

LEGISLATIVE UPDATE: FEDERAL ACTIVITY IN 1992

by Danae J. Aitchison and Holly Damiani

The first few months of 1992 spawned a great deal of environmental legislation in Congress. Notable achievements include progress toward reauthorizing the Resource Conservation and Recovery Act and the Clean Water Act. The Senate finally passed a national energy bill, a feat which proved unachievable for the Senate in 1991. The following excerpts provide a sample of the environmental activity in Congress.

CENTRAL VALLEY PROJECT REFORM

S 2016: At the end of March, the Senate's Energy and Natural Resources Committee passed S 2016, John Seymour's (R-Calif.) bill to restructure the Central Valley Project. Seymour's bill, backed by agricultural interests, does not represent the CVP reform many hoped for. The bill would continue long term water contracts and federal water subsidies for farmers, but would not stop farmers from "double dipping." Double dipping is a process whereby farmers who use taxpayer subsidized water grow surplus crops that qualify them for subsidies from the Department of Agriculture. Furthermore, S 2016 provides little water for fish and wildlife, or for the needs of urban areas.

The Committee's support of Seymour's bill is disappointing because it represents the weakest of the CVP bills under consideration. S 484, sponsored by Bill Bradley (D-N.J.), and J. Bennett Johnston (D-La.) would have shortened farmer's water contracts; provided water for urban areas; and reserved water for fish and wildlife. The provision designating water specifically for fish and wildlife is crucial to a CVP reform bill. Runoff from farms irrigated by CVP water pollutes wetlands, harming migratory waterfowl. In addition, low water levels in the Sacramento River raise the water temperature enough to destroy salmon eggs.

HR 1306: George Miller's (D-Calif.) effort at restructuring how Central Valley Project water gets used may be derailed by the recent Senate vote supporting S 2016. Miller's bill would require adequate water supplies from the CVP for wetlands, rivers, and the San Francisco Bay. The bill would also provide funding for habitat restoration programs. Miller's bill does not, however, merely focus on the environment. It also would provide additional water to California cities, and would create incentives for farmers to use water more efficiently.

CLEAN WATER ACT (PL 92-500)

Both the Senate and the House made reauthorization of the Clean Water Act a priority in 1992. Last May, Max Baucus (D-Mont.) introduced a major Clean Water Act reauthorization bill, S 1081. This bill contains hundreds of pages of text, revamping the entire Clean Water Act. The Senate Environment and Public Works Committee continues to work with it, along with a draft by John Chafee (R-RI) which has similar content. Neither the House nor the Senate, however, are likely to consider a comprehensive Clean Water Act reauthorization before the end of the year due to time pressure.

Alternatively, Congress could pass a scaled down bill which would target only the most critical issues. One important issue is providing funding for the state revolving fund program through the year 2000. The revolving fund provides states with their main funding source for local water pollution control measures. Other crucial areas include streamlining the storm

water management permitting process, and reducing non-point source pollution and combined sewer overflows. A scaled down bill probably would not include provisions dealing with wetlands protection. This is an astute political maneuver, since reauthorizing the Clean Water Act is so important. Due to the current controversy over defining wetlands and revising the wetland permit process, it would be difficult for legislators to reach agreement on a Clean Water Bill that included wetland provisions.

ENDANGERED SPECIES ACT (PL 93-205)

HR 4045: In late November, 1991, Gerry Studds (D-Mass.) introduced a reauthorization bill for the Endangered Species Act. The bill has several major components for strengthening the Act. First, it would tighten deadlines for developing species recovery plans. Specifically, it would require the Secretary of the Interior to develop and implement recovery plans for all species listed as of December 31, 1992 within four years. For species listed after December 31, 1992, recovery plans would be required within two years. The bill would authorize \$517 million over five years to the Interior and Commerce Departments to implement the act, more than twice the authorized funding for 1988-1992.

HR 4045 also directs the Department of Fish and Wildlife and the National Marine Fisheries Service to emphasize ecosystem recovery involving many species, rather than the single species approach currently in place. Finally, HR 4045 would create a \$20 million Habitat Conservation Fund to support development of conservation plans by local governments and other groups. The Environmental Protection Subcommittee will be holding hearings on HR 4045 this year. The Senate, preoccupied with reauthorizing the Resource Conservation and Recovery Act and the Clean Water Act, will probably postpone reauthorizing the Endangered Species Act until after the election.

FOREST PROTECTION BILLS

Several competing bills concerning forest protection or, in some cases, logging protection, will be considered this year. The bills provide varying levels of ancient forest protection. Two bills in particular merit discussion: Sen. Packwood's **S1156**, and Rep. Jontz's **HR 842**.

Senator Packwood's (R-OR) bill, introduced last year, has strong timber industry backing. The focus of the bill is to preserve logging in national forests. The bill states that timber harvesting is the dominant value in the national forest and mandates minimal levels of logging to be done every year. Even forests designated as ancient forest reserves would be subject to reevaluation every ten to fifteen years. At reevaluation, the forest service could reclassify the forest to allow logging. Wilderness areas that are currently protected by Congress would be opened to logging and road building.

Packwood's bill would change the way timber management plans are formulated and appealed. Currently the forest service hears from competing interests in deciding how a forest should be managed. If a group is unhappy with the forest service's decision it may appeal it. Packwood's bill would limit appeals to groups which had input into the initial plan formulation process. Instead of an appeal, that group would ask for an amendment to the management plan, a process more difficult than an appeal.



Packwood's bill appeals to logging interests partly because it has a strong economic aid package for logging communities hit by decreased logging. It seeks to protect the industry and

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industry's employees above the forests. Although environmental objection to the bill is strong, there is strong popular support for the bill because of the aid proposed.

S1156 is being considered by the energy and forestry committees. The bill has been in committee since last May. But when committee compromises are worked out, the bill could go to the Senate floor at any time. It faces stiff opposition from environmentalists and is unlikely to make it through the Senate without major changes. Even so, environmental groups are concerned that the bill's approach to forest use may affect the debate over forests for years to come.

Representative Jim Jontz (D-IN) introduced a bill which is more favorable to the environment last year. HR 842 would establish a National Ancient Forest Reserve System to ban logging and road building in the reserve system. Significant forest areas would be designated as "ancient forests" or "associated forests" in Oregon, California and Washington. The secretaries of Agriculture and the Interior would designate areas to be granted permanent protection. Until Congress adopted the designations, interim protection would close the areas to all logging and road building. The bill focuses on saving ecosystems in danger rather than on isolated habitats, such as the spotted owl habitat.

One major weakness of this bill is that it contains no economic aid package for areas economically depressed from cutbacks in logging. Rep. Jontz has said that he is amenable to an economic aid being added to the bill, but is deferring to colleagues from the northwest to propose a specific economic plan.

HR 842 is currently being considered by the forestry committee. When it comes out of committee it should go out to the floor of the house where it will face a lot of opposition from logging interests. If a good economic aid package is added, it will have a better chance of gaining more support.

INVOLVEMENT IN U.N. ENVIRONMENT CONFERENCE

In June the United Nations will hold the Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil. About 2,000 people are expected to attend the conference, including seventy to eighty heads of state. President Bush has yet to make a commitment to attend, although he has indicated he would like to go. Major goals of UNCED are to develop a treaty on global warming; a treaty preserving biodiversity, to protect disappearing species and habitats, and to pass a voluntary program, establishing goals for converting economies to environmentally sustainable patterns.

Other nations participating in UNCED have criticized the United States, and President Bush in particular, for lack of support on key issues. The U.S. opposes setting specific targets and timetables for reducing carbon dioxide emissions. President Bush claims to support a climate change convention, but rejects a convention with legally binding obligations. He is pushing instead for voluntary goals. The U.S. is the only developed country refusing to commit to reducing or stabilizing CO₂ emissions at 1990 levels by the year 2000. However, there may still be a little time for the U.S. to change its position; the last session of the climate talks runs from April 30 to May 8. Delegates from representative nations will have to resolve many disagreements on the text of the framework convention to ready it for UNCED.

A second goal of UNCED is to develop a treaty on biodiversity. The intent of the treaty is to preserve species and habitats by limiting development in environmentally sensitive areas, especially in developing countries. The committee preparing this treaty may not be able to resolve critical differences in time to present a treaty proposal to UNCED.

Key provisions of the treaty are controversial. One provision calls for the creation of a common fund to compensate developing countries for sacrificing economic development.

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The U.S. opposes creation of a new fund and favors any funding from existing mechanisms.

A second major stumbling block is difference in the way the U.S. and developing countries view development of patentable material in endangered areas. Many areas targeted for preservation are considered laboratories for future vaccines and medicines. Developing countries insist on licenses for products derived from their natural resources, and also seek some revenue from these products. However, there is no mechanism for transferring technology to developing countries. Many developing countries do not have a well developed patent system. The U.S. does not want to make technological development available to third world countries except through existing patent systems. The developing countries want access to the technology now, and want to build their patent system over time. Neither side seems willing to make concessions.

A third major issue is UNCED's "Agenda 21," a collection of voluntary measures for sustainable development projects. Several components of "Agenda 21" are unacceptable to the U.S., including plans for handling radioactive waste, references to military activities, and references to liability for international environmental damage. Curtis Bolen, head of the U.S. delegation to UNCED, insists the major objection to the approval of Agenda 21's goals, is that developing nations insist on the creation of a new funding mechanism. The U.S. favor funding through the Global Environmental Fund, managed by the World Bank. Third world countries criticize this fund as too subject to U.S. influence.

Although conventions emerging from UNCED may not be as strong as environmentalists hope, there is reason to be optimistic over UNCED's long term effects. By preparing for UNCED conventions, national governments are forced to focus on environmental threats and economic policies. What they learn may help them change their internal policies, even though worldwide standards are lacking. Even if the treaties on global warming and biodiversity are weak, there is a chance they will be strengthened in the future. Finally, some agreement on international goals and concerns is emerging.

On April 7, the Senate voted 87-11 to pass **HCR 292**, which encourages President Bush to attend the UNCED talks this summer and support international efforts against global warming. "The President's delay in committing to this battle stands in sharp contrast to the actions of other world leaders," said Joseph Biden (D-DE), who led the unanimous Democratic delegation. He said other countries have "watched as the U.S. has paused, sat silent, or sought to weaken progressive proposals." Alan Simpson (R-WY) said that what the President "does not want to do is proceed with some half-baked global climate change policy that would not work and would have a very deleterious effect on the economy of the United States." [*You can always count on Al Simpson for special insight in environmental matters, huh? Ed.*]

MONTANA NATIONAL FOREST MANAGEMENT ACT

Despite environmentalist's best efforts, the Senate approved (75-22 in a roll call vote) a Montana wilderness bill sponsored by the state's two senators, Max Baucus and Conrad Burns. The bill exposes millions of acres of wilderness to development, leaves wilderness water supplies unprotected, and limits judicial review of forest planning decisions. It accomplishes this last goal by limiting citizens' ability to question the management of Montana's national forests. Currently, the House of Representatives is reviewing the legislation.

NATIONAL ENERGY SECURITY ACT

S 2166: J. Bennett Johnston (D-La.) revived the national energy bill he was unable to pass in 1991 by removing its most controversial provisions: opening the Arctic National Wildlife



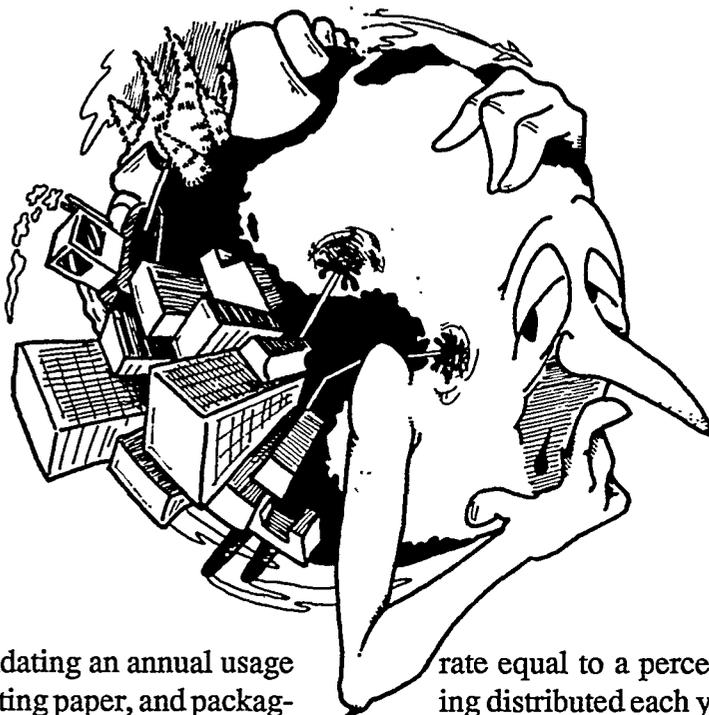
Refuge (ANWR) to oil and gas drilling, and increasing Corporate Average Fuel Efficiency standards for automobiles. Environmentalists welcomed removal of the ANWR drilling provision, although most would prefer to see a "miles per gallon" standard retained. By deleting these two provisions, Johnston was able to answer to his most vocal critics on both sides of the political spectrum. The Senate passed the revised bill in mid-February by a 94-4 vote. S 2166 would streamline the licensing process for nuclear power plants by allowing the Nuclear Regulatory Commission to issue single permits for operating and construction, rather than two separate licenses. It contains a controversial provision designed to increase competition in the power generation market. This provision would loosen federal regulation of the wholesale electric power market, making it easier for small generators to sell power to electric companies. Fewer regulations should lead to less expensive power.

S 2166 would also strengthen energy conservation practices by mandating efficiency standards for lamps and electric motors, and by requiring federal agencies to implement all energy-efficiency measures which would pay for themselves within 10 years. Other provisions would direct the Secretary of Energy to develop a plan for promoting alternative fuels, and subsidize interest rates on loans for manufacture of renewable energy equipment. An amendment, approved by a 96-0 vote, would end all production of ozone-depleting chlorofluorocarbons (CFCs) by 1995. S 2166 represents a major accomplishment for the Senate. It is the first comprehensive national energy policy passed in more than a decade, yet the bill remains a true compromise.

RESOURCE CONSERVATION AND RECOVERY ACT (PL 98-216):

S 976: Max Baucus' (D-Mont.) draft RCRA reauthorization bill is currently before the Senate Environment and Public Works Committee. S 976 contains many controversial provisions which may not survive scrutiny by the entire Environment and Public Works Committee at the end of April. The draft bill would prohibit out-of-state solid waste from being disposed of in another state's landfill without approval of the affected local government. Three and one half years after enactment, the bill would also allow governors of states with approved waste management plans to restrict out-of-state solid waste if the exporting state does not have an approved waste management plan, or is not implementing

controversial provisions include 17 new under RCRA, companies and to report additional 250 the Toxic Registry. In addition, the bill would require utilization of recycled packaging by mandating an annual usage rate equal to a percentage of all newsprint, printing, writing paper, and packag-



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rate equal to a percentage of all newsprint, printing, writing paper, and packag-

cies would be required to purchase items made of the highest percentage of recycled materials to create a market for recycled goods.

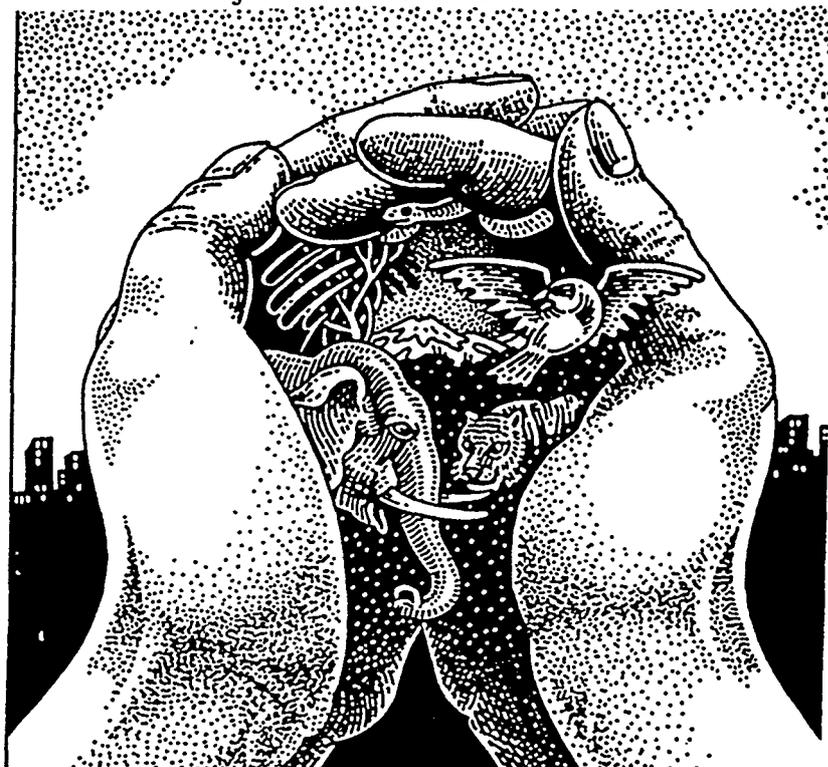
S 976 also provides for implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal. It would prohibit export from or import into the United States of wastes subject to the Basel Convention unless there is a bilateral or regional agreement with the exporting country. Environmentalists opposed to the convention and this provision, argue that the treaty merely provides a framework for legal trade in hazardous waste instead of banning it completely.

WETLANDS PROTECTION

HR 4255: Don Edwards (D-Calif.) has introduced a bill in the House that would reform regulations protecting wetlands. Edwards' bill is welcome, since it comes in the wake of many attacks on wetlands protection. HR 4255 would keep jurisdiction over issuing Section 404 permits in the Army Corps of Engineers, subject to EPA veto. The bill would expand current wetlands regulations to include all activities which could harm wetlands, such as draining, excavation, filling, and dredging. This provision will be controversial, since President Bush prefers changes in wetlands protection which will narrow the areas protected and the types of activity restricted. In addition, the bill would require the Army Corps of Engineers to report to Congress every two year to account for the effect of permit activity on wetlands.

Edwards' bill would also require an independent study by the National Academy of Science on proper methodology for identifying and delineating wetlands. This provision is important because it addresses the main criticism of wetlands protection: that the definition of wetlands is haphazard and deals more with politics than scientific reality. Other provisions in the bill would expedite the permit process for small projects by requiring a percentage of Army Corps of Engineers staff to work solely on reviewing small project requests. HR 4255 competes with HR 1330, sponsored by James Hayes (D-La.). Hayes' bill would severely limit the role of the EPA in regulating wetlands, and would allow developers to destroy a wetland if they restored another. It would also require government compensation whenever private land has been declared a wetland and subject to use restrictions.

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