

Federal Legislative Update, Spring 1993

by Annette Barry Feldman

During his presidential campaign, candidate Clinton vowed to provide strong bipartisan environmental leadership. As one of his first acts, President Clinton abolished the Bush administration's Council on Competitiveness. The COC allowed business to circumvent federal environmental regulations, such as the 1990 amendments to the Clean Air Act, without public notice or participation. Clinton also pushed 26 EPA rules through an Office of Management and Budget logjam. Clinton then appointed noted environmentalists to key administration positions. Bruce Babbitt, former Arizona governor and conservation advocate, is Clinton's Interior Secretary. Environmental activists Carol Browner and Kathleen McGinty head the Environmental Protection Agency and the new White House Office of Environmental Policy, respectively.

As another election result, environmental leadership is strong in the 103d Congress. A majority of 123 newly elected members of Congress are more supportive of environmental legislation than their predecessors. Four environmental advocates now chair full committees: Rep. Norman Mineta (D-CA) chairs the Public Works Committee, which hears some water pollution issues. Rep. Gerry Studds (D-MA) chairs the Merchant Marine and Fisheries Committee, which decides water pollution and coastal protection issues. Sen. Max Baucus (D-MT) chairs the Environment Committee, which has jurisdiction over all major environmental protection bills. Sen. Daniel Moynihan (D-NY) chairs the Finance Committee, which hears pollution tax bills.

The Clinton administration has vowed to reconcile environmental and business interests after 12 years of adversarial conflict. In Congress, President

Clinton is reaching out to moderate Republicans, once pressured by the Bush administration to routinely oppose environmental legislation, to join in a new cooperative approach to solving environmental problems. If all goes according to plan, 1993 could mark the beginning of a new era in successful progressive environmental legislation.

On a more somber note, the environmental issues facing the Clinton administration and the 103d Congress are considerable and complex. Six major environmental laws are up for renewal: the 1972 Clean Water Act, the 1974 Drinking Water Act, the 1980 Comprehensive Environmental Response, Compensation and Liability Act (toxic waste dumps), the 1976 Resource Conservation and Recovery Act (solid and hazardous waste), the 1872 Mining Law, and the 1973 Endangered Species Act. Other issues include elevation of the Environmental Protection Agency to Cabinet level, resolution of the ancient forest/spotted owl/timber supply crisis, the fate of the proposed Arctic Coastal Plain Wilderness, the California Desert Protection Act, the Antarctic Environmental Protocol Act, and vehicle fuel economy standards.

Department of the Environment

S. 171: "Department of The Environment Act of 1993", introduced January 21, 1993, by Sen. John Glenn (D-OH), elevates the Environmental Protection Agency to Cabinet level status, renames the EPA the Department of the Environment, creates a Bureau of Environmental Statistics to gather environmental data and publish an annual report on environmental trends, increases the EPA budget by \$23 million to cover EPA's new duties and costs of elevation,

and forms a 2-year advisory commission to monitor department management. H.R. 109, introduced by Rep. Sherwood Boehlert (R-NY) is S. 171's companion bill in the House.

Under S. 171, Carol Browner, EPA's head, would become a Cabinet secretary with full diplomatic powers and increased domestic autonomy. As Department of the Environment, the EPA would have greater influence over budget issues and inter-agency programs. Browner currently attends all Cabinet meetings. Proponents have been working to make the EPA a 15th Cabinet department since 1989. Sen. Glenn presented similar legislation to Congress in 1991 and 1992, but it failed in the face of opposition from the Bush administration. On February 8, 1993, President Clinton and Vice President Gore endorsed S. 171.

On March 24, 1993, the Senate Government Affairs Committee approved amendments to abolish the president's Council on Environmental Quality, eliminate funding for the Bureau of Environmental Statistics, and drop a provision calling for an international meeting on energy efficiency and renewable resources. Most major environmental organizations, including the National Resources Defense Council, the National Audubon Society, the Wilderness Society, and the Sierra Club oppose the amendment abolishing the Council of Environmental Quality. The groups believe that the authority to oversee and coordinate enforcement of environmental policy within the federal government, under the National Environmental Policy Act, should reside in the President, and not the EPA. Environmentalists argue that the CEQ's executive authority is necessary to ensure interagency compliance with NEPA under a potentially hostile future administration. In spite of this disagreement, the environmental community supports elevation of the EPA to Cabinet level status.

S. 171 is the Clinton administration's first major environmental legislative initiative. The bill has strong bipartisan support in both houses of Congress. According to a Senate Democratic aide, S. 171 will likely be "the only significant environmental legislation to make it through Congress this year."

Endangered Species Act

The Endangered Species Act of 1973 (PL93-205) designates plant and animal species as threatened or endangered based on scientific principles, rather than political or economic interests, and protects diminishing species from further harm from industry, developers, and hunters. The 1973 ESA was reauthorized in 1982 (PL 97-304) and 1988 (PL 100-478). It expires in 1993. The House Merchant Marine and Fisheries and Senate Energy committees will handle ESA reauthorization and amendment.

Environmentalists and business interests strongly disagree over the form, if any, the ESA should take in 1993. A coalition of developers, resource industries, industrial polluters, corporate agricultural interests, dubbing themselves the "Wise Use Movement", oppose reauthorization. ESA opponents support amendments that take into account economic as well as scientific factors. The Wise Use Movement suggests a new "non-adaptive species" designation. Species designated as "non-adaptive", including the California Condor and Northern Spotted Owl, will not qualify for ESA protection. Corporate interests also demand open access to all public lands for mining and energy exploitation.

Environmentalists support reauthorization of a strengthened ESA. Environmentalists argue that the 1973 ESA does not adequately protect endangered species because it does not address the underlying problem of ecosystem destruction. Habitat destruction, and subsequent ecosystem collapse, are principal causes of species extinction. All major

conservation groups advocate strong reauthorization language designed to restore habitat, conserve species diversity, and protect ecosystems as well as individual species. Environmentalists want an ESA whose mandates will be upheld without exemption.

Conservationists and big business both criticize the current ESA approach of protecting individual species only after they have become endangered. Environmentalists must rely on "endangered species strategies" to preserve entire ecosystems. Neither conservationists nor developers profit from the adversarial attitudes and costly litigation this strategy promotes.

Interior Secretary Bruce Babbitt, a long-time conservationist, strongly supports reauthorization of a more practicable ESA. At his Senate confirmation hearing in January, Babbitt stated, "The most important thing I can do as interior secretary...is to roll up my sleeves and make the ESA work." Babbitt proposes a plan to restructure the ESA to preserve ecosystems while they are still healthy. In April, Babbitt will ask Congress to fund nationwide survey to identify potentially threatened species and ecosystems. He expects environmentalists and developers to use data from the survey to negotiate land use agreements before crises develop.

Congress will not consider ESA reauthorization or amendment until the Clinton administration resolves the dispute between conservationists and timber interests in the Pacific Northwest. The battle over the threatened Northern Spotted Owl, and logging destruction of old-growth forests, typifies the criticized adversarial, single species approach to ecosystem preservation. (see Ancient Forests, *infra*) Proponents hope the new "habitat" approach, and the administration's commitment to making the ESA work, will expedite reauthorization later this year or in 1994.

Ancient Forests

For years conservationists and the timber industry have waged a fierce battle over the fate of the last remnants of the ancient forests of the Pacific Northwest and California. On April 2, 1993, in Portland, Oregon, President Clinton, Vice President Gore, and five Cabinet members met with loggers, fishermen, timber industry representatives, scientists, and environmentalists to discuss the issue. Management of 7 to 25 million acres of federal lands in Washington, Oregon, and California is at stake. Court injunctions currently prohibit logging on 6 million acres that are habitat to the threatened northern spotted owl. Three million acres of ancient forest are vulnerable to cutting.

Major conservation groups, including the Sierra Club Defense Fund, the National Wildlife Federation, National Audubon Society, and The Wilderness Society, have coalesced to form the Ancient Forest Alliance. The Alliance decries the fact that only 10% of the region's ancient forests remain after decades of over-logging on public lands. Scientific consensus holds that a permanent Ancient Forest Reserve in the Pacific Northwest is mandatory to protect ancient forest ecosystems, forest-dependent species, and the anadromous salmon. The Alliance advocates creation of an Ancient Forest Protection Act to administrate preservation of ancient forest ecosystems and facilitate economic diversification in rural logging communities.

The timber industry is fighting for renewed access to public forests, a guaranteed "reasonable" harvest, and amendments to the ESA making court injunctions that halt logging more difficult to obtain. Displaced timber workers are generally allied with the timber industry. However, labor will consider retraining and economic diversification as long as it means good jobs and preserves the integrity of rural communities.

On April 3, 1993, President Clinton

promised to outline a long-term solution balancing rural economic interests with ancient forest preservation by June 1, 1993. The House Natural Resources and Senate Energy committees will have jurisdiction over ancient forest legislation.

Mining Law

H.R. 322: The "Mineral Exploration and Development Act of 1993", introduced by Rep. Nick Rahall (D-WV), sets stricter standards for mining on public lands, requires environmentally sound reclamation efforts, requires miners to lease, rather than buy, the land they use, and imposes a minimum 8% royalty on gross production income. H.R. 322 overhauls the 1872 Mining Law that currently allows miners to acquire exclusive domain over public lands for as little as \$2.50 per acre. The 1872 law declares mining the "highest and best use" of public lands. Under the Mining Law, miners are not required to pay royalties on profits, or to reclaim depleted mine sites. S. 257, introduced by Sen. Dale Bumpers (D-ARK), is H.R. 322's companion bill in the Senate.

The Bush administration opposed mining reform legislation in 1992. Similar bills died in both Houses. In 1993, although Clinton recently dropped promised mining and grazing fee increases from his budget proposal, the president is expected to support H.R. 322 and S. 257 as a legislative means to achieve the same goals. Mining reform also enjoys strong congressional support, although proponents expect the mining industry to campaign hard for amendments. Conservationists support both bills. The House Natural Resources and Senate Energy committees will handle the issue.

California Desert Protection Act

S. 21: The "California Desert Protection Act of 1993", introduced by Sen. Dianne Feinstein (D-CA), adds 234,000 acres to Joshua Tree National Monument

and redesignates the area as a national park, establishes a 1.5 million acre Mojave National Park, and designates a 3.3 million acre Death Valley National Park. In addition, S. 21 establishes 4 million acres in the California Mojave, Colorado, and Great Basin deserts as 74 Bureau of Land Management wilderness areas and one wilderness study area. S. 21 permits livestock grazing in Mojave National Park for up to 25 years and contains broad concessions to existing military desert training and testing activities. The Desert Act is the largest single land-use management project since the Alaska National Interest Lands Conservation Act of 1980. H.R. 518, introduced by Reps. Richard Lehman (D-CA) and George Miller (D-CA), is S.21's companion bill in the House. The Senate Committee on Energy and Natural Resources is handling the desert bill.

Former California senator Alan Cranston first introduced the California Desert Protection Act in 1986. Previous desert bills died in committee due to opposition from former republican California senators Pete Wilson and John Seymour, and the Reagan and Bush administrations. In 1993, California's freshman democratic senators Dianne Feinstein and Barbara Boxer are co-sponsors of S. 21. The desert bill has the full support of the Clinton administration and House and Senate majorities. Interior Secretary Bruce Babbitt has pledged support for immediate passage of California desert legislation. The California Desert Protection Act will almost certainly be enacted in 1993.

Arctic Coastal Plain Wilderness

H.R. 39: The "Morris K. Udall Wilderness Act", introduced by Reps. Richard Lehman (D-CA) and Bruce Veto (D-MN), designates over 1.5 million acres of Alaskan arctic coastal plain as permanently protected components of the

National Wilderness Preservation System. The land is currently part of the Arctic National Wildlife Refuge under the National Wildlife Refuge Act. The bill is named for former senator Morris Udall, the moving force in establishing the 104 million acre Alaska National Interest Lands Conservation Act of 1980. S. 39, introduced by Sens. Max Baucus (D-MT) and William Roth (R-DE), is H.R. 39's Senate companion bill. The House Natural Resources and Senate Environment and Public Works committees are handling the legislation.

A majority of representatives, a growing number of senators, and the Clinton administration support the arctic wilderness bills. Major environmental organizations are lobbying for passage. However, opposition to the Alaskan bills will be fierce. Proponents expect the oil industry to lobby hard to defeat legislation that protects the ANWR coastal plain from oil and gas drilling. Congress will consider the issue in early 1994.

Safe Drinking Water Act

The 1974 Safe Drinking Water Act (PL 93-523) sets drinking water purification standards, and requires states to prevent ground water contamination. A 1986 reauthorization of the Act expired in 1991. Congress has funded ongoing programs with annual appropriations bills. The Clinton administration supports reauthorization and is seeking creation of a separate state revolving fund for drinking water projects. Industrial polluters, such as the coal industry, and some local governments, who find treatment standards too costly, oppose reauthorization. Congress will consider reauthorization legislation in late 1993 or early 1994. The House Energy and Commerce and the Senate Environment and Public Works committees will handle the issue.

Clean Water Act

The 1972 Federal Water Pollution Control Act (PL 92-500), also known as the

Clean Water Act, sets industrial and municipal waste discharge limits and provides low-interest federal loans to local governments for sewage treatment plant construction. The Act was amended in 1977, and reauthorized in 1981 and 1987 (PL-100-4). All major provisions except the loan program have expired. The Clinton administration supports reauthorization and is seeking to extend funding through 1997. Congressional committee leaders are giving reauthorization of the Clean Water Act top priority among the six environmental reauthorization issues. Environmental groups advocate reauthorization with amendments for tougher sewage treatment standards, greater restrictions on agricultural run-off, and more extensive wetlands protection. Some local governments, developers and agribusiness interests oppose reauthorization. Reauthorization legislation should be presented to Congress by early 1994. The House Public Works and Merchant Marine and Fisheries and Senate Environment committees are handling the issue.

Toxic Waste Dumps

The 1980 Comprehensive Environmental Response, Compensation and Liability Act (PL 96-510) establishes a federal "superfund" to reclaim toxic waste sites, and holds polluters liable for compensation of clean up costs. The Act was amended in 1986 and reauthorized in 1990. All major provisions, except taxation, expire in 1993. The Clinton administration supports reauthorization and has included the superfund in its economic stimulus package. Congress will consider reauthorization of the Act by early 1994. Opponents claim the Act's standards are too vague and that it produces more litigation over liability than toxic clean up. The House Energy and Commerce and Senate Environment committees will handle reauthorization.

H.R. 870: The "Toxic Cleanup Equity and Acceleration Act of 1993",

introduced February 4, 1993 by Rep. Robert Torricelli (D-NJ), amends the 1980 Comprehensive Environmental Response, Compensation and Liability Act to provide tax relief to municipalities and small businesses for toxic waste cleanup. S. 343, introduced by Sen. Frank Lautenberg (D-NJ) is the Senate companion bill.

Solid and Hazardous Waste

The 1976 Resource Conservation and Recovery Act (PL 94-580) regulates solid and hazardous waste disposal, interstate waste disposal, and recycling. The Act was reauthorized in 1984 but expired in 1988. Congress has funded ongoing regulatory functions by appropriation. The Clinton administration and majorities in both Houses support reauthorization. However, drafters have been unable to agree on specifics. Interest groups disagree over interstate garbage transportation rules, incinerator ash regulation, recycling standards, and waste utilization taxes. Reauthorization attempts are expected to fail this session as they did last year. The House Energy and Commerce and Senate Environment committees will hear the RCRA reauthorization debate. H.R. 424; The "Pollution Prevention, Community Recycling and Incinerator Control Act", introduced January 5, 1993 by Rep. Edolphus Towns (D-NY), sets minimum content standards for recyclable materials, sets recycling rates and compliance dates, establishes a moratorium on construction and permitting of solid waste incinerators, requires incremental reduction of hazardous waste, and sets fines for violations. Sen. Max Baucus (D-MT) expects to introduce a senate recycling bill in June. In addition to

the above, the senate bill will set waste utilization tax rates, establish a waste utilization tax that would decline as the recycled content increases, and strengthen federal procurement policies for recycled products. Congressional environmental leaders believe a recycling bill will succeed only if supported by cities and local recycling efforts. The House Energy and Commerce and Senate Environment committees will handle the issue.

Vehicle Fuel Economy Standards

For the fourth year, environmentalists will face oil and auto industry opposition to a proposal to raise the vehicle fuel economy standard from its current 27.5 miles per gallon. The House Energy and Commerce and Senate Commerce committees will hear the issue.

Antarctic Environmental Protocol Act

H.R. 1066: The "Antarctic Environmental Protocol Act of 1993", introduced February 24, 1993 by Rep. Gerry Studds (D-MA), provides the United States legislative authority to implement the Protocol on Environmental Protection to the Antarctic Treaty. The Treaty establishes Antarctica as a natural reserve devoted to peace and scientific research, and provides the region comprehensive environmental protection. The bill is supported by the Clinton administration. The House Merchant Marine and Fisheries, Science, Space and Technology and Foreign Affairs committees are handling the legislation.

Annette Barry Feldman is a-IL at King Hall.



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