald D. Fischbach

Neurobiology, Dean of the Faculty of Medicine, Columbia University

Former Director, National Institute of Neurological Disorders and Stroke

Val L. Fitch *†

Experimental Particle Physics, Princeton University

Jerry Franklin

Ecosystem Analysis, University of Washington

Jerome Friedman †

Experimental Particle Physics, Massachusetts Institute of Technology

Richard L. Garwin *

Pure and Applied Physics, Military Technologies, National Security Policy; IBM

Fellow Emeritus

John H. Gibbons

Former Science Advisor to the President

Marvin L. Goldberger

Theoretical Physics, Former President, California Institute of Technology

Lynn R. Goldman

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William Lipscomb †
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Michael C. MacCracken
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James J. McCarthy
Biological Oceanography, Harvard University

Jerry M. Melillo
Former Associate Director for Environment, Office of Science and Technology Policy; Co-Director, The Ecosystems Center, Marine Biological Laboratory

Matthew S. Meselson
Molecular and Cell Biology, Harvard University

David Michaels
Former Assistant Secretary for Environment, Safety and Health, Department of Energy; Occupational and Environmental Health and Epidemiology, George Washington University

Mario Molina †
Atmospheric Chemistry and Climate Science, Massachusetts Institute of Technology

Michael Oppenheimer
Geosciences, Princeton University

Gordon Orians
Zoology, University of Washington

W.K.H. Panofsky *

Experimental Particle Physics, National Security Policy, Stanford University

Stuart Pimm

Conservation Ecology, Duke University

Ron Pulliam

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Atomic, Molecular and Nuclear Physics, Harvard University

Anthony Robbins

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Atmospheric Chemistry and Climate Science, University of California, Irvine; Former President, American Association for the Advancement of Science

Edwin E. Salpeter #

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Director, Nanotechnology Laboratory, Rice University

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Reproductive Health Research and Policy, University of California, San Francisco

Kevin Trenberth

Head, Climate Analysis Section, National Center for Atmospheric Research

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Behavior of Retroviruses; Former Director, National Institutes of Health; CEO, Memorial Sloan-Kettering Cancer Center

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Entomology, Harvard University

Edward Witten *
Theoretical and Mathematical Physics, Institute for Advanced Study

George M. Woodwell
President and Director, Woods Hole Research Center

Donald Wuebbles
Atmospheric Sciences, University of Illinois

Herbert F. York
First Director, Livermore National Laboratory

ENDNOTES

Chapter 1

1 As quoted in REP America's newsletter, "The Green Elephant" (Fall 2003).

2 John Heilprin, "EPA enforcement figures show declines, advances," Associated Press, January 31, 2003.

3 The report on the declining number of environmental violations referred by the EPA for federal criminal prosecution was based on a review of Justice Department records by a Syracuse University research center.

4 Polluters saved an estimated \$39 million from 2002 to 2004 because the Bush administration failed to add a required inflation adjustment to environmental penalties. (Marty Coyne, "EPA raises maximum penalties for violations," *Greenwire*, February 13, 2003.)

5 In 2002, the EPA referred less than half of its pollution violation cases to the Justice Department for prosecution (while dropping 21 percent), according to the IG report. The findings vindicated the EPA criminal enforcement agents who cited chronic funding shortfalls and consistently poor management as problems that prevented them from pursuing new cases against polluters. According to the field agents, they lacked even basic resources, such as computers, radios, and flashlights. (Source: John Stanton, "Lack of funding, resources limit EPA enforcement, IG finds," *Greenwire*, October 16, 2003.)

6 Seth Borenstein, "Pollution citations plummet under Bush," *Philadelphia Inquirer*, December 9, 2003.

7 Ibid.

8 Marty Coyne, "EPA raises maximum penalties for violations," *Greenwire*, February 13, 2004.

9 National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 68 Federal Register 7176, February 12, 2003.

10 Damon Franz, "EPA should increase CAFO program oversight, says GAO," *Greenwire*, January 31, 2003.

11 Currently, 44 states and the U.S. Virgin Islands are delegated to enforce the CAFO permit program.

The GAO study found that 11 states—with a total of more than 1,000 large animal feeding operations—do not properly issue discharge permits.

12 A state audit initiated by Gov. Foster in 2002 criticized the Louisiana Department of Environmental Quality (DEQ) for not collecting fines from polluting industries and for failing to cite others for environmental violations. Local environmentalists had long complained that the DEQ was supplying the EPA with inaccurate data about air quality in communities outside oil refineries and chemical plants.

13 The new Border 2012 agreement, which replaces a similar pact that expired in 2002, was an outgrowth of the 1983 La Paz Agreement.

14 Guy Gugliotta and Eric Pianin, "EPA: Few fined for polluting water," *Washington Post*, June 6, 2003.

15 The EPA relies on the PCS to track the issuance of clean water permits, self-monitoring data, and enforcement and inspection activities for more than 64,000 facilities across the country. Even with the faulty system, the agency's latest analysis shows that one-quarter of the nation's industrial facilities routinely violate their Clean Water Act pollution permits, resulting in some 16,000 major violations. And that number does not account for wet weather discharges (overflow of waste storage tanks or ponds in heavy rains), which supposedly are the EPA's top water enforcement priority. (See <http://uspirg.org/uspirgnewsroom.asp?id2=5437&id3=USPIRGnewsroom&>.)

16 Katherine Q. Seelye, "Pollution system at EPA is faulted," *New York Times*, May 27, 2003.

17 Marty Coyne, "EPA puts off reform of enforcement program," *Greenwire*, October 21, 2003.

18 Analysis by the Natural Resources Defense Council (available upon request).

19 D.C. water officials also plan to distribute free water filters to up to 10,000 of the estimated 23,000 homes in their (admittedly incomplete) database of homes fed by lead service lines—and to begin studying the cost of replacing lead pipes on an accelerated basis.

20 David Nakamura, "EPA failed to hold D.C. accountable, some say," *Washington Post*, February 23, 2004.

21 Revisions To Clarify the Scope of Certain Monitoring Requirements, 69 Federal Register 3202, January 22, 2004.

22 Seth Borenstein, "EPA to reduce monitoring of smokestack emissions," *Knight-Ridder*, January 22, 2004.

23 John Heilprin, "Criminal agents diverted to drive EPA boss," Associated Press, April 26, 2003.

24 Chris Bowman, "EPA pulls its officers off homeland security," *Sacramento Bee*, December 16, 2003.

25 Darren Samuelsohn, "Key figure in NSR cases says Bush reforms driving early retirement," *Greenwire*, December 23, 2003.

26 Ibid.

Chapter 2

1 James Glanz, "Scientists accuse White House of distorting facts," *New York Times*, February 18, 2004.

2 As quoted by Robert F. Kennedy, Jr., "The junk science of George W. Bush," *The Nation*, March 8, 2004.

3 John Fialka, "Mercury threat to kids rising, unreleased EPA report warns," *Wall Street Journal*, February 20, 2003.

4 Methylmercury is a toxic chemical that is particularly dangerous to pregnant women because it disrupts the brain development of fetuses. A 2000 report by the National Academy of Sciences found that children born to women who consumed large amounts of fish and seafood during pregnancy are more than likely to face learning struggles in school. (See <http://books.nap.edu/catalog/9899.html>.) The following year, the Food and Drug Administration advised women who may become pregnant to avoid eating certain fish because of potential methylmercury contamination. (See <http://vm.cfsan.fda.gov/seafood1.html>.)

5 Jeff Nesmith, "How the U.S. EPA gave up on an 'impaired' river's mercury problem," *Cox News Service*, March 21, 2003.

6 In a sharply critical letter the day before the EPA unveiled its mercury pollution reduction plan, a federal advisory committee

questioned whether the approach would adequately protect children, infants, and women of child-bearing age. The 27-member Children's Health Protection Advisory Committee—which includes health experts from state and federal agencies, environmental groups, universities, even big corporations such as Bayer, British Petroleum, Monsanto, and Procter & Gamble—urged EPA Administrator Mike Leavitt to reconsider the plan. (Source: John Fialka, "EPA is warned by panel of mercury 'hot spots,'" *Wall Street Journal*, January 30, 2004.)

7 The EPA's proposed regulations involve establishing a "cap-and-trade" program, permitting companies to purchase pollution credits from cleaner plants to achieve an overall industry target. The problem with using such an approach with a dangerous toxin like mercury is that it would allow the creation of toxic "hot spots" in some communities. The agency's plan would reduce mercury emissions by 30 percent over the next 15 years—whereas previous proposals would have decreased emissions by 90 percent within the next three years.

8 Eric Pianin, "Proposed mercury rules bear industry mark," *Washington Post*, January 31, 2004.

9 Darren Samuelsohn, "More industry materials found duplicated in EPA's mercury rule," *Greenwire*, February 26, 2004.

10 For a copy of the report, go to www.epa.gov/oig/reports/2004/20040305-2004-P-0008.pdf.

11 The IG noted that these false claims were repeated in the media, including in a *New York Times* editorial (June 23, 2003) that cited the purported improvement in tap water safety. The IG report also found that internal EPA tracking reports have made similar false claims over the past four years.

12 According to the EPA's own data, about 77 percent of known monitoring and reporting violations nationwide, and 35 percent of known health standard violations, have never even been entered into the agency's compliance database. In addition, the IG's report pointed out—and the EPA documents acknowledge—that many of these monitoring and reporting violations likely are "masking" health standard violations. Like the EPA's own audits, the IG's review of data

for 761 water systems confirmed substantial underreporting of all types of violations.

13 David Nakamura, "EPA data on water purity faulted," *Washington Post*, March 12, 2004.

14 The leaked documents, from the EPA and the Defense Department, draw back the curtain on two decades of government inaction and infighting. To fill out this story, NRDC also has obtained thousands of pages of reports, internal memos, correspondence, contamination plume maps, and other documents from a number of other sources. Together, these documents tell an appalling story of corporate and government malfeasance. They indicate that the nation is beset by a serious, widespread, and expanding public health problem that already threatens tens of millions of Americans.

15 There is no reliable public information on the extent of the water or environmental contamination caused by perchlorate across the country. When Rep. John Dingell (D-Mich.) and other members of Congress asked the DOD for information, the DOD took months to respond and finally provided only vague and incomplete information, with few details on how widespread or serious the contamination problem might be. Meanwhile, both the EPA and the DOD have failed to respond to NRDC Freedom of Information Act (FOIA) requests for information on the extent of the contamination. NRDC, however, has obtained leaked internal documents, ferreted out documents available on various government databases or presented at low-profile professional meetings, and reviewed other data that together begin to paint a picture of widespread perchlorate contamination.

16 The Bush administration has quietly taken several actions that undermine public protection, including the following: declining to set a legal limit for perchlorate in drinking water, maintaining that more study is needed; issuing a gag order on EPA scientists, banning them from publicly discussing the risks of perchlorate (after the gag order became public, the administration said the order was a "misunderstanding," but EPA scientists still avoid publicly discussing perchlorate's risks); issuing an order to the EPA staff to

ignore new EPA risk data when planning the cleanup of perchlorate-contaminated sites, instead relying on older, weaker cleanup standards; derailing the EPA's perchlorate review that suggested strict standards would be needed, and sending the issue to the National Academy of Sciences for a lengthy review by a panel that includes scientists who either have direct conflicts of interest or are industry consultants; proposing legislation to exempt the DOD and its contractors from legal responsibility to clean up perchlorate contamination; delaying or stonewalling congressional investigations and 12 NRDC FOIA requests for government documents on perchlorate contamination and its health threats.

17 NRDC filed its FOIA requests with the EPA headquarters and its 10 regional offices in March 2003. In a series of conference calls with NRDC over the summer, the EPA staff promised repeatedly to provide records, stating that many had been collected. We recently learned that some of the agency's regional offices had collected records and were prepared to send them to NRDC, but the EPA headquarters prohibited them from doing so. In what is likely an unprecedented act, the EPA headquarters' senior staff blocked the agency's regional offices from responding to NRDC's FOIA requests directly, insisting that headquarters staff review all of the regional offices' records. To date, a year later, NRDC has received only one document in response to the 11 requests to the EPA. Last summer, NRDC filed FOIA requests with the DOD. We have received nothing. The DOD also has refused to respond to FOIA requests by citizen groups for information about the extent and precise location of perchlorate contamination of wells and groundwater at the Aberdeen Proving Grounds in Maryland. The DOD claims that national security concerns prevent it from releasing detailed information.

18 Intentional failure to disclose direct conflicts of interest to the academy is potentially a criminal violation of federal law; the academy's failure to review a known conflict of interest also would constitute a legal violation.

19 Jennifer Lee, "Second thoughts on a chemical," *New York Times*, March 2, 2004.

20 The industry trade group—the Rodenticide Registrants Task Force—includes the companies Syngenta, Bell Laboratories, LiphaTech Inc., and others.

21 The EPA found that rat poisons pose a significant threat to wildlife generally and to endangered species in particular, both from accidental poisonings and secondary poisonings when a non-target species eats an animal or carcass that has been poisoned.

22 The recently released EPA documents reveal that the agency made major changes in an apparent effort to satisfy the industry. In one set of handwritten notes prepared before a meeting with the industry, an EPA official summarizes the major changes made "to address [industry's] non-error concerns." The official also acknowledges that the EPA's decision making, although fully accommodating the industry, excluded the rest of the public and other interested parties. In those same notes, the EPA official writes of being "Concerned that for a year the broad stakeholder community has been shut out—some are asking why." In the margin of an industry memo was a handwritten note where an EPA official writes, "[the] EPA has afforded nearly unprecedented chances. We are working w/ the RRTF [industry trade group]." The EPA documents show an acquiescence to industry demands and sensitivities. One email message among the EPA staff states, "I have completed my task of going through the October 16th version to ensure objective and high quality science, no references to mitigation and no words/phrases etc. that could evoke emotion on the part of the RRTF." Another email shows that the EPA changed its terminology in an apparent effort to satisfy the industry: earlier drafts of the document addressed wildlife poisoning incidents, but the EPA changed the word "poisoning" to "treated" or "dosed" to be more palatable to the industry. Industry also provided the EPA with suggested line-by-line rewrites of some sections of the ecological risk assessment.

NRDC filed comments with the EPA to highlight the impropriety, unseemliness, and potential

illegality of EPA's repeated meetings and apparent backroom negotiations with the rat industry.

23 Because earlier drafts of the document were provided only to industry but never made publicly available, it is impossible to tell exactly how much the EPA changed to comply with industry requests. But it is clear that, upon industry insistence, the EPA removed references to safety measures that were apparently intended to remedy risks to wildlife and the environment.

24 Although the EPA's decision on this human health issue was made in a previous, separate regulatory matter, it is relevant here because it demonstrates the significance of the public health threat posed by these rat poisons—ingestion by at least 15,000 children each year—and it shows a pattern of the EPA's deference to the rat poison industry.

25 "Agency ends calculation of one's worth based on age," *Chicago Tribune*, May 8, 2003.

26 John Cushman, "Review of environment rules finds benefits outweigh costs," *New York Times*, September 28, 2003.

27 Andrew Schneider, "White House seeks control on health, safety," *St. Louis Post-Dispatch*, January 11, 2004.

28 Proposed Bulletin on Peer Review and Information Quality, 68 Federal Register 54023, September 15, 2003.

29 Rick Weiss, "Peer review plan draws criticism; Under Bush proposal, the OMB would evaluate science before new rules take effect," *Washington Post*, January 15, 2004.

30 Ibid.

31 Ibid.

32 Andrew Schneider, "White House seeks control on health, safety," *St. Louis Post-Dispatch*, January 11, 2004.

33 Jennifer Lee, "White House sway is seen in EPA response to 9/11," *New York Times*, August 9, 2003.

34 Anthony DePalma, "Group is suing federal agency over post-9/11 health hazards," *New York Times*, March 11, 2004.

35 Joan Lowry, "White House wants to weaken environmental law," *Scripps Howard News Service*, September 24, 2003.

36 NEPA is, ironically, the statute that created the CEQ.

37 Analysis by the Natural Resources Defense Council (available upon request).

38 Darren Samuelsohn, "EPA considers makeup of key scientific review panel for ozone," *Greenwire*, March 1, 2004.

Chapter 3

1 Christopher Lee, "IG probes Interior's record on ethics rules," *Washington Post*, May 13, 2003.

2 Jen Koons, "Agency's top lawyer under investigation for ethics violations," *Greenwire*, August 21, 2003.

3 Dan Berman, "IG report exonerates former top attorney of ethics charges," *Greenwire*, January 13, 2004.

4 Christopher Smith, "Clarke had Utah dealings despite recusal," *Salt Lake Tribune*, November 17, 2003.

5 Les Blumenthal, "Salmon at risk with adviser, critics say; Bush pick too close to timber to protect species, environmentalists fear," *Tacoma News Tribune*, April 7, 2003.

6 Judy Sarasohn, "NRDC cries foul as two EPA officials depart," *Washington Post*, September 4, 2003.

7 Marty Coyne, "Documents could undermine industry defense of NSR violations," *Greenwire*, January 14, 2004.

8 In May 2001, President Bush accepted a recommendation from Vice President Dick Cheney's energy task force, directing the Justice Department to review the EPA's cases against the utilities "to ensure that the enforcement actions are consistent with the Clean Air Act and its regulations." Although that review found that the EPA's enforcement actions against coal-fired power plants were consistent with the Clean Air Act, the administration continued citing industry's claim that it was sandbagged to justify broadening the "routine maintenance" exemption to accommodate massive pollution increases such as the ones that previously had landed the utilities in court. The utilities'

false claims about unfair EPA prosecutions led directly to the administration's effort to cripple NSR protections and enforcement.

The administration's support for this industry canard continues, even though the EPA won the only enforcement case that went to trial and has proved coal-fired plant owners knew all along that their emissions-boosting overhauls violated clean air rules. For example, in a speech to the Edison Electric Institute earlier this year, EPA Administrator Leavitt said that "[u]tilities are ready to go to the mat because they believed they were in compliance with the rules, then had the rules changed and applied retroactively." He had to know that the utilities' claim is false. (Leavitt's address to EEI is available at <http://yosemite.epa.gov/administrator/speeches.nsf/b1ab9f485b098972852562e7004dc686/137d40fb1715115d85256e1600656e30?OpenDocument>).

After months of legal wrangling, the Justice Department obtained the documents last November from Duke Energy Corporation, one of several electric utilities that the EPA determined were violating the Clean Air Act's NSR program. The NSR program requires companies to install modern pollution control technologies in new plants, and in old plants when they make modifications that significantly increase emissions. The documents are memoranda to Duke Energy from the Utility Air Regulatory Group (UARG), an industry trade organization. According to the government's brief, the documents reveal "that UARG understood and told Duke from the beginning" that the EPA-created exemption from the Clean Air Act for "routine maintenance" at industrial facilities was too narrow to accommodate the substantial emissions-boosting renovations that utilities had been making at their plants.

9 "Environmentalists say industry email shows EPA overstated NSR reform benefits," *Inside EPA*, March 3, 2004.

10 Automotive Fuel Economy Manufacturing Incentives for Alternative Fuel Vehicles, 69 Federal Register 7689, February 19, 2003.

11 Fara Warner, "U.S. extends alternative fuel regulation," *New York Times*, February 19, 2004.

12 Robert Gehrke, "Interior Department fires worker who claims Navajos were cheated," Associated Press, September 18, 2003.

13 Subsequent news reports revealed that White House Political Chief Karl Rove and Vice President Cheney both had worked behind the scenes to persuade federal officials to divert water from the Klamath River for irrigation despite concerns about possible harm to endangered fish. In January 2002, Rove traveled to Oregon to speak to 50 top managers at the Interior Department about the political importance of pleasing agriculture interests in the region. (Source: Tom Hamburger, "Oregon water saga illustrates Rove's methods with agencies," *Wall Street Journal*, July 30, 2003.) In December 2002, Cheney called an Interior Department official—after he himself was lobbied by a prominent Oregon Republican to allow more water for farmers—to urge the agency to move faster in diverting the river for irrigators. (Source: Greg Hiitt, "Out of sight, Cheney is power," *Wall Street Journal*, December 9, 2003.)

14 James Dao, "Mine safety official critical of policies faces firing," *New York Times*, November 9, 2003.

15 James Carroll, "Whistle-blower in inquiry of slurry spill is demoted," *Courier Journal*, February 26, 2004.

16 The use of sludge on farms is routine, because wastewater plants prefer to sell or give away the sewer waste instead of paying to dispose of it in a landfill.

17 While sewage sludge offers a broad range of nutrients to growing plants, it is more like hazardous waste, often containing toxic heavy metals such as cadmium and lead, not to mention millions of bacteria, viruses, and other disease-causing organisms.

18 Erica Werner, "Whistle-blower says EPA used unreliable data for sludge decision," Associated Press, February 5, 2004.

19 Analysis by the Natural Resources Defense Council (available upon request).

20 More details can be found at: www.peer.org/press/403.html.

Chapter 4

1 Vice President Cheney's energy task force report, issued in April 2001, erroneously claimed that "40 percent of the natural gas resources on federal lands in the Rocky Mountain region have been placed off-limits." (See www.whitehouse.gov/energy/.)

2 Bill McAllister, "West's oil, gas not all locked up, study finds," *Denver Post*, January 17, 2003.

3 Perhaps it is not surprising that industry's drive to drill more of the West is reflected in the White House's agenda. Oil and gas companies contributed nearly \$2 million to President Bush's 2000 campaign and have already given more than \$1 million to his re-election bid, according to the Center for Responsive Politics. The industry has contributed \$29 million to political campaigns since 1999, with roughly 80 percent going to Republicans. (See www.opensecrets.org.)

4 Tom Kenworthy, "Stretch of Colorado land becomes battleground," *USA Today*, March 4, 2004.

5 "BLM unveils streamlined oil and gas exploration process," *Oil Daily*, April 15, 2003.

6 "Oil, gas drillers win quick permit OKs," Associated Press, December 23, 2003.

7 The drilling would produce only nine weeks worth of natural gas and 39 minutes-worth of oil, according to the State of Wyoming's own figures for technically recoverable energy reserves.

8 "Groups skeptical of Jack Morrow Hills plan," Associated Press, February 19, 2003.

9 Mike Stark and Clair Johnson, "Lawsuits filed against methane study," *Billings Gazette*, May 2, 2003.

10 Charging that the BLM failed to fully consider environmental impacts—including direct, indirect, and cumulative effects on air and water quality, wildlife habitat, and private landowners—NRDC and other groups filed suit to force the agency to comply with environmental laws before engaging in widespread drilling in the region.

11 In the summer of 2003, the Bush administration charged a group of top government officials with developing ways to

"streamline" drilling projects in the Rocky Mountain region. The new group was part of a pilot project of the White House Task Force on Energy Streamlining, created by the president's National Energy Plan. At its first meeting in Denver, which was closed to the public, the Rocky Mountain Energy Council began discussions with federal and state officials on how to ease the permitting process for industry in Colorado, Montana, New Mexico, Utah, and Wyoming. NRDC and other environmentalists questioned the need for the council, especially given that its focus is solely on changing the process to boost energy production and not on evaluating the potential environmental harm from extracting what the government estimates to be about a seven years' supply of gas. In the view of these groups, the goal of this new pro-industry task force is to find ways to give oil and gas companies more access to public lands for drilling, while leaving the public with less input into energy development decisions.

12 "Norton urges a tripling of gas permits," Associated Press, January 22, 2004.

13 Mike Soraghan, "Rockies targeted for oil drilling," *Denver Post*, August 8, 2003.

14 A spike in natural gas prices last summer had Bush officials warning of an impending natural gas supply crisis that could be alleviated by increasing drilling on federal lands. To make that happen, the administration stepped up its call for streamlining environmental protections to help energy companies tap more energy reserves, faster. Now, to be able to drill on public lands an energy company need only follow the rules that ensure the land's protection. (Source: Christopher Smith, "Interior official argues for gas drilling," *Salt Lake Tribune*, June 25, 2003.)

15 Analysis by the Natural Resources Defense Council (available upon request).

16 "N.M. GOP donor gets oil-drilling leeway," Associated Press, March 4, 2004.

17 The head of the BLM's New Mexico field office asked a group of oil and gas industry representatives last November to organize public meetings to develop recommendations for energy development at Otero Mesa. The officials

planned to meet this past January but "forgot" to include non-industry representatives, a violation of the Federal Advisory Committee Act. Earthjustice filed a lawsuit asking for a temporary restraining order to halt the meeting until the makeup of the group is balanced and the meeting is open to full public participation. Within days, the BLM called off the meeting of the group.

18 For more information, see "Cash, Contributions and Connections," a report issued by the Campaign to Protect America's Land: www.protectamericaslands.org/special_blmotero.asp.

19 "Mineral lease sales planned near dinosaur national monument," Associated Press, February 9, 2004.

20 Juliet Eilperin, "Utah oil and gas leases stir criticism," *Washington Post*, March 1, 2004.

21 Elizabeth Shogren, "Sensitive drilling struggle intensifies," *Los Angeles Times*, March 1, 2004.

22 Bureau of Land Management, Environmental Impact Statement/Integrated Action Plan (EIS/IAP) for the Northwest Area of the National Petroleum Reserve-Alaska (NPR-A), 2003.

23 Although the energy industry claims that as much as 13 billion barrels of oil could be extracted from the area in question, the U.S. Geological Survey (USGS) estimates that less than one-third of that amount is economically recoverable in the entire 23.5-million-acre National Petroleum Reserve-Alaska. (Source: John Heilprin, "Deal signed to allow oil drilling on 9 million acres in Alaska," Associated Press, January 23, 2004.)

24 Katherine Q. Seeley, "U.S. may open oil reserve in Alaska to development," *New York Times*, January 18, 2003.

25 Notice of Availability and Announcement of Public Subsistence-Related Hearings; Alpine Satellite Development Plan, Draft Environmental Impact Statement; National Petroleum Reserve-Alaska, and Colville River Delta, 69 Federal Register 4974, February 2, 2004.

26 Wesley Loy, "BLM may relax drilling ban near NPR-A lake," *Anchorage Daily News*, April 16, 2003.

27 In contrast to what is required for drilling in the Arctic refuge, the Bush administration can move forward with the lease sale unless blocked by Congress. This is considered unlikely given Republican control of both houses and strong support for drilling from Alaska's congressional delegation.

28 Only two Alaska outer-continental lease sales have been held since 1997, and those were relatively small because of environmental concerns, according to NRDC.

29 Yereth Rosen, "Expanded offshore drilling," *Reuters*, September 14, 2003.

30 John Heilprin, "Interior Dept. plans gas royalty break," Associated Press, March 26, 2003.

31 Royalties will be waived on natural gas extracted in a narrow band of waters less than 600 feet deep stretching along the coast from Texas to Alabama. (Source: John Sullivan, "Too early to tell about federal incentive program, Woolie says," *Daily Advertiser*, February 10, 2004.)

32 Kenneth R. Weiss, "U.S. is seeking to limit states' influence on offshore decision," *Los Angeles Times*, August 21, 2003.

33 Bureau of Land Management, Instruction Memorandum 2003-195, June 20, 2003; rescinded Wilderness Inventory and Study Procedures Handbook H-1630-1.

34 In 1976, Congress directed the BLM to survey its 261 million acres of land for areas worthy of wilderness protection. Many of those original inventories were terribly flawed and, as a result, the BLM began to re-inventory public lands, identifying millions of additional acres of roadless, wilderness quality lands. Under the Clinton administration, the agency not only continued the wilderness review process, but also adopted procedures to ensure consistent inventory practices and consistent treatment of lands once the BLM decided that they had wilderness qualities. In particular, these procedures barred destructive activities in areas with wilderness qualities until the BLM, through its land use planning process, decided whether or not to protect those qualities and recommend the areas to Congress for permanent protection. Utah officials argued that such activities should be allowed in those wild lands because

Congress has yet to approve the wilderness designations proposed by the Clinton administration.

35 The Bush administration's partner in this unseemly deal was then-Utah Gov. Mike Leavitt, whom President Bush tapped last fall to serve as the new head of the Environmental Protection Agency.

36 As part of the settlement, the Bush administration also agreed to discard the BLM's 2001 wilderness handbook, which laid out the procedures land managers were to follow in identifying wilderness-quality lands and protect them pending a congressional decision.

37 Bureau of Land Management, Instruction Memorandum 2003-275, September 29, 2003.

38 Robert Gehrke, "New administration policy could open land to oil, gas development," Associated Press, September 29, 2003.

39 Robert Goldrich, "White House rollback: A filming oasis in wilderness?" *VNU Business* (vol. 44, no.16), April 25, 2003.

40 The energy task force court case took a surprising turn in December 2002, when a federal appointed by President Bush sided with the White House.

41 Mike Allen, "GAO cites corporate shaping of energy plan," *Washington Post*, August 26, 2003.

42 NRDC is still fighting to compel the release of what may be the most telling documents, the records of the task force staff themselves.

43 National Energy Policy, pp. 4-5 and 4-6 (www.whitehouse.gov/energy).

44 "Balancing Natural Gas Policy—Fueling the Demand of a Growing Economy," (Washington, DC: National Petroleum Council, September 25, 2003, p. 72).

45 Based on analysis by the American Council for an Energy-Efficient Economy for the Appliance Standards Awareness Project, cost-effective new standards for these three products will save 60,000 gigawatt hours per year (roughly enough to meet the needs of 6 million U.S. homes); cut peak electricity demand by 25,000 megawatts (an amount equal to the output of about 80 new power plants); reduce natural gas consumption by 400 billion cubic feet per year (enough to heat about one in ten U.S. homes that heat with

natural gas); and yield \$21 billion in net savings for businesses and consumers. (The savings of \$21 billion is the *cumulative* savings for the first 20 years of sales of efficient products.) By catching up on other overdue standards, the agency could easily double these energy savings.

46 Despite Secretary Spencer Abraham's endorsement in principle of "federal tax breaks for . . . energy efficiency programs," neither the Energy Department nor the White House has endorsed the actual legislation that would do this, even though two key pieces of it (the CLEAR Act for cars and the EFFECT Act for buildings) were offered by Republican lawmakers. In fact, NRDC several times has asked Assistant Secretary David Garman to marshal the administration's support for the buildings measure, which would have helped to reduce natural gas prices this past winter if it had been enacted last spring.

47 Steve Raabe, "Energy chief advances renewable alternatives," *Denver Post*, July 2, 2003.

48 Conservation groups that work with the government to promote energy efficiency now face a significant reduction in federal grants. That could result in less advertising to spread consumer awareness about the Energy Star program, according to NRDC.

49 "EPA cuts funding for touted 'Energy Star' conservation program," *Inside EPA*, July 1, 2003.

50 Amanda Griscolm, "Lights out," *Crist Magazine*, October 2, 2003.

Chapter 5

1 This is not the first time that Bush officials have reversed a finding by Park Service experts that pollution from a proposed power plant would harm a national park, according to NRDC. In August 2002, Assistant Secretary Manson reversed a finding that a proposed 1,500-megawatt coal-fired power plant in western Kentucky would significantly hamper visibility at Mammoth Cave National Park. The air at Mammoth Cave is already more polluted than almost all other parks in the country. The reversal occurred after the deputy secretary of Interior and the director of the Park Service met with executives from the company that wants to

build the facility, Peabody Energy Corp.—a company that is one of President Bush's major political contributors.

2 Brian Stempeck, "Interior reverses stance, green-lights power plant near Yellowstone," *Greenwire*, January 16, 2003.

3 The same companies that are currently being prosecuted for NSR violations are major contributors to President Bush and the Republican Party, and had easy access to Vice President Cheney's secret energy task force in 2001, according to the Center for Responsive Politics. As a whole, the energy industry gave more than \$48 million to the Republican Party in the 2000 election cycle; \$3 million of that went to the Bush-Cheney campaign. For example, the Edison Electric Institute, an industry trade group comprising the power plant defendants in the NSR cases, had at least 14 contacts with the energy task force and contributed nearly \$600,000 to Republican congressional candidates from 1999 to 2003. Other beneficiaries of the Bush administration's NSR changes include American Electric Power and Southern Co. (which gave \$1.6 million to the GOP in 2000 cycle), Reliant Energy (which gave nearly \$445,000 to the GOP), and Dominion Resources (which gave \$560,000 to the GOP). (See www.opensecrets.org.)

4 Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair, and Replacement Exclusion, 68 Federal Register 61248, October 27, 2003.

5 Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair, and Replacement Exclusion, 68 Federal Register 61248, October 27, 2003. This exemption would apply even if a facility's air pollution increased by thousands, or tens of thousands, of tons as a result of the replacement. For example, if a coal-fired power plant replaced a boiler that cost less than 20 percent of the replacement cost of the entire process unit—the boiler, turbines, generators and other equipment that turns coal into electricity—the company would not have to control the resulting pollution increases. Under this scheme,

virtually all Clean Air Act violations that the Justice Department is prosecuting would have been allowed, according to environmentalists. The upgrades at those plants increased air pollution by hundreds of thousands of tons, but because the upgrades cost less than 20 percent of the replacement value of the process units, the companies would not have had to install modern pollution controls under the new rule.

6 "Two studies contradict EPA on new rules," *Washington Post*, Associated Press, October 23, 2003.

7 Officials in 27 of 44 states told the GAO they expect higher pollution; only five expect a decrease. (General Accounting Office Report; GAO-04-274; February 2, 2004).

8 Eric Pianin, "Ex-EPA officials question clean air suits," *Washington Post*, October 16, 2003; "Senate Democrats cite limited benefits of NSR policy while blasting Bush," *Inside EPA*, February 17, 2004.

9 About five-dozen career staff in EPA's general counsel's office held a Halloween party last year, in which they plastered the walls with wanted posters bearing Jeffrey Holmstead's picture labeled: "Wanted: suspected in the untimely death of C.A. Adams. [CAA is the common shorthand for the Clean Air Act.] Reward: \$27,500 per violation per day." Those are the penalties for violations of the CAA. (Source: Al Kamen, "In the loop," *Washington Post*, November 3, 2003.)

10 Darren Samuelsohn, "Whitman warned White House of NSR reforms' political price," *Greenwire*, October 16, 2003.

11 Darren Samuelsohn, "Bush's NSR reforms harming enforcement cases, former EPA official says," *Greenwire*, February 9, 2004.

12 Catherine Tsai, "Official: Bush committed to Western coal," *Associated Press*, February 10, 2003.

13 Compared to current law, the Clear Skies plan would allow three times as many toxic mercury emissions, 50 percent more sulfur dioxide emissions, and hundreds of thousands more tons of smog-forming nitrogen oxides. It would also delay cleaning up this pollution by up to a decade, forcing people to breathe dirtier, unhealthier air for years longer compared with requirements under the existing Clean Air Act. (See NRDC

analysis at www.nrdc.org/air/pollution/qbushplan.asp#clearskies.)

14 According to Washington State air officials, under the Clear Skies plan sulfur dioxide pollution could increase 34 percent, nitrogen oxide pollution could double, and mercury pollution could rise by up to 88 percent.

15 Les Blumenthal, "Exaggerated EPA claims revealed," *Tacoma News Tribune*, March 10, 2003.

16 Jeff Nesmith, "EPA scuttles comparison of ways to control mercury pollution," *Cox News Service*, October 16, 2003.

17 Guy Gugliotta and Eric Pianin, "EPA withholds air pollution analysis," *Washington Post*, July 1, 2003.

18 Darren Samuelson, "EPA claim of support for Clear Skies misleading, groups say," *Greenwire*, August 8, 2003.

19 Dana Milbank, "Bush lauds Michigan power plant as model of clean air policy," *Washington Post*, September 16, 2003.

20 Tom Hamburger and Alan C. Miller, "Mercury emissions rule geared to benefit industry, staffers say," *Los Angeles Times*, March 16, 2004.

21 National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, 68 Federal Register 61868, October 30, 2003.

22 Taconite plants emit other potentially hazardous chemicals also not addressed by the rule, including asbestos, hydrochloric acid, and hydrofluoric acid.

23 Marty Coyne, "New EPA rule ignores mercury in Great Lakes, activists say," *Greenwire*, October 30, 2003.

24 Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard, 68 Federal Register 32802, June 2, 2003.

25 Seth Borenstein, "EPA proposes to ease and delay urban pollution-control standards," *Knight-Ridder*, May 15, 2003.

26 Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule, 69 Federal Register 4566, January 30, 2004.

27 Sara Shipley, "EPA proposes rules to cut pollutants," *St. Louis Post-Dispatch*, December 17 2003.

28 These rules include: National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing, and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing, 68 Federal Register 26690, May 16, 2003; National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing, 68 Federal Register 27645, May 20, 2003; National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, 68 Federal Register 27913, May 22, 2003.

29 Gary Polakovic, "EPA plans to relax toxic emission standards," *Los Angeles Times*, February 11, 2003.

30 "Harboring Pollution: The Dirty Truth About U.S. Ports," a report by the Natural Resources Defense Council, March 2004.

31 For some commercial ports such as Miami, New Orleans, and Corpus Christi, oceangoing ships contribute between 5 percent and 7 percent of the area's nitrogen oxide emissions. In Santa Barbara, the EPA has said large vessels are a source for as much as 37 percent of local nitrogen oxide. (Source: Darren Samuelsohn, "Enviros urge court to overturn EPA's marine vessel rule," *Greenwire*, February 20, 2003.)

32 Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters Per Cylinder; Final Rule, 68 Federal Register 9745, February 28, 2003.

33 Darren Samuelsohn, "EPA puts final stamp on marine vessel regulations," *Greenwire*, February 3, 2003.

34 Mark Gross and Leslie Maxwell, "EPA lets up on farms as polluters," *Sacramento Bee*, March 25, 2003.

35 Diane Lindquist, "Ruling deals blow to power plants in Mexico," *San Diego Union-Tribune*, May 6, 2003.

36 Traci Watson, "Environmentalists attack EPA's farm-pollution plan," *USA Today*, September 25, 2003.

37 Elizabeth Shogren, "EPA relaxes estimations of park pollution," *Los Angeles Times*, February 14, 2004.

Chapter 6

1 The NAS scientists say average temperature increases of 3 to 10 degrees Fahrenheit will occur by the end of the century unless emissions are cut soon. (See: books.nap.edu/books/0309075742/html/index.html.)

2 See www.nrdc.org/global/Warming/qthinice.asp.

3 Paula Dobriansky, "Only new technology can halt climate change," *Financial Times*, November 30, 2003.

4 The Pentagon report is entitled, "An Abrupt Climate Change Scenario and Its Implications for United States National Security."

5 Mark Townsend and Paul Harris, "Now the Pentagon tells Bush: Climate change will destroy us," *The Observer*, February 22, 2004.

6 Edward Walsh, "Emissions reductions plan touted," *Washington Post*, February 13, 2003.

7 The energy industry's voluntary pledge to reduce its emission 3 percent to 5 percent over the decade falls short of the less than 7 percent it had predicted before the Bush administration unveiled its climate plan the year before, according to NRDC.

8 Also omitted from the EPA's "State of the Environment" report was information on the potential harm to humans and wildlife from pesticides and industrial chemicals.

9 Paul Harris, "Bush covers up climate research," *The Observer*, September 21, 2003.

10 Guy Gugliotta, "EPA issues environmental overview," *Washington Post*, June 24, 2003.

11 Jennifer Lee, "New estimates on Senate carbon dioxide emissions plan," *New York Times*, July 30, 2003.

12 Air-quality officials in California have sued the EPA over the decision because it threatens the state's efforts to control global warming gases by regulating tailpipe emissions. Illinois, Massachusetts, New Hampshire, and North Carolina are also considering laws or regulations to address

the problem. While the Bush administration fiddles, states are taking the lead. California adopted a new law to curb global warming pollution from motor vehicles. Illinois, Massachusetts, New Hampshire, and North Carolina are also considering laws or regulations to address the problem. (Source: Miguel Llanos, "EPA won't list carbon dioxide as air pollutant," *MSNBC.com*, August 28, 2003.)

13 Excerpt of official EPA statement posted on *U.S. Newswire*, September 17, 2002.

14 Paul Rodgers, "U.S. backs chemical use," *San Jose Mercury News*, February 8, 2003.

15 Andrew C. Revkin, "U.S. requests exemptions to ozone pact for chemical," *New York Times*, March 4, 2004.

Chapter 7

1 More details provided by Public Employees for Environmental Responsibility at: www.peer.org/press/403.html.

2 Seth Borenstein, "Scaled-back protections for wetlands are dropped," *Knight-Ridder*, December 17, 2003.

3 Based on a study by the EPA, completed in May 2003, at least 274 mining operations may have illegally buried more than 700 Appalachian streams under dirt and rock blasted from mountaintops by coal companies. Despite the findings, the Bush administration said it favors better agency coordination—not new regulations—to reduce the environmental destruction caused by the controversial practice. (Source: Ken Ward, "EPA review finds 274 valley fill violations," *Charleston Gazette*, September 5, 2003.)

4 Trial Lawyers for Public Justice, <http://ga3.org/ct/Wp1o7uM1Qam2/>.

5 Surface Coal Mining and Reclamation Operations; Excess Spoil, 69 Federal Register 1036, January 7, 2004.

6 Federal Register, vol. 69, no 4 (January 7, 2004), p. 1035.

7 John Fialka, "U.S. plan to ease rule on method of coal mining," *Wall Street Journal*, January 8, 2004.

8 The EPA's 2002 National Coastal Condition report acknowledged that the overall condition of our

coastal waters is only fair to poor. (See also www.epa.gov/305b.)

9 Damon Franz, "EPA officially withdraws Clinton TMDL rule," *Greenwire*, March 18, 2003. Withdrawal of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation, 68 Federal Register 13608, March 19, 2003.

10 Clean Water Report, "EPA withdraws Clinton's TMDL rule citing adverse comments, lawsuits," *Federal Update II*, no. 1, vol. 41, January 13, 2003.

11 National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Municipal Wastewater Treatment Discharges During Wet Weather Conditions, 68 Federal Register 63042, November 7, 2003.

12 Brent Kallestad, "Environmentalists say sewage discharges harming water quality," *Associated Press*, February 19, 2004.

13 The EPA wants to exempt municipal waste disposal wells in 24 south Florida counties from the "no migration rule," which prohibits waste injection that causes the movement of wastewater into underground sources of drinking water. If adopted, the rule change will allow municipalities to continue, and even increase, their current injection rate until the aquifer is contaminated and there is an immediate threat to health. Underground Injection Control Program: Revision of Underground Injection Control Requirements for Class I Municipal Wells in Florida, 68 Federal Register 23671, May 5, 2003.

14 More than five years ago, the EPA and the Florida DEP admitted that, as scientists had predicted, the wastewater had begun migrating upward from the "injection zones" toward and into Florida's underground drinking water aquifers, in violation of the federal Safe Drinking Water Act. An EPA report last May confirmed that the problem is already widespread and threatens to get worse. ("Relative Risk Assessment of Management Options for Treated Wastewater in South Florida," May 5, 2003 (68 FR 23666) www.epa.gov/region4/water/uic/RA.htm.)

15 Niraj Warikoo, "U.S. allows hazardous waste disposal in wells," *Detroit Free Press*, March 17, 2004.

16 According to NRDC, the EPA's policy would not require overall pollutant loads to be capped, but would allow trading between polluters located miles from one another, and would even allow trading for toxic, bioaccumulative pollutants.

17 Eric Pianin, "EPA to allow polluters to buy clean water credits," *Washington Post*, January 14, 2003.

18 Modification of National Pollutant Discharge Elimination System (NPDES) Permit Deadline for Storm Water Discharges for Oil and Gas Construction Activity That Disturbs One to Five Acres of Land, 68 Federal Register 11325, March 10, 2003.

19 Jennifer Lee, "Oil and gas industry exempt from new clean water rules," *New York Times*, March 8, 2003.

20 Michael Milstein, "Oil-leaking dams generate concern," *Oregonian*, May 4, 2003.

21 Interpretive Statement and Guidance Addressing Effect of Ninth Circuit Decision in *League of Wilderness Defenders v. Forsgren* on Application of Pesticides and Fire Retardants, September 3, 2003.

22 Paul Rogers, "U.S. says EPA won't regulate ships' ballast water," *Milwaukee Journal Sentinel*, September 4, 2003.

23 Curtis Morgan, "Long-awaited glades plan unveiled," *Miami Herald*, November 5, 2003.

24 Another looming threat to the Everglades is a plan by the Bush administration to allow a massive mining project in south Florida. In 2002, the Army Corps of Engineers approved permits allowing 5,000 acres of mining within one half-mile of Miami Dade County's largest well field, which supplies drinking water for much of the region. Independent testing conducted in April 2003 showed that a setback of more than five miles is necessary to comply with well field protection regulations.

The mining industry plans eventually to dig up 15,000 acres of wetlands around the well field. Together with the existing pits, the project would encompass 22,000 acres, an area of the Everglades equal to the size of the city of

Miami. After President Bush took office, the EPA and the U.S. Fish and Wildlife Service withdrew their objections to the mining project. NRDC and other groups, which are challenging the permits in federal court, argue that the project threatens to destroy Everglades wetlands, as well as block water flows into Everglades National Park.

25 *South Florida Water Management District v. Miccosukee Tribe* (No. 02-626).

26 William E. Gibson, "Supreme Court hears dispute over water pollution in Everglades," *South Florida Sun-Sentinel*, January 15, 2004.

Chapter 8

1 Based on an analysis of EPA data by *Knight-Ridder*. (Source: Seth Borenstein, "Fewer superfund cleanups under way," *Knight Ridder*, April 18, 2003.)

2 John Heilprin, "EPA reports completing 40 more Superfund toxic waste site cleanups," *San Francisco Chronicle*, November 5, 2003.

3 According to a report by the EPA's inspector general, funding from 2001 to 2003 dropped below the \$1.3 billion per year mark for the first time in 15 years. A key factor in the funding shortage is that penalties paid by polluters have fallen 41 percent (compared with the annual average during the Clinton era). Also, the amount of money for cleanup costs recovered from polluters dropped by 13 percent, according to the IG report. (See: www.epa.gov/oigearth/.)

4 Bill Lambrecht, "EPA failed to fund many recommended waste cleanups," *St. Louis Post-Dispatch*, January 8, 2004.

5 Analysis by the Natural Resources Defense Council (available upon request).

6 Although there is now a clearer understanding of the danger mercury poses to humans, scientists have only recently begun to investigate how mercury threatens wildlife. Research under way in the United States and Canada has linked mercury exposure to decreased reproduction, weakened immune systems, and deteriorated muscle coordination in loons, a bird that spends most of its life in water, feeding on fish. These

findings have only increased the urgency for tougher measures to control mercury pollution.

7 Critics, however, say the warning is misleading because the FDA continues to recommend fish as a good source of protein and "part of a healthy and balanced diet." In fact, experts on the advisory panel say that the new federal guidelines do not reflect the group's views that children and pregnant women should eat even less chunk light tuna than the advisory recommends, and avoid albacore tuna altogether. Vas Aposhian, a toxicology professor at the University of Arizona, resigned from the advisory panel after FDA did not heed its warnings. (Source: Marc Kaufman, "Limits urged on eating tuna," *Washington Post*, March 20, 2004.)

8 Kathryn R. Mahaffey, "A U.S. EPA Presentation to the Fish Forum," San Diego, January 2004. (See www.epa.gov/waterscience/fish/forum/2004/presentations/monday/mahaffey.pdf.)

9 Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 69 Federal Register 4651, January 30, 2004.

10 The EPA's proposal would establish a cap based on an almost 70 percent decrease in mercury emissions—from 48 tons to 15 tons—beginning in 2018. Agency experts previously estimated that sources would cut mercury pollution by as much as 90 percent in three years to meet the Clean Air Act's directive to use the maximum achievable technology. In other words, the Bush administration's plan cuts less mercury pollution and delays even those reductions. More troubling, this new proposal would put no restrictions on individual power plants, but would let companies buy and sell the rights to emit mercury. A particularly disturbing aspect of this proposal is the ability to bank emissions credits; last summer, the EPA performed modeling analysis of the "Clear Skies" initiative and predicted that, because of banking, power plant mercury pollution would decrease by only 43 percent (to approximately 27.8 tons) by 2026—despite

the 15-ton cap established for 2018. (Analysis by the Natural Resources Defense Council.)

11 John J. Fialka, "EPA is warned by panel of mercury 'hot spots,'" *Wall Street Journal*, January 30, 2004.

NRDC, "EPA science advisory committee urges Administrator Leavitt to strengthen controls on power plant mercury pollution. Children's Health Committee says administration plan inadequate," January 29, 2004.

12 National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants, 68 Federal Register 70903, December 19, 2003.

13 NRDC, "New EPA rules take small step forward, giant leap backward on mercury," September 4, 2003.

14 The typical plant has 56 cells, each with about 8,000 pounds of mercury, which is used to conduct an electrical charge that extracts chlorine from salt.

15 Instead of addressing the potential public health threat from mercury cells, the EPA focused its new rule on controlling a fraction of the chlorine industry's mercury pollution. It merely set standards for vents at these facilities, estimating that these standards will reduce mercury emissions by 1,286 pounds per year. This amount pales in comparison with the mercury reductions the agency could achieve by requiring manufacturers to use non-mercury technology, which accounts for nearly 90 percent of chlorine production today. (Source: NRDC, "New EPA rules take small step forward, giant leap backward on mercury," September 4, 2003.)

16 The average chlor-alkali plant loses more than 17,000 grams of mercury every day.

17 At the behest of the water industry, the EPA did say it would consider, in the next several years, amending the monitoring and perhaps other requirements for coliform bacteria.

National Primary Drinking Water Regulations; Announcement of Completion of EPA's Review of Existing Drinking Water Standards, 68 Federal Register 42908, July 18, 2003.

18 The Safe Drinking Water Act requires the EPA to decide *every five years* whether contaminants

not regulated in tap water pose health risks and therefore should be addressed.

Announcement of Regulatory Determinations for Priority Contaminants on the Drinking Water Contaminant Candidate List, 68 Federal Register 42898, July 18, 2003.

19 Analysis by the Natural Resources Defense Council (available upon request).

20 Scientific studies indicate that when these DBPs “spike”—or reach higher levels than normal—they likely pose risks of causing birth defects and miscarriages. DBPs are eventually found in the drinking water of more than 250 million Americans.

21 National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection By-products Rule; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical Contaminants, 68 Federal Register 49548, August 18, 2003.

22 National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection By-products Rule; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical Contaminants, 68 Federal Register 49548, August 18, 2003.

23 Although the perchlorate problem is a national one, a single facility—the Kerr-McGee plant in Henderson, Nevada—is responsible for contaminating the drinking water of more than 20 million people living in Arizona, California, and Nevada, including the residents of Los Angeles, San Diego, Phoenix, and Las Vegas. Despite Kerr-McGee’s promise of a voluntary cleanup, the facility still discharges 300 to 500 pounds of toxic perchlorate into the Colorado River every day, producing a contamination plume that has polluted the entire lower Colorado River well above EPA’s draft safe level of 1 part per billion (ppb). To NRDC’s knowledge, this facility has contaminated more Americans’ water than any other single polluter.

Perchlorate also finds its way into our food. The chemical concentrates in cow’s milk and, according to leaked DOD documents, in fish. Scientists believe that perchlorate also likely concentrates in mother’s breast milk,

and thus babies may get a higher concentration than their mothers receive in tap water. Meanwhile, farmers use water from the perchlorate-laced Colorado River to irrigate about 70 percent to 80 percent of the nation’s winter lettuce. Recent evidence also suggests perchlorate has contaminated melons and mustard greens.

24 The Bush administration has failed to address the crop contamination problem despite mounting evidence that it poses a threat. Small, privately funded studies of lettuce have found cases of serious perchlorate contamination. They suggest that crops such as lettuce concentrate perchlorate at levels far higher than those present in the water used to irrigate them.

At a September 2003 public presentation attended by NRDC, Col. Dan Rogers explained that although DOD advisers had recommended many years ago that perchlorate crop-contamination studies should be a top priority, the DOD has never funded any. Rogers conceded that the Pentagon had spent \$30 million on a variety of other perchlorate studies (many, according to internal DOD documents, done in an effort to undermine the EPA’s low presumed-safe level for perchlorate). However, Rogers explained, the DOD could not find the \$200,000 needed to fund a crop study. He blamed the problem on the Department of Agriculture for backing out of a promise to pay for it.

The DOD, however, has looked at what perchlorate can do to fish. NRDC recently obtained documents that show the DOD has conducted studies concluding that perchlorate was concentrated in fish tissues in areas around a DOD facility. According to the study, some parts of the fish, including the head and the fillet, concentrated perchlorate at levels several times higher than the level in the water in which the fish were swimming. These results have not been publicized. This suggests yet another route of human exposure that should be evaluated in areas where surface waters are contaminated with perchlorate, especially the Colorado River.

25 More than 80 water systems in California alone are contaminated with perchlorate. The single largest source of contamination is a former Kerr-McGee rocket fuel plant outside Las Vegas, which

leaches as much as 900 pounds of perchlorate per day into the Colorado River, the main water source for much of Arizona, southern Nevada, and southern California.

26 “Perchlorate: Bush to ask NAS reviewed panel to examine safety,” *Greenwire*, March 14, 2003.

27 Peter Waldman, “EPA bans staff from discussing issue of perchlorate pollution,” *Wall Street Journal*, April 28, 2003.

28 Peter Waldman, “Pentagon is accused of hiding report on perchlorate pollution,” *Wall Street Journal*, May 19, 2003.

29 Peter Waldman, “Pentagon backs off water-test plan,” *Wall Street Journal*, June 20, 2003.

30 Jennifer Lee, “Second thoughts on a chemical,” *New York Times*, March 2, 2004.

31 Elizabeth Shogren, “Pentagon appeals to White House on pollution limits,” *Los Angeles Times*, January 15, 2004.

32 Analysis by the Natural Resources Defense Council (available upon request).

33 In particular, using the old guidelines could hamstring the EPA’s ability to declare a chemical a carcinogen, leaving more Americans exposed to more cancer-causing chemicals in the air, the water, and their food. Environmentalists complain that the outdated guidelines also provide many exceptions to the rule, giving polluters many opportunities to paralyze the agency with pseudo-scientific arguments.

34 There are 700 plants that put at risk 100,000 people or more, and 3,000 that bring risk to 10,000 or more. (See: www.ncseonline.org/nle/crsreports/03Feb/RL31530.pdf.)

35 See: www.dhs.gov/dhspublic/display?theme=44&content=525.

36 In 2002, after an intensive lobbying effort by industry groups, the Bush administration opted not to incorporate into its homeland security legislation a bill by Senator Jon Corzine (D-NJ) that would have mandated better security measures at chemical plants.

37 General Accounting Office: “Homeland Security: Voluntary Initiatives Are Under Way at Chemical Facilities, but the Extent

of Security Preparedness Is Unknown,” GAO-03-4391, no. 4, vol. 2003, March 14, 2003.

38 General Accounting Office: “Homeland Security: Voluntary Initiatives Are Under Way at Chemical Facilities, but the Extent of Security Preparedness Is Unknown,” GAO-03-4391, no. 4, vol. 2003, March 14, 2003.

39 The Bush administration and its congressional allies oppose Sen. Corzine’s bill, which requires chemical companies to assess and reduce their risks and to implement available and cost-effective alternatives to highly hazardous chemicals and processes; the bill also ensures accountability through government oversight. Instead, the Inhofe bill, which the White House supports, does not require that companies implement available and affordable alternatives to toxic chemicals. That bill also bars the EPA—the federal agency that has the most expertise on chemicals—from exercising its inspection authority to evaluate plant security. Environmentalists oppose the Inhofe bill because it allows the administration to rubber-stamp a flawed voluntary program written by the chemical industry, one that would exempt the nation’s largest and most dangerous facilities from meaningful federal requirements.

40 The chemical industry has failed to take adequate precautions to safeguard facilities and surrounding communities, according to NRDC. Some plants have strengthened on-site security by adding guards, building fences, or installing surveillance cameras. A few others have committed to reducing or phasing out their use of toxic chemicals in favor of safer ones.

41 Peter Eisler, “EPA lifts ban on selling PCB sites,” *USA Today*, September 2, 2003.

42 Marty Coyne, “EPA rule would expand hazardous waste exemptions for industry,” *Greenwire*, October 23, 2003.

43 Darren Samuelsohn, “EPA to restrict access to worst-case scenario data,” *Greenwire*, February 13, 2004.

44 Cindy Skrzycki, “EPA seeks middle ground in toxic-release reporting,” *Washington Post*, November 18, 2003.

45 Analysis by the Natural Resources Defense Council (available upon request).

46 Standards for the Use or Disposal of Sewage Sludge: Decision Not to Regulate Dioxins in Land-Applied Sewage Sludge; Notice, 68 Federal Register 61084, October 24, 2003.

47 Jason Best, "They're Recycling What?" *OnEarth Magazine* (Spring 2004).

Chapter 9

1 The Bush administration discreetly gutted environmental protections without putting up a fight in court. In what environmentalists call a "sue-and-settle" strategy, the administration has been encouraging industry groups to sue over rules and then settling those lawsuits on terms favorable to industry. Using such tactics, the administration has allowed more logging, has curtailed protections for roadless and wilderness lands, and has encouraged development in and around national parklands. (Source: Matthew Daly, "Lawsuits shape Bush forest policy," *Associated Press*, April 20, 2003.)

2 The Forest Service's decision comes despite a 1999 ruling by a federal judge that the agency failed to provide sufficient rationale for similar categorical exclusions, according to NRDC, National Environmental Policy Act Determination Needed for Fire Management Activities; Categorical Exclusions, 68 Federal Register 33813, June 5, 2003.

3 Molly Villamana, "USFS exempts small projects from full enviro review," *Greenwire*, July 30, 2003.

4 Under the new rules, anyone who wants to appeal a logging project must have submitted substantive comments during the comment period, a nearly impossible task because average citizens must know minute details before the Forest Service even makes necessary information available to the public. (68 Federal Register 33581, et seq. June 4, 2003).

5 Elizabeth Shogren, "Juggling fire risks and species' safety," *Los Angeles Times*, May 31, 2003.

National Environmental Policy Act Determination Needed for Fire Management Activities; Categorical Exclusions, 68 Federal Register 33813, June 5, 2003.

6 A report by the Forest Service concluded that "timber harvest can sometimes elevate fire hazard by increasing dead-ground fuel, removing larger fire-resistant trees, and leaving an understory of ladder fuels." *Forest Service Fuel Management and Fire Suppression Specialist's Report*, part of the Final Environmental Impact Statement for Roadless Area Conservation Rule (November, 2000).

7 Mike Taugher, "Report: Environmental appeals don't significantly delay forest projects," *Contra Costa Times*, May 15, 2003.

8 A May 2003 report by the GAO found that more than 95 percent of fuel reduction projects (742 out of 762) reviewed—covering some 4.7 million acres of federal forestlands—moved forward quickly (*i.e.*, they were ready for implementation within the standard 90-day review period). The report includes no evidence to support the Forest Service's contention that environmentalists have obstructed fire prevention efforts. In fact, more than 97 percent of the 762 logging projects reviewed by the GAO were not challenged by a single lawsuit, the report shows. In all, only 23 projects were litigated in court. The government's own data reveal that only 7 percent of the projects identified as hazardous fuels reduction projects are appealed at all, with only three-tenths of 1 percent going to court. (See: <http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi>.)

9 According to NRDC, heightened fire risk in federal forests is a direct result of 90 years of Forest Service mismanagement. Second, unrestrained thinning of forests far away from communities and homes is at best a waste of scarce fire-risk reduction resources and dollars—and may even increase fire risk. And third, the Forest Service spent the past two years falsely claiming to Congress and the media that appeals and litigation hamper efforts to reduce threats to homes, communities, and forests.

10 Analysis by the Natural Resources Defense Council (available upon request).

11 Predecisional Administrative Review Process for Hazardous Fuel Reduction Projects Authorized Under the Healthy Forests Restoration Act of 2003, 69 Federal Register 1529, January 9, 2004.

12 Dan Berman, "First rule under Healthy Forests bill limits appeals," *Greenwire*, January 12, 2004.

13 Dan Berman, "Feds will not appeal ruling striking down roadless rule," *Greenwire*, September 15, 2003.

14 The Tongass covers 16.8 million acres, of which 9 million acres are without roads.

15 Of more than 250,000 comments the Forest Service received on this issue, all except 2,000 supported protecting Tongass roadless areas, according to NRDC.

16 Brian Stempeck, "No new wilderness for Tongass, says Forest Service," *Greenwire*, March 3, 2003.

17 From 1982 through 1990, the Forest Service lost, on average, more than \$46 million each year preparing timber sales on the Tongass. Randall O'Toole, "How taxpayers paid pulp mills to clear-cut the Tongass National Forest," March 1993) Despite the enactment in 1990 of the Tongass Timber Reform Act, annual losses continued to average \$28 million through 2002. In 2002, the Forest Service spent more than \$36 million preparing timber sales and building logging roads on the Tongass. That same year, the timber industry paid the government \$1.2 million in return for the trees they cut. Taxpayers bore the \$34.8 million loss. (Source: Forest Service data obtained through FOIA, December 2002.)

18 According to NRDC, demand for Tongass trees has fallen dramatically because of changes in world timber markets and increased competition from timber producers in Europe and Russia. In 2002, U.S. taxpayers lost \$36 million through the Tongass timber program, more than \$90,000 for each private sector timber job in the forest. The Forest Service failed to find a buyer for 37 percent of the timber sales it offered between 1998 and 2002. And although timber volume has decreased, subsidies remain high. These subsidies are being provided to industry even though the Forest Service cannot afford to maintain the 5,000 miles of road already built in the Tongass.

19 "Forest Service plans to give away Tongass timber," *Juneau Capital City Weekly*, September 23, 2003.

20 Brian Skoloff, "Forest Services issues management plan for national monument," Associated Press, January 17, 2004, Environmental Impact Statements; Notice of Availability, 69 Federal Register 2593, June 5, 2003.

21 "From giants to hot tubs," editorial, *Los Angeles Times*, January 29, 2003.

22 Environmentalists are particularly concerned that the Forest Service's logging plan would erode habitat of rare wildlife, such as the Pacific fisher, whose declining populations are dependent on dense old growth.

23 Logging in the Sierra Nevada is expected to increase from 191 million to 450 million board feet under the new Forest Service management plan. Environmental Impact Statements; Notice of Availability, 69 Federal Register 4512, January 30, 2004.

24 Dan Berman, "Plan would triple logging in Sierra Nevada in name of wildfire protection," *Greenwire*, January 23, 2004.

25 Glen Martin, "Forest Service hired PR firm to sell log plan, memo urged keeping details under wraps," *San Francisco Gate*, March 10, 2004.

26 See www.southernregion.fs.fed.us/planning/sap/final_plans.htm.

27 Dan Berman, "Southern Appalachian forest plan also calls for more logging," *Greenwire*, January 23, 2004.

28 Environmental Impact Statements; Notice of Availability, 69 Federal Register 4512, January 30, 2004.

29 Clyde Stancil, "Forest Service surprise," *Decatur Daily News*, February 11, 2004.

30 Julie Cart, "Bill aims to ban oil drilling in Los Padres," *Los Angeles Times*, February 19, 2004.

31 Based on a report released in October by the Campaign to Protect America's Lands, www.protectamericaslands.org.

32 Five of the in-depth studies in Wyoming, Utah, Nevada, and Idaho concluded that in every case, Forest Service employees do their jobs better and more inexpensively than would their private sector replacements.

33 Alex Kaplun, "Agency wasting money on privatization studies report," *Greenwire*, October 23, 2003.

Chapter 10

1 Mining wastes poison America's rivers, lakes, streams, and groundwater, an estimated 12,000 miles of rivers alone. It is not only active mines that cause these problems. Today, more than 550,000 abandoned hard-rock mines litter our public lands. Sixty-six of them are so dangerous they are listed on the Superfund national priorities list. Each year, the mining industry extracts \$2 billion to \$4 billion worth of minerals from public lands, without paying a penny in rent or royalties. In contrast, companies that develop energy minerals—oil, gas, and coal—pay a 12.5 percent royalty on revenue they make from public lands. (See www.nrdc.org.)

2 Analysis by the Natural Resources Defense Council (available upon request).

3 Scott Sonner, "Industry cheers Interior's reversal of Clinton mine waste opinion," *Associated Press*, October 10, 2003.

4 Carol D. Leonnig, "Judge decries pro-industry mining rules," *Washington Post*, November 19, 2003.

5 Eryn Gable, "Arizona copper mine moves closer to opening," *Environment and Energy Daily*, December 18, 2003.

6 Ibid.

7 Felicity Barringer, "Mine's pollution fund is focus of federal agencies' duel," *New York Times*, March 8, 2004.

8 Mike Soraghan, "Eased cattle-grazing rules sought," *Denver Post*, January 31, 2003.

9 Grazing Administration—Exclusive of Alaska, 68 Federal Register 68451, December 8, 2003.

10 Under the new rules, the time allotted to federal land managers to make decisions to protect range health would be increased from 12 months to two years, with another potential five years to actually execute those decisions. The new rules, which could take effect by December, also would do little to increase the recovery rates of streamside vegetation or to protect endangered plants and animals from decline. Ranchers also would be allowed to claim ownership of any projects constructed to facilitate their grazing operations, essentially privatizing federal land. (Source: Theo Stein, "Ranchers applaud grazing proposal," *Denver Post*, February 10, 2004.)

11 John Heilprin, "New rules may harm grazing in West in short term," *Associated Press*, January 4, 2004.

12 Dan Berman, "Judge strikes down another N.M. forest service permit," *Land Letter*, April 24, 2003.

13 Bill Lambrecht, "Judge nullifies another USFS permit in Arizona, New Mexico," *Greenwire*, November 10, 2003.

14 Dan Berman, "Forest Service wants to change approach to NEPA studies," *Greenwire*, February 10, 2004. Forest Service Handbook, Grazing, February 17, 2004.

Chapter 11

1 At the time of President Bush's trip to Santa Monica, the park faced a funding shortfall of more than \$6 million. Shortly after, Interior Department officials released a report claiming to have provided \$2.9 billion of the president's campaign pledge to wipe out the national park system's estimated \$4.9 billion maintenance backlog. (Source: Julie Deardorff, "Bush vows to give parks a chance," *Chicago Tribune*, August 16, 2003.)

But those numbers do not add up. According to NRDC, the Bush administration has so far budgeted less than 10 percent of what is needed to fix the parks' massive maintenance problems, with other funding shifted over from essential park programs. In fact, President Bush's FY 05 budget allocates only \$350 million in new money to fix the parks' ailing infrastructure.

2 The survey was sponsored by the Campaign to Protect America's Lands.

3 Elizabeth Shogren, "Park workers 'openly' opposing Bush policies," *Los Angeles Times*, November 14, 2003.

4 Brent Israelson, "Former Park Service execs scold Bush over resources stewardship," *Salt Lake Tribune*, January 23, 2004.

5 Elizabeth Shogren, "Administration, Yellowstone staff at odds on park threats," *Los Angeles Times*, June 26, 2003.

6 In the early 19th century, several million buffalo roamed the Great Plains; by the mid-1890s, only a few dozen remained. The Yellowstone buffalo herd was the only free-roaming buffalo herd not exterminated; it remains the only

free-range herd in the country. The buffalo's recovery from near extinction is considered one of the greatest conservation success stories in American history. In severe winter weather, Yellowstone bison wander near and beyond the park's boundaries in search of food at lower elevations. Over the past few decades, Montana's Department of Livestock has harassed and killed bison when they cross the unmarked park boundary into Montana. This extreme form of wildlife management is supposed to protect nearby cattle from brucellosis. However, this disease has never been transmitted from free-roaming bison to cattle, most of which are vaccinated.

7 In that case, the Interior Department ignored overwhelming public support for a ban on off-road vehicles and the EPA's findings that air pollution from snowmobiles poses a health risk to park visitors, employees, and wildlife.

8 In January 2003, the Bush administration approved a 780-megawatt coal-fired power plant on federal land outside Billings, Montana. In green-lighting the proposal, Craig Manson, assistant secretary of the Interior Department for fish, wildlife, and parks, reversed the determination of National Park Service experts that the plant would adversely impact air quality and visibility in Yellowstone Park, which is 112 miles downwind. Without bothering to notify Park Service staff about the turnaround, Manson told Montana environmental officials that weather, not pollution, was to blame for the park's visibility problems. (Source: Brian Stempeck, "Interior reverses stance, greenlights power plant near Yellowstone," *Greenwire*, January 16, 2003.)

9 "Group names 10 most endangered parks," *Associated Press*, January 14, 2004.

10 Julie Cart, "Bush team allows wider use of machines despite Park Service analysis of environmental threat," *Los Angeles Times*, January 31, 2003.

11 Brodie Farquhar, "Wyoming answers call of wild," *Casper Star-Tribune*, June 5, 2003.

12 Notice of Availability of a Record of Decision (ROD) on the Final Supplemental Environmental Impact Statement for the Winter Use Plans for Yellowstone and

Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway, 68 Federal Register 16548, April 4, 2003.

13 Becky Bohrer, "Park Service issues decision for snowmobiles," *Associated Press*, March 25, 2003.

14 "EPA raises concerns over snowmobile plan," *Associated Press*, June 21, 2003.

15 The agency said it will eventually require quieter, less polluting "four-stroke" engine models, but for the time being 1,100 snowmobiles per day will be permitted in both Yellowstone and Grand Teton national parks. Starting in 2005 all snowmobiles entering Yellowstone will have to meet a 70 percent reduction in carbon monoxide emissions from the EPA's 2002 baseline. However, park officials acknowledge that enforcing those air quality standards will be challenging. (Source: "Park Service issues decision for snowmobiles," *Associated Press*, March 24, 2003.)

16 The judge's ruling limited snowmobile access to 490 per day in Yellowstone this winter, and 50 per day in Grand Teton. No snowmobiles would be allowed next year in either park.

17 Dan Berman, "Yellowstone increases number of snowmobiles for remaining winter season," *Greenwire*, February 13, 2004.

18 Kevin Taylor, "Protection of caribou on agenda," *The Spokesman-Review*, October 15, 2003.

19 Jim Mann, "Forest allows controversial bridge," *Daily Inter Lake*, December 22, 2003.

20 Theo Stein, "Canyon water going to cities," *Denver Post*, April 3, 2003.

21 Chris Guy, "Personal watercraft OK'd in 2 park areas," *Baltimore Sun*, May 31, 2003, Final Environmental Impact Statement, Personal Watercraft Rule-Making, Glen Canyon National Recreation Area, Arizona and Utah, 68 Federal Register 26645, May 16, 2003.

22 Ibid.

23 "Drilling of 8th gas well on Padre Island approved," *Associated Press*, February 27, 2004.

24 Kenneth R. Weiss, "National Seashore washing out with Bush administration," *Los Angeles Times*, August 20, 2002.

25 Conveyances, Disclaimers, and Correction Document, 68 Federal Register 494, January 6, 2003.

26 Miguel Llanos, "Land rule change fuels roads battle," *MSNBC.com*, August 16, 2003.

27 Ibid.

28 Julie Cart, "70% of jobs in Park Service marked ripe for privatizing," *Los Angeles Times*, January 26, 2003.

29 When he campaigned for president in 2000, George W. Bush promised to fix the system's estimated \$4.9 billion maintenance backlog. According to NRDC, over the past three fiscal years President Bush has paid lip service to bolstering national parks, adding only about \$363 million in new funding to the agency's budget; much of that funding shifted over from other crucial environmental protection programs.

30 Judd Slivka, "Parks at risk: National treasures threatened by lack of money and heavy use by visitors," *Arizona Republic*, May 18, 2003.

31 Julie Cart, "Service outsourcing may hurt diversity," *Los Angeles Times*, April 19, 2003.

32 In the wake of the terrorist attacks of September 11, 2001, park visitation lagged or fell, pumping less money into the system. The stagnating economy also kept visitation down, contributing to an overall reduction in park staff. Compounding the staffing shortage was the need to assign personnel to the homeland security detail every time the nation goes on a "Code Orange" terror threat alert. The cash-strapped agency had to spend as much as \$2 million per month last year to pay for stepped-up security at parks across the country. (Source: Slivka, "Parks at risk," *Arizona Republic*, May 18, 2003.)

33 Guy Gugliotta, "Archaeologists on the block?" *Washington Post*, July 15, 2003.

34 Blaine Harden, "National Park Service backs off shifting repair funds," *Washington Post*, July 25, 2003.

35 Joel Connelly, "Bush seems intent on clearcutting park funding," *Seattle Post*, March 22, 2004.

Chapter 12

1 Lisa Leff, "Primate expert calls Bush's environmental record terrifying," *San Francisco Chronicle*, October 13, 2003.

2 After receiving thousands of public comments urging the withdrawal of the international wildlife trading proposal last fall, the Fish and Wildlife Service—claiming citizens were "confused" about the impacts of the rule—instead opted to reopen the comment period. More than 350 scientists, conservationists, and wildlife advocates, including E.O. Wilson and Animal Planet-TV host Jeff Corwin, have already submitted comments opposing the plan. (Source: Natalie M. Henry, "Proposed rule would ease importation of endangered species," *Greenwire*, March 9, 2004.)

3 The Fish and Wildlife Service estimated that it needs \$20 million per year for the next six years to clear the backlogs—roughly double the annual funding received for critical habitat designations from the Bush administration. (Source: Seth Borenstein, "Citing money issues, Department asks for delay in creating critical habitats," *Knight-Ridder*, May 29, 2003.)

4 Elizabeth Shogren, "Bush weighs endangered species delay," *Los Angeles Times*, April 19, 2003.

5 In October a federal judge dismissed the Interior Department's claim that it lacked enough funding to implement the Endangered Species Act, ordering the agency to designate critical habitat for the threatened Mexican spotted owl. The judge reinforced his decision by citing an earlier ruling that found the government "may not evade the laws simply by failing to appropriate enough funds to enforce it." (Source: Arthur H. Rotstein, "Judge: No more delay on designating critical owl habitat," Associated Press, October 14, 2003.) A 1993 lawsuit prompted former Interior Secretary Bruce Babbitt to designate 4.6 million acres of critical habitat for the owl, which the Clinton administration later increased to 13.4 million acres. The Bush administration, which assumed responsibility for implementing that decision, deleted 8.9 million of those acres, all including 11 national forests in Arizona and New Mexico where the remaining few owls are primarily found. Interior Secretary Gale Norton then balked at designating any habitat for the owl until Congress appropriates more funds to the agency's depleted habitat protection budget.

6 Seth Borenstein, "Citing money issues, department asks for delay in creating critical habitats," *Knight-Ridder*, May 29, 2003.

7 Robert Gehrke, "Bush touts \$26 million in private conservation grants," Associated Press, February 25, 2004.

8 The Bush administration vehemently opposes ESA critical habitat designations, even though the Fish and Wildlife Service quietly submitted two reports to Congress showing that species that have critical habitat are twice as likely to improve as are species without it. The latest findings mirror two other agency reports since 1997, which also concluded that critical habitat significantly enhances endangered species recovery. All of the reports confirm what Congress declared in 1976: that "if the protection of endangered and threatened species depends in large measure on the preservation of the species' habitat, then the ultimate effectiveness of the Endangered Species Act will depend on the designation of critical habitat." Yet the Bush administration has successfully lobbied Congress to exempt the military from protecting critical habitat and has refused to budget enough funds to carry out court orders to safeguard critical habitat.

9 Joint Counterpart Endangered Species Act Section 7 Consultation Regulations, 69 Federal Register 4465, January 30, 2004.

10 Corey Reiss, "EPA seeks changes in pesticide rules," *Sarasota Herald-Tribune*, February 9, 2003.

11 John Heilprin, "White House wants to ease pesticide reviews," Associated Press, January 27, 2004.

12 A draft proposal from the Fish and Wildlife Service to revoke ESA protections for grizzly bears is expected as early as 2005.

13 Nicholas K. Geranios, "Naturalists want grizzly bears left on protected list," Associated Press, January 5, 2003.

14 Scott McMillion, "Forest plans look toward grizzly delisting," *Bozeman Daily Chronicle*, July 26, 2003.

15 Forest Plan Amendments for Grizzly Bear Habitat Conservation for the Greater Yellowstone Area National Forests, 68 Federal Register 41999, July 16, 2003.

16 NRDC and other environmentalists warn that delisting grizzly bears would open the way for oil and gas drilling, logging, and other projects in national forests bordering Yellowstone. Such development would infringe on the grizzly's habitat and mobility, genetically isolating the Yellowstone population from other bears in the Northern Rocky Mountains. Opening up grizzly habitat in the Yellowstone ecosystem, and thereby preventing the park's bears from traveling and mixing with grizzlies elsewhere, would seriously undermine the efforts of environmental groups to establish corridors of habitat between Yellowstone and Glacier National Park (and all the way to Canada). There is also a safety factor to consider, say environmentalists, both for bears and humans: By the government's own admission, humans are the leading cause of grizzly fatalities in and near Yellowstone. (Source: Nicholas K. Geranios, "Naturalists want grizzly bears left on protected list," Associated Press, January 5, 2003.)

17 Sherry Devlin, "Rock creek mine approval expected," *Missoulian*, May 15, 2003.

18 Endangered and Threatened Wildlife and Plants; Final Rule To Reclassify and Remove the Gray Wolf from the List of Endangered and Threatened Wildlife in Portions of the Conterminous United States; Establishment of Two Special Regulations for Threatened Gray Wolves, 68 Federal Register 15803, April 1, 2003.

19 Rocky Barker, "Feds may make it easier to kill wolves," *Idaho Statesman*, March 3, 2004.

20 Sherry Devlin, "Feds to propose delisting gray wolf," *Missoulian*, April 18, 2003.

21 Nick Gevock, "Federal officials to eradicate two Madison Valley wolf packs," *Bozeman Chronicle*, March 10, 2004.

22 "Ban on poisoning prairie dogs lifted in 5 national grasslands," Associated Press, February 15, 2004.

- 23 The American Fisheries Society also blamed the massive fish kill on low water levels caused by the administration's policies. (See www.fisheries.org.)
- 24 Dan Vergano, "Hook, line, and sinker," *USA Today*, April 22, 2003.
- 25 Joe Rojas-Burke, "Ruling rejects Klamath water plan," *Oregonian*, July 18, 2003.
- 26 In the summer of 2002, federal wildlife officials refused to let the Corps of Engineers move nests (along with the chicks) of the endangered least tern and threatened piping plover. This prevented the Corps from releasing water from upstream reservoirs to aid navigation because the birds would be drowned—putting the agency in violation of the ESA. But the Fish and Wildlife Service later reversed course, signing off on the Corps' proposal to steadily release water last April. Afterward, water levels were to be maintained through steady releases if drought conditions persist. That would allow the Corps to move the birds and nests to higher ground. Because not all of the birds were expected to survive, wildlife officials agreed to an "incidental take" of up to 121 birds. (Source: Bill Lambrecht, "Army Corps plan saves Missouri River barges, imperils protected birds," *St. Louis Post-Dispatch*, April 23, 2003.)
- 27 According to the Corps of Engineers, the judge's order upholding the ESA conflicts with a previous federal court ruling that enough water must be maintained in the river to enable barge navigation. In that case, a federal judge in Nebraska ordered the agency to preserve higher water levels in the lower reaches of the river—through Nebraska, Iowa, Kansas, and Missouri—primarily to sustain barge traffic. However, that case did not deal with the question of endangered species.
- 28 In addition to refusing to comply with the judge's order, the Corps of Engineers said it will not adopt the Fish and Wildlife Service's recommendations, put forth in a 2000 biological opinion, for river management changes that are necessary to ensure the survival of the imperiled least tern and pallid sturgeon. Among those recommendations, the service said that natural conditions—including a spring rise and low summer flows—are needed to create wild-life habitat.
- 29 "Corps of Engineers refuses to drop Missouri River levels despite judge's order," *Associated Press*, July 16, 2003.
- 30 Contending that the Corps of Engineers is ignoring clear scientific evidence and opportunities to boost local economies, in late October conservation groups pronounced the Corps' 2004 Annual Operating Plan for the Missouri River's big dams "dead on arrival." Scientific and public consensus points to flow restoration as a critical component to restoring the health of the Missouri River that would also boost the surrounding regions' economies. The National Academy of Sciences concluded that Missouri River dam reforms would enhance valuable fishery resources, leading to marked increases in user days for fishing and hunting, activities that currently generate nearly \$90 million a year. The public voiced its support for restoring natural flows in 99 percent of the comments submitted during a public comment period on dam operations. Despite clear scientific evidence and overwhelming public support for restoring the river, environmentalists say that the Corps' operating plan ignores the low-flow period and fails to present evidence that high summer flows are good for fish and wildlife. Instead, its plan focuses on maintaining flows at current levels in order to support commercial navigation. Moreover, environmentalists accuse the Corps of attempting to strong-arm the Fish and Wildlife Service into agreeing that current operations are good for native fish and wildlife, a position in direct conflict with the agency's long-standing conclusions that current dam operations are the principal contributor to the Missouri River's poor health. (*Associated Press*, July 16, 2003.)
- 31 Although the new scientists did not call for a change as drastic as that suggested by the previous scientific panel, their report did note that the pallid sturgeon had experienced a 98 percent habitat loss. To address this problem, the scientists recommended that the Corps of Engineers create shallow spawning grounds for the sturgeon by lowering flows from the Gavins Point Dam to allow a spring rise in water levels corresponding to natural periods of snowmelt. (Source: Libby Quaid, "Government scientists affirm need for low flows on Missouri River," *Grand Forks Herald*, December 18, 2003.)
- 32 In February 2003, Save Our Wild Salmon Coalition, a national group composed of regional environmental organizations, issued a report criticizing the administration for not implementing the government's salmon recovery plan. (Report available at www.wildsalmon.org.)
- 33 Save Our Wild Salmon Coalition: www.wildsalmon.org
- 34 Water Quality Standards for Oregon, 68 Federal Register 58757, October 10, 2003.
- 35 Natalie Henry, "EPA paves way for federal agencies to skirt temperature standards," *Greenwire*, October 14, 2003.
- 36 Notice of Availability (NOA) of Final Supplemental Environmental Impact Statement (FSEIS) for the Clarification of Language in the 1994 Record of Decision for the Northwest Forest Plan; National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl (Proposal To Amend Wording About the Aquatic Conservation Strategy); Western Oregon and Washington, and Northwestern California, 68 Federal Register 62050, October 31, 2003.
- 37 Natalie M. Henry, "Change to Northwest plan eases rules on logging near waterways," *Greenwire*, November 3, 2003.
- 38 To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines, 69 Federal Register 3316, January 23, 2004.
- 39 Scott Maben, "Industry cheers halt to surveys of wildlife," *Register-Guard* (Eugene, OR), January 24, 2004.
- 40 Michael Milstein, "Bush commits to increased timber cutting," *Oregonian*, August 9, 2003.
- 41 Joe Rojas-Burke, "Private firms hired to review protection of two species," *Oregonian*, September 30, 2003.
- 42 Notice of Availability of a Final Environmental Impact Statement and Associated Amendment to the California Desert Conservation Area Plan and Final Recreation Area Management Plan for the Imperial Sand Dunes Recreation Area, 68 Federal Register 32544, May 30, 2003.
- 43 Jennifer Bowles, "Sand dunes may open again to riders," *Riverside Press Enterprise*, April 10, 2003.
- 44 Sandra Chereb, "BLM seeks voluntary off-road rules for Sand Mountain," *Las Vegas Sun* (Associated Press), July 22, 2003.
- 45 The Pentagon asked Congress to approve its Readiness and Range Preservation Initiative, granting the military sweeping exemptions from the Clean Air Act, Resource Conservation and Recovery Act, Superfund cleanup law, Marine Mammal Protection Act, and Endangered Species Act.
- 46 On the heels of the Pentagon's effort to convince Congress to grant the Defense Department sweeping exemptions from the nation's environmental and public health laws, the Pentagon's number two official ordered the chiefs of the Army, Navy, and Air Force to provide examples to justify possible exemptions by President Bush in the name of national security. The secret memo, written by Deputy Defense Secretary Paul Wolfowitz—and leaked by an environmental group—argues the Bush administration's position that antipollution and wildlife protections threaten military training and readiness. Environmentalists strongly oppose broad exemptions for the military. Although the statutes under fire already allow the president or secretary of defense to grant waivers for national security reasons, the military has yet to provide evidence that environmental laws impede readiness. Nor has the military ever requested that those provisions be invoked. (Source: John Heilprin, "Pentagon considers environment exemptions," *Associated Press*, March 20, 2003.)
- 47 "Activists slam proposed environmental exemptions for military," *National Journal's Congress Daily*, March 6, 2003.
- 48 "Pentagon cites pending litigation as force for law changes," *Environment & Energy Daily*, March 14, 2003.
- 49 Andrew Bridges, "Whitman: EPA 'comfortable' with military environmental exceptions," *Associated Press*, March 26, 2003.

Chapter 13

- 1 Suzanne Struglinski, "Energy department wants to withhold nuke cleanup funds," *Las Vegas Sun*, February 25, 2004.
- 2 EPA Publication of Advance Notice of Proposed Rulemaking Regarding the Disposal of Low-Activity Radioactive Waste: Request Comment, 68 Federal Register 64993, November 18, 2003.
- 3 Eric Pianin, "Radioactive waste plan attacked," *Washington Post*, November 18, 2003.
- 4 Chronic Beryllium Disease Prevention Programs; Worker Safety and Health, 68 Federal Register 68276, December 8, 2003.
- 5 Nancy Zuckerbrod, "Federal safety rules at nuclear facilities may end," *Seattle Times*, January 29, 2004.
- 6 These records revealed, for example, that before the war with Iraq, Pentagon planners drew up contingency plans for a nuclear strike against that country and warned Saddam Hussein that any use of chemical or biological weapons by his army would result in a devastating response by the United States.
- 7 That arsenal was developed and deployed in the 1970s and 1980s, largely to deter the former Soviet Union and to carry out the nuclear war plan known as the Single Integrated Operational Plan (SIOP).
- 8 According to NRDC, this initiative is the first step toward resuming testing and designing a new generation of nuclear weapons if President Bush wins a second term.
- 9 Included in President Bush's budget request for the Energy Department last year was funding to explore designs of new or modified "earth penetrator" nuclear weapons, so-called bunker buster bombs, to attack hard and deeply buried targets.
- 10 Jeff Nesmith, "U.S. wants 'agile' nuclear weapons," *Cox News Service*, June 2, 2003.
- 11 According to NRDC, the Energy Department is sponsoring these potentially dangerous research programs in several countries. In South Korea, for example, the agency is promoting research on reprocessing and plutonium chemistry and metallurgy research,

while at the same time the United States is trying to curb reprocessing and nuclear weapons development next door in North Korea. The agency's programs also are fostering alternative routes to nuclear weapon-usable materials in Argentina and Brazil, two non-weapon states that formerly had clandestine nuclear weapons programs and now have only five nuclear power reactors between them.