

# Six Bush Administration Conservation & Wildlife Policies

The National Wildlife Federation survey asked hunters and anglers if they favor or oppose six specific Bush Administration conservation and wildlife policies - Question 32 through 37 in the national survey.

This document provides background and contextual information about those policies.



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## Mercury

*Among the harmful, and possibly permanent, health affects associated with mercury exposure are delays in walking, talking, and developing fine motor skills, attention deficit, poor memory, and inability to process and recall information.*

Coal-fired power plants are the largest unregulated source of mercury falling into the nation's waterways, contributing 42 percent of all U.S. mercury emissions. Each year they spew about 48 tons of mercury into the air. Once released from smokestacks, mercury falls to the earth and accumulates in the tissues of people and wildlife. In 2002, health departments in 43 states issued advisories warning the public to limit or avoid entirely their consumption of locally-caught fish due to mercury, potentially threatening public health.

The Environmental Protection Agency's (EPA) proposed mercury rule reverses course on what has been an aggressive 10 year program to reduce mercury and other toxic emissions from industrial sources. Rather than requiring coal-fired power plants to install technology to get "maximum achievable" reductions as the Clean Air Act requires for toxic pollutants, the EPA proposes to use a different provision of the Act that was never intended for regulating air toxics. This section allows the administration to arbitrarily decide how stringent, or in this case, how lenient the clean up requirements should be. Compared to a requirement for maximum achievable reductions in mercury emissions, the administration's proposal dramatically weakens health protections, and would result in at least five times more mercury pollution by the end of the decade.

### Industry influence

When EPA released its proposed rule, it did more than simply take into account the suggestions of the power industry - it went so far as to copy text into the proposal verbatim from industry memos. At least a dozen paragraphs were lifted, sometimes word for word, from two memos distributed by Latham &



Watkins, a law firm representing the power industry's interests. As it happens, EPA's Office of Air and Radiation that developed the proposed rule is headed by Jeffrey Holmstead, who used to work for Latham & Watkins.

### Mercury is toxic

Mercury poisoning can permanently harm an unborn baby or young child. Mercury in pregnant women can disrupt brain development in their babies. Among the harmful, and possibly permanent, health affects associated with mercury exposure are delays in walking, talking, and developing fine motor skills, attention deficit, poor memory, and inability to process and recall information. Very high exposures to mercury can cause mental retardation. Research shows the level of mercury in the umbilical cord is 1.7 times higher on average than that in the mother's overall blood.

Mercury poisoning affects adults, too. A study of middle aged men published in 2002 in the New England Journal of Medicine found that mercury exposure may diminish the cardiovascular benefits of eating fish. Another recent study showed links between high blood mercury levels and infertility in both men and women.

One in six women of childbearing age has blood mercury levels exceeding what EPA considers safe for fetuses. EPA recently updated its analysis of mercury exposure for women of childbearing age (16 - 49), finding that as many as 630,000 babies born each year are at risk of mercury-related learning and developmental problems. The figure doubles earlier estimates.

Thousands of children each year may suffer from learning disabilities because of mercury. A National Academy of Sciences study in 2000 said that as many as 60,000 babies may be born in the United States each year with neurological problems that could lead to poor school performance because of exposure to methylmercury in utero.

### **The technology is available**

Many existing technologies already control for mercury, and others are under development and will soon be readily available. EPA tests show that many technologies that capture other pollutants also capture mercury. Northeast States for Coordinated Air Use Management, which represents Northeast state air pollution officials, reported in November 2003 that existing technologies can reduce mercury air emissions from coal-fired power plants nationwide by 90 percent. Depending on the type of coal being burned, certain scrubbers installed to capture sulfur dioxide, nitrogen oxide and other pollutants already capture 90 percent of the mercury emissions. When combined with new mercury clean-up technologies, plants could reduce mercury by more than 90 percent.

States are taking stronger action than EPA and requiring 90 percent or more reductions. Currently, 14 states are considering or implementing mercury reduction regulations on power plants. In 2003, Connecticut approved new rules

requiring a 90-percent reduction in power plant mercury emissions by 2008. New Jersey is poised to approve a similar regulation. In 2004, Massachusetts finalized a rule requiring operators of the state's four power plants to install equipment to capture 85 percent of their mercury emissions by 2008 and 95 percent by 2012. To date this is the strongest power plant rule in the country.



Yet EPA continues to claim the technology is not available to cut mercury emissions by up to 90 percent.

### **The administration's proposal delays mercury clean-up**

The Clean Air Act does not allow for trading toxics. When Congress revised the

Clean Air Act in 1990, it specifically called for "maximum achievable" clean-up of major sources of toxic air pollution, including mercury. The Bush administration proposal ignores the intentions of Congress. Instead, the administration's cap-and-trade approach allows dirty plants to pay for the right to keep polluting. Market based incentives, like emissions trading, can be useful tools for achieving overall reductions of some pollutants, such as carbon dioxide and other greenhouse gases. But emissions trading makes no sense for toxics like mercury.

Emissions trading will not protect people and wildlife that live near the source. Under a cap-and-trade proposal, some power plants will clean up their act, but others will continue to pollute, and could even increase the amount mercury they release. People and wildlife living near these polluters will have no protection.

Reducing mercury emissions at the source will lower mercury levels in fish. If every power plant in America were subject to a MACT standard (maximum achievable control technology), we'd soon see a dramatic improvement in mercury levels in fish downstream of the source. Recent studies in Florida, New Hampshire and Wisconsin prove there is a direct correlation between reducing mercury at the source and the reduction in mercury in nearby fish and wildlife.

## **The Clean Water Act & Wetlands**

*The administration has left in place a guidance that potentially allows for removing protection for up to 20 million acres of wetlands in the lower 48 states and untold numbers of streams and other waters.*

The Clean Water Act (CWA) seeks to broadly protect the nation's waters from pollution, destruction and degradation. From the Act's passage in 1972 until 2001, there was little doubt that the CWA protected virtually all surface waters. However, a narrow 2001 Supreme Court ruling has led to a firestorm over the scope of the Act's coverage. In ruling on *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (referred to as SWANCC), the Court found that an abandoned sand and gravel pit in Illinois, only connected to other waters by virtue of its use by migratory birds, was not covered under the Act.

Despite the narrowness of the SWANCC ruling, certain interest groups argued that Clean Water Act protection no longer

applies to many types of waters, such as non-navigable, intermittent streams and ditches, wetlands neighboring such streams, and other so-called "isolated" waters. These groups lobbied the administration to roll back many of the Act's long-standing protections. In January 2003, the administration responded with an Advanced Notice of Proposed Rulemaking that announced the government's intention to propose a change to the regulatory definition of "navigable waters" regulated under the Clean Water Act. However, the rule making was abandoned after public outcry from states and concerned citizens, including hunters and anglers who did not want to see Clean Water Act protections lost for many waters.

### **The guidance memorandum**

However, despite abandoning the rulemaking, the administration has left in place a guidance memorandum it had issued with the advanced notice in January. That guidance advises federal agencies to interpret the SWANCC decision far more broadly than the ruling demands, potentially removing protection for up to 20 million acres of wetlands in the lower 48 states and untold numbers of streams and other waters.

On Earth Day, April 22, 2004, President Bush announced that he would work to attain the goal of "no-net-loss" of wetlands and move towards a goal of net gain. Because the guidance memorandum

continues to be enforced and due to a variety of other administration policies, such a goal is largely rhetorical.

For example, the administration does not have a policy in place to account for, or even adequately document, the millions of acres of wetlands and streams that may be lost due to the guidance. Moreover, there is no indication that "net gain" means anything more than allowing low functioning manmade wetlands to replace countless acres of highly functioning natural wetlands so valued by hunters - many of which the administration has put at risk because of its existing policy. As such, without a change in policy, valuable wetland areas will be lost.



### Impacts of the administration's Clean Water Act guidance policy

Policy changes in Washington often result in unknown or hard to track changes in the field. Many forget that a shift in policy can have enormous real-world effects. The National Wildlife Federation has been gathering information on how the Bush Administration's changes to the Clean Water Act are being applied on the ground. What we have found thus far has been expansive and disturbing.

### Southwest

So-called "isolated" basins exist throughout the Southwest. These basins comprise valleys surrounded on all sides by higher ground. Since the region is so dry, water only escapes these basins via the groundwater table and evaporation. The New Mexico Department of Game and Fish has determined that 20 percent of New Mexico could be considered within one of these "isolated" basins, including 84 miles of perennial and 3,900 miles of

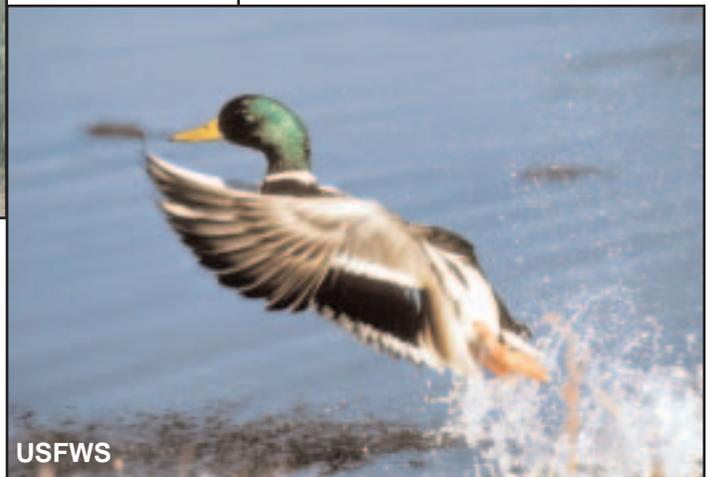
intermittent streams and rivers. Due to the administration's policy guidance, these basins have lost Clean Water Act protections and are subject to unlimited pollution and destruction.

For example, the Tularosa Basin, located in south-central New Mexico and stretching into Texas, averages 60 miles in width and is approximately 150 miles long. Within it lies the Sacramento River and Tularosa Creek, the two major waterways of the region. In 2002, a project was proposed to realign Forest Highway 45 that would cross several ephemeral drainages and four crossings of the Sacramento River. The Federal Highway Administration applied for several permits for the road construction but was told that none were required, as the Sacramento River and all of its tributaries are located within a "closed basin" and, therefore non-jurisdictional.

For example, Wisconsin's Gurno Lake is 86 acres in size and 27 feet deep. This lake supports bluegill, largemouth bass, muskie, northern pike and walleye and has public access from two surrounding roads. Despite the inherent value of this natural resource, its large size, and the recreational opportunities it offers, it has been determined that any future projects in Gurno Lake will no longer require a Clean Water Act permit.

### The Plains states

In the Great Plains, wetlands such as prairie potholes provide irreplaceable breeding and other habitat for waterfowl and a variety of wildlife. Most formerly-natural water conveyances have since been altered by humans for irrigation and flood control purposes. These ditches often criss-cross the landscape the way streams and rivers once did. Moreover, destruction, draining and degradation of wetlands and prairie potholes in the Great Plains have created flooding problems of their own, as water is no longer retained in upland wetlands, but rather flows to lower areas more quickly. Under the



### The Great Lakes region

In the Great Lakes region, entire lakes and huge wetlands complexes that lack a clear surface connection to other waters have lost Clean Water Act protections under the administration's guidance policy. These include lakes with obvious hydrological connections to other waters via the groundwater table, as well as lakes with clear recreational opportunities, such as fishing, boating, or wildlife watching.

The St. Paul District of the Army Corps of Engineers, which issues dredge-and-fill permits under the Clean Water Act for all of Wisconsin and Minnesota, has broadly interpreted the administration's Clean Water Act policy guidance. National Wildlife Federation research shows that 15 large lakes have lost Clean Water Act protections, not to mention countless acres of wetlands, streams, and other waters

administration's policy guidance, Clean Water Act protection may no longer apply to these upland wetlands, prairie potholes and ditches despite the fact that they now supply this region with a substantial amount of its water, provide habitat for wildlife and ensure lowland areas aren't flooded. Discharge of fill or pollutants into these wetlands, prairie potholes, and ditches often times no longer require a permit.

For example, the State of North Dakota wants to build an outlet to Devil's Lake to drain the Lake into an adjacent river basin to account for raising lake levels that have submerged nearby areas in recent years. The cause of the Lake's raise is mostly due wetland destruction in the area.

Draining the Lake will likely pollute a neighboring river basin, which has cleaner water than the Lake and an ecosystem that cannot handle the increased flow from the outlet. In building the pipes and canals constituting the outlet, the State wants to bisect several wetland areas - perhaps as many as 20 - that have clear ditch and small stream connections to navigable waters. In addition to destroying habitat for the wildlife relying on these wetlands, the project will have the perverse effect of further destroying wetlands that help control flooding. The Corps has not required permits to be issued for this destructive, polluting project.

## Florida

In Hamilton County, Florida, a phosphate mining company applied for a permit to mine over 18,000 acres in the Suwannee River watershed. The Jacksonville District of the Army Corps of Engineers granted permission to fill in 1,671 acres of wetlands on this land. However, using the guidance policy, the Corps determined that Clean Water Act protections did not cover an additional 4,000 acres of existing wetlands on the site.

All of the wetlands in the Suwannee River watershed play critical roles in maintaining the water quality and hydrology of the river, a major navigational and recreational

waterway. Additionally, destruction of these 4,000 acres would adversely affect several species of imperiled wildlife, including the wood stork, red-cockaded woodpecker, bald eagle, eastern indigo snake, Gulf sturgeon, Flatwoods salamander, and gray bat.

In the Final Environmental Impact Statement, the Corps argued that the excavated pits created to hold the waste from the mining operations will be ecologically equivalent to the original wetlands, going so far as to say that there will be a net ecological benefit to the area from the construction of the mine and the loss of over 5,600 acres of wetlands.

# Forest Legacy Program

*FLP offers the opportunity for the federal government to work in partnership with states, local communities and private landowners to ensure that the multiple benefits found on forest lands - economic sustainability, wildlife habitat protection, and recreational opportunities - are secured for future generations.*

Authorized by Congress in 1990, the Forest Legacy Program helps preserve working forestlands and protect critical habitat and wildlife resources. Development of the nation's forested areas poses an increasing threat to maintaining the integrity of the country's valuable forest lands. Intact forest lands supply timber products, wildlife habitat, soil and watershed protection, aesthetics, and recreational opportunities. However, as these areas are fragmented and disappear, so do the benefits they provide. While local governments commonly guide development away from the most sensitive areas through traditional land use controls (like zoning and performance standards), sometimes these measures are not sufficient to fully protect the forested component of our natural resource base.

The Forest Legacy Program (FLP), a federal program in partnership with states, supports state efforts to protect environmentally sensitive forest lands. Designed to encourage the protection of privately owned forest lands, FLP is an entirely voluntary program. To maximize the public benefits it achieves, the program focuses on the acquisition of partial interests in privately owned forest lands. FLP helps the states develop and carry out their forest conservation plans. It encourages and supports acquisition of conservation easements, legally binding agreements transferring a negotiated set

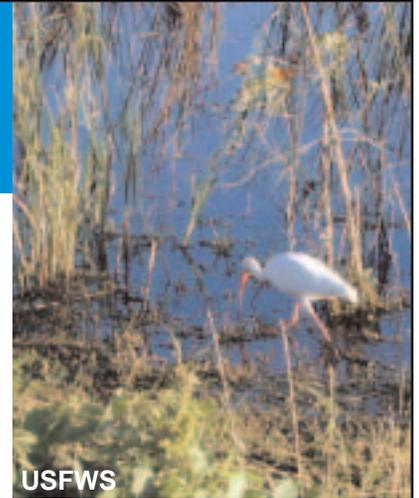


of property rights from one party to another, without removing the property from private ownership. Most FLP conservation easements restrict development, require sustainable forestry practices, and protect other values.

The Forest Legacy Program offers the opportunity for the federal government to work in partnership with states, local communities and private landowners to ensure that the multiple benefits found on forest lands - economic sustainability, wildlife habitat protection, and recreational

opportunities - are secured for future generations. Since its inception, the program has proven extremely popular but unable to meet the demand across the nation. In recent years states submitted funding requests totaling over \$300 million in Forest Legacy funding, yet less than a third was appropriated. In addition, several other states are in the process of enrolling in the program in the near future, increasing the demand for funding. President Bush has requested \$100 million for FY 05 this program, a significant increase over past years.

# Restoration of the Florida Everglades



The Everglades is one of America's greatest but most imperiled natural treasures, home to a vast community of wildlife, and a critical water resource for Florida. Once a healthy eight million-acre "river of grass," the Everglades has been reduced to half its original size by agriculture, urban sprawl and unwise water management.

In 2000, Congress passed legislation creating the 30+ year, \$8 billion Comprehensive Everglades Restoration Plan (CERP), the largest environmental restoration project ever undertaken in the United States to restore the eastern side of the Everglades. Although Congress put in place a broad outline of restoration on paper, the challenge has been to keep the project on track through approval of projects that are the next in line, provide a detailed roadmap to ensure restoration, and provide sufficient funding.

Since the early stages of CERP, the Bush Administration has been responsible for ensuring that implementation of the Everglades restoration plan is successful. In these tight fiscal times, funding for the \$8 billion plan is a continuing challenge. And the administration continues to address this challenge by placing a priority on restoration, elevating the issue in general, and providing needed funding in its budget. Unfortunately, however, it has also failed to issue strong regulations that are needed to provide a clear roadmap to restoration. As CERP implementation continues, the administration will have several more opportunities to ensure not only that the restoration plan stays on track through adequate funding; but that there will be strong "checkpoints" to ensure restoration is a success.

## Oil & Gas Drilling on Public Lands

*The administration continues to call for oil drilling in areas with extraordinary wildlife values such as New Mexico's Otero Mesa, Montana's Rocky Mountain Front and Wyoming's Red Desert.*

In May 2001 the Bush Administration released its National Energy Policy, which was the culmination of work done by a task force headed by Vice President Dick Cheney. While the documents related to Vice President Cheney's Energy Task Force remain secret pending ongoing litigation, it has been widely reported that its meetings were dominated by energy industry executives with little input from other stakeholders including scientists, conservation groups, hunters and anglers.

### Energy legislation supported by the White House

Congress subsequently took up energy policy legislation, passing measures in both the House and Senate. A final conference report, reached in the 108th Congress has thus far been rejected by the Senate. That legislation, repeatedly endorsed by the White House, weakens environmental safeguards and essentially establishes oil and gas development as a

dominant use of public lands not in conservation reserves. The bill includes a mandate to review "restrictions and impediments" to the development of federal oil and gas deposits, targeting everything from lease sale stipulations that protect wildlife to our National Monuments and National Wildlife Refuges. The bill also limits public involvement and environmental reviews by requiring that applications for drilling permits be processed within 30 days.

The energy bill also mandates that National Environmental Policy Act study expenses be paid by the U.S. taxpayers, rather than by industry as has been the practice.

### Clean Water Act and Safe Drinking Water Act exemptions

The administration-backed bill also would exempt the construction of pipelines, roads and other infrastructure necessary for oil and gas development on public lands from portions of the Clean Water Act. Runoff from this construction could end up in the streams and rivers important to hunters and anglers.



Peter Aengst

Example of gas drilling on the Upper Green River Basin in Wyoming

The bill would exempt a practice known as "hydraulic fracturing" from the Safe Drinking Water Act. With this provision, tar, diesel and other drilling by-products could make their way into groundwater.

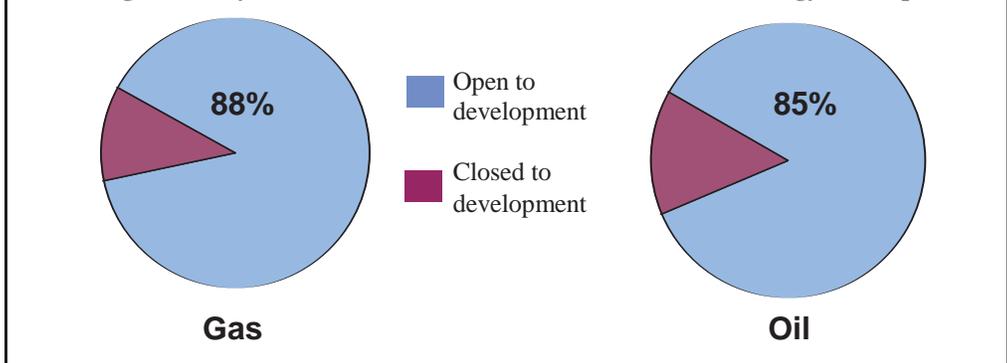
The bill would require the U.S. Geological Survey to identify various "restrictions and impediments" to the development of federal oil and gas deposits. These "restrictions and impediments" include things like seasonal development stipulations that protect wintering herds of elk, mule deer, bighorn sheep, and pronghorn. These protections are the product of hard-fought compromises between sportsmen and the oil and gas industry.

Neither the administration's energy plan nor the congressional legislation it supports includes a requirement that the nation's cars go farther on a gallon of gas, that electric utilities produce a certain percentage of their power from renewable sources such as solar and wind or that corporations reduce or even disclose their greenhouse gas emissions.

### Directive to accelerate drilling on public lands

Meanwhile, the administration continues to call for oil drilling in the Arctic National Wildlife Refuge and to aggressively lease or seek to lease other areas with

**Percentage of Rocky Mountain West Public Lands Available for Energy Development**



extraordinary wildlife values such as New Mexico's Otero Mesa, Montana's Rocky Mountain Front and Wyoming's Red Desert.

The administration has issued two Presidential Executive Orders (E.O. 13211 and 13212, May 2001) directing the Bureau of Land Management and other federal agencies to "expedite energy-related projects," "accelerate the completion of energy-related projects," and include a requirement for agencies to prepare a "statement of energy effects" that details how proposed agency actions could adversely affect "energy supply, distribution and use." In response, the BLM has directed field staff to expand access to public lands for energy development and to speed up related environmental reviews of applications for energy development. In some cases, BLM is suspending seasonal closures designed to protect wildlife. The BLM is

also rushing to update several Western land use plans to permit even more leasing and drilling.

These and other actions have led to a dramatic increase in leasing of the nation's federal lands. Between 2000 and 2003, the amount of federal lands under lease for oil and gas development increased from 34.8 to 42.9 million acres - a 20 percent jump.

Despite the Bush Administration's claims that much of the public lands in the Rocky Mountain West are not open to oil and gas development due to environmental restrictions and impediments, the Department of the Interior's own findings demonstrate that 88% of the region's technically recoverable natural gas resources and 85% of the "technically recoverable oil on federal lands is currently available for leasing and development.

# Partners for Fish & Wildlife

The Partners for Fish and Wildlife Program is a proactive, voluntary program of the U.S. Fish and Wildlife Service that provides technical and financial assistance to private landowners to voluntarily restore wetlands and other fish and wildlife habitats on their land. The program emphasizes the reestablishment of native vegetation and ecological communities for the benefit of fish and wildlife in concert with the needs and desires of private landowners.

The Partners program has helped restore

over 677,000 acres of wetlands and 5,560 miles of riparian and in-stream habitat, with a focus on those habitats critical for declining federal trust species. It also provides natural resource management teaching and learning opportunities through its School Yard Habitat and Outdoor Classroom programs.

The Partners for Fish and Wildlife is an entirely voluntary program in which landowners sign an agreement to maintain their projects for a period of time. With a waiting list of private landowners eager to

share in the costs of these projects, and additional contributions by state and local agencies, soil and water conservation districts and private conservation organizations, any additional federal appropriation to this program leverages additional funds that help it yield far reaching benefits

President Bush's \$50 million Partners for Fish and Wildlife budget request for FY 2005 was a \$7 million increase over last year.



### For more information

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