

# Anti-Environmental Riders on FY 2012 Appropriations Bills

## AS OF 7/15/2011

Note: The list does not yet include amendments added to the Energy and Water Appropriations Bill on the floor and may not yet have captured all egregious language in the Interior Appropriations Committee Report. The list will be updated on an ongoing basis.

### Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (H.R. 2112)

**1) Section 755: Blocking All Funds for Implementation of the Departmental Regulation on Climate Change Adaptation**  
 – Would prevent the Department of Agriculture from implementing its new departmental regulation on climate change adaptation (Departmental Regulation 1070–001 (June 3, 2011)). This amendment, offered by

| <u>FY2012 Anti-Environmental Rider Ticker</u> |           |
|---|-----------|
|   | Proposed  |
| <b>Agriculture Appropriations</b>             | <b>1</b>  |
| <b>Energy and Water Appropriations</b>        | <b>3</b>  |
| <b>Homeland Security Appropriations</b>       | <b>1</b>  |
| <b>Interior Appropriations</b>                | <b>38</b> |
| <b>Total</b>                                  | <b>43</b> |

Representative Steve Scalise (R-LA) is designed to prevent the Department of Agriculture from making preparations to protect citizens from climate change impacts. Future climate change and variability will make farming harder to plan for, and will make forests more vulnerable to invasive pests and wildfire. Because of this, the Agriculture Department is working to assist the nation’s farmers, agriculture industry, and forest managers in developing better farming and forestry practices that create new markets and reduce the negative impacts of climate change and variability. In addition, the climate change adaptation policy encourages the integration of climate preparation strategies into the Department’s programs and operations so it can better ensure that taxpayer resources are invested wisely and that the Department’s services and operations remain effective in current and future climate conditions. These critical efforts will end with the enactment of this bill.

*STATUS: This provision was offered as an amendment (#467) by Rep. Steve Scalise (R-LA) on the floor and passed by a vote of 238-179.*

### Energy and Water Development and Related Agencies Appropriations Act (H.R. 2354)

**1) Section 109: Restoring Clean Water Act Protection** – The best way to protect our drinking water, protect communities from flooding, restore fish and wildlife habitat and keep waters used for swimming and other recreation clean is to eliminate water pollution at its source and ensure all waters are protected. For almost 40 years the Clean Water Act has protected America’s waters from excessive pollution. As a result, the quality and safety of our nation's waters have improved. However, two Supreme Court decisions in 2001 (SWANCC) and 2006 (Rapanos) and subsequent Bush administration guidance threw the protections for millions of acres of wetlands and tens of thousands of miles of stream into doubt. This has dire consequences for clean water; for example,

117 million Americans get their drinking water in whole or part from public water systems that use these waters. Currently the EPA and Army Corps are working on measures to restore these protections. But Congress instead wants dirty water. The House Energy and Water Development 2012 Appropriations bill now contains a provision that would stop the EPA and Corps from moving forward with common sense guidance to protect waters from pollution. If this rider succeeds, it will introduce more pollution into our drinking water supplies, threaten public health, and force communities to pay more to clean up flood damage to communities.

*STATUS: This provision was included in the chairman's mark.*

**2) Section 203 - Undermining the Consensus Agreement to Restore California's San Joaquin River** – Section 203 would block implementation of the San Joaquin River Restoration Agreement, which balances salmon restoration with the water supply needs of agricultural users. This provision would prevent the restoration of flows and salmon to California's second largest river and undermine efforts to revive the state's beleaguered commercial salmon fishing industry, while also blocking flood management and water supply projects that would benefit the region's farmers. Additionally, this provision would order the Bureau of Reclamation to permanently maintain the river in a degraded state, thereby impacting downstream water quality for millions of Californians. The bipartisan settlement agreement ended 18 years of litigation and initiated one of the largest river restoration and water supply programs in the nation. Passage of this provision could force all parties back into court resulting in a waste years of effort and millions of dollars that are already available - funds that would create water supply projects, habitat projects, flood protection improvements and jobs.

*STATUS: This provision was included in the chairman's mark.*

### ***Amendments***

**1) Threatening Salmon Restoration in the San Joaquin River** – This amendment blocks funding to reintroduce salmon to the San Joaquin River – a key component of the 2006 bipartisan settlement agreement to restore the river. After the completion of Friant Dam by the federal government in the 1940's, nearly 95% of the San Joaquin River's flow was diverted, drying up the river and devastating salmon populations and commercial fisheries jobs. Passage of the amendment will undermine the settlement agreement and could force the case back into court. If the court takes over river restoration, water users and local farmers would be at risk of losing water supply and flood management projects provided by the settlement.

*STATUS: This amendment was offered by Rep. Jeff Denham (R-CA) and passed by voice vote.*

### **Department of Homeland Security Appropriations Act (H.R. 2017)**

**1) Section 707: Blocking All Funds for Climate Adaptation Task Force of the Department of Homeland Security** – Would prevent the Department of Homeland Security from implementing its climate adaptation task force designed to identify and assess any impacts that climate change could have on the operations of DHS. This amendment, offered by Representative John Carter (R-TX) is designed to prevent DHS from making any preparations to protect citizens from the impacts of climate change which will have far reaching impacts as the U.S. Coast Guard and FEMA fall under the DHS umbrella. FEMA has been burdened by severe weather events including hurricanes, tornadoes and flooding most recently. Without the ability to address the changing climate that is

spurring these natural disasters, FEMA is severely limited in how it helps both in the planning for and recovery from such events, leaving Americans vulnerable to the worst. In the case of the Coast Guard, changing temperatures are melting sea ice and creating increased sea traffic off the Alaska coast. Without planning for these changes the Coast Guard may not have the resources and facilities required to protect the nation. This critical planning will end with the enactment of this bill.

*STATUS: This provision was offered as an amendment (#378) by Rep. John Carter (R-TX) on the floor and passed by a vote of 242-180.*

## **Interior and Environment Appropriations Act (H.R. 2584)**

### ***Title I – U.S. Fish & Wildlife Service Resource Management***

**1) Extinction Rider** – The Extinction Rider is the most sweeping attempt in recent history to gut the Endangered Species Act, paralyzing our nation’s ability to protect hundreds of imperiled wildlife. The rider prevents the U.S. Fish & Wildlife Service from spending any money to implement some of the most crucial sections of the Act: § 4(a) to list new species; § 4(b) to designate habitat critical to a species’ survival; § 4(c) to upgrade the status of any species from threatened to endangered; and § 4(e) to assist law enforcement by protecting species that resemble listed species. As a result, the Service could not immediately list and protect any of the over 260 “candidate species” under the Act – species that the Service has already determined warrant this protection. By no accident, the rider does allow the Service to spend money on *weakening* protection for wildlife by removing them from the ESA and by down-listing them from endangered to threatened. Put simply, the rider creates a one-way ratchet, in which wildlife protection can be weakened, but not strengthened. Supporters of the rider claim that the Endangered Species Act is broken and needs to be reauthorized. To the contrary, the Act can be improved for wildlife and people – all without reauthorization. The Department of Interior is currently doing just that by beginning a comprehensive effort to streamline and improve the regulations and policies that implement the Act. The rider would only derail this effort and jeopardize America’s natural heritage for all future generations.

*STATUS: This provision was included in the chairman’s mark.*

### ***Title I – General Provisions***

**2) Section 116: Prevents NPS from Enforcing the Law on Waters in Yukon-Charley Rivers National Preserve** – Congress has the power to regulate navigable waters within units of the national park system and has delegated that authority to the National Park Service. This provides NPS with the ability to protect a park’s natural and cultural resources from damaging activities and to ensure the safety of park visitors. Park Rangers enforcing the law is what Law Enforcement Rangers do. The impetus behind this rider is an unfortunate incident in August 2010 that resulted in the arrest by two NPS Park Rangers of a local resident within the boundaries of Yukon-Charley for eluding and resisting arrest. When Park Rangers attempted to do a boating safety inspection, resistance from the local resident led to an altercation (which included Park Rangers drawing their weapons) that led to the charges still before the courts. In response to the arrest of this 70-year old local resident, who many in Alaska see as being harassed by the federal government, the state of Alaska intervened in the court case and also petitioned Secretary Salazar to negate the aforementioned regulation. This arrest was exacerbated by another incident when it was learned that the same two park rangers had hand-cuffed (but later released) another local resident who refused to

talk to the rangers when they approached him at his fishing site along the river's edge. While these actions by NPS may or may not have been warranted, throwing out the future ability of park rangers to protect both resources and lives on the waters of Yukon-Charley is a significant over-reaching reaction. NPS officials have reviewed the situation and traveled to the region and apologized to local residents. Some personnel changes were made. Healing has begun. This action is a vindictive reaction against just a couple incidents, but could have the impact of crippling the agency to do its job for everyone else.

*STATUS: This provision was included in the chairman's mark.*

**3) Section 118: Reducing the Public's Right to Participate in the Management of Public Lands** – One of the foundations for the management of federal lands is the citizen's right to participate in how public lands are governed. In this system, one of the more meaningful rights is the public's prerogative to petition the federal courts when a citizen believes that a federal decision has not adhered to the rule of law. But Section 118 would severely curtail these rights by delaying opportunities for the public to seek assistance in the federal court system in regard to how Department of the Interior lands are managed.

*STATUS: This provision was included in the chairman's mark.*

**4) Section 119: Shielding Gray Wolf Delistings from Judicial Review** – This provision exempts from judicial review any final rule that delists gray wolves in Wyoming and any states within the range of the Western Great Lakes Distinct Population Segment of gray wolves (i.e., all of Michigan, Minnesota, and Wisconsin, and portions of North and South Dakota, Iowa, Illinois, Indiana, and Ohio), provided that FWS has entered into an agreement with the state for it to manage wolves. The provision undercuts one of the most important checks and balances built into the ESA – public participation through the ability of citizens to request judicial review of delistings. Of most concern are the Wyoming wolves, as the state has refused to even create a wolf conservation plan. Should the Service delist these wolves without using the best available science, it would be important for citizen groups to have the option of asking a court to review that decision. Indeed, throughout the years, citizen lawsuits have successfully revealed serious legal and scientific deficiencies with the Service's management of wolves and other species. The wolf rider would abolish this important conservation tool, deprive the public of its rights, and interfere with the balance struck between the executive and judicial branch.

*STATUS: This provision was included in the chairman's mark.*

**5) Section 120: Granting a Sweetheart Deal to Ranchers by Exempting Certain Types of Grazing from Environmental Requirements** – This section would exempt a certain type of grazing permit called a "mobile permit" from complying with the National Environmental Policy Act (NEPA). Mobile permits allow ranchers to "trail" their sheep or cattle or allow them to graze on a broad area going from one point to another, as opposed to allowing grazing on a discrete piece of land for a fixed time. Because mobile permits allow the grazing animals to move over broad swaths of land, they can have greater negative consequences to native wildlife than other grazing methods. For this reason, exempting these permits from the environmental reviews required under NEPA will lead to great environmental harm. For instance, allowing trailing to continue, free of scrutiny, will harm bighorn sheep, some subspecies of which are endangered or threatened, by increasing their contact with disease-carrying domestic sheep. Indeed, in the recent past, trailing has been attributed to a number of bighorn die-off's when diseased domestic sheep came into contact

with bighorns. In one incident in 2009, 88 bighorn and one mountain goat in Nevada died when they came into contact with one of these domestic sheep trails.

*STATUS: This provision was included in the chairman's mark.*

#### ***Title IV – General Provisions***

**1) Section 415: Grazing Permits Renewal and the Circumvention of NEPA** – Reviewing grazing permits under NEPA is one of the primary means by which the BLM and the Forest Service consider changes needed to improve resource conditions and protect important values on federal lands. Renewing, transferring, or issuing grazing permits without prerequisite NEPA analyses allows poorly managed and abusive grazing practices on over 260 million acres of federal rangelands to continue to degrade many of the unique resources found on federal lands, while also jeopardizing sensitive wildlife species such as sage-grouse that share the range. In 1974, the federal courts held in *NRDC v. Morton* that NEPA analysis for individual grazing allotments should be mandatory. However, 37 years later, over half of all federal grazing allotments have never been analyzed. Section 415 circumvents the efficacy of NEPA, while providing the grazing industry a five-year blank check that provides livestock permittees the means to operate in a manner that puts sensitive wildlife species and ecological resources in peril.

*STATUS: This provision was included in the chairman's mark.*

**2) Section 431: Dirty Air, Anti-Science** – This rider would require EPA to stop all work limiting life-threatening carbon dioxide pollution from power plants, refineries and other large sources for one year and allow the biggest new carbon polluters to be built completely uncontrolled. It would allow big polluters to continue dumping unlimited amounts of carbon dioxide into the air, threatening the health of our children, families, and communities. The science is clear and health professionals agree - carbon dioxide pollution is a serious health issue that is already harming the health and well-being of the American people. We wouldn't wait to give our kids medicine if they were sick. Why would we wait to start doing something about the pollution that's threatening our public health?

*STATUS: This provision was included in the chairman's mark.*

**3) Section 432: Prohibiting Rules to Protect Streams from Surface Mining** – Keeps the Office of Surface Mining Reclamation and Enforcement within the Department of the Interior from continuing work to revise regulations adopted in the waning days of the Bush administration that opened up streams to destructive and polluting practices associated with surface coal mining. The Obama administration has acknowledged both substantive and legal flaws with the Bush administration rule and needs urging to accelerate its efforts on this rule, not a directive to stop work.

*STATUS: This provision was included in the chairman's mark.*

**4) Section 433: Blocking EPA Oversight of Mountaintop Removal Mining** – Shields mountaintop removal coal mining operations from EPA review by stopping EPA and the Corps of Engineers from continuing a process they put in place in April 2010, to scrutinize proposed mining permits. In addition, it suspends the use of an internal EPA memo that explains to agency

personnel how the scientific evidence of the harms associated with mountaintop removal projects should be taken into account as EPA reviews permits issued to mine operators by the Corps of Engineers and states. The EPA's policies are based on peer-reviewed scientific literature demonstrating that waters downstream of mountaintop removal mining operations in Appalachia have such high levels of pollutants that they cannot sustain aquatic life. Preventing the EPA from relying on the best science and conducting more rigorous permit reviews will accelerate the destruction of Appalachia's lands and waters. The EPA estimates that mountaintop removal mining has already destroyed some 2,000 miles of Appalachian streams.

*STATUS: This provision was included in the chairman's mark.*

**5) Section 434: Interrupting Agency Review of Coal Ash Standards** – Toxic coal ash, or coal combustion waste, is the second largest industrial waste stream and has no minimum federal disposal standards. Coal ash is a well-documented threat to human health and the environment, and contains hazardous chemicals including: arsenic, cadmium, hexavalent chromium, lead, and mercury. Due to largely unregulated dumping, coal ash poses a threat to our waterways and drinking water. For these reasons, EPA has undertaken a rulemaking to establish minimum standards for the disposal and handling of coal ash. Interest from industry, experts, and affected communities yielded over 450,000 public comments, and the EPA is presently evaluating this feedback on their proposed standards. This amendment seeks to defund any rulemaking that would regulate coal ash as a hazardous waste, thus foreclosing any regulatory scheme that provides for federally enforceable regulations. EPA should complete the ongoing rulemaking, evaluate stakeholder feedback, and apply the best available science to ensure robust and effective standards that protect public health.

*STATUS: This provision was included in the chairman's mark.*

**6) Section 435: Water of the United States** – Would halt EPA's ongoing work to clarify which waters remain protected by the Clean Water Act in the wake of confusing court decisions. EPA estimates that roughly 117 million Americans get at least some drinking water from systems that rely on headwaters and other critical streams for all or part of their supply. Many of those streams are at risk of being denied Clean Water Act protections today.

*STATUS: This provision was included in the chairman's mark.*

**7) Section 436: Preventing EPA's Ability to Regulate the Largest Water Users** – This rider prevents EPA from developing and proposing standards for the use of cooling water at power plants under 316(b) of the Clean Water Act. Power plants are the largest water users in the country, with approximately 500 power plants still using the most antiquated and destructive type of cooling system known as once-through cooling. Each of these plants can withdraw at least 50 million (and often more than a billion) gallons of cooling water every day. This rider prevents EPA from protecting drinking water supplies and eliminating fish kills by better regulating the source of the largest water withdrawals in the country.

*STATUS: This provision was included in the chairman's mark.*

**8) Section 437: Excluding the Public from Forest Service Decision Making** – Would restrict the public to an objection process in which their time frame for appealing Forest Service decisions is severely limited and the Forest Service has the power to exclude them entirely from making any appeal for projects or activities implementing a forest plan. First, the public's opportunity would be

decreased dramatically from a 45 day period after knowing the agency's final decision to zero days. Instead all appeals would have to be made after the completion of environmental review but *before* a final decision is issued. In addition, this section allows the Chief of the Forest Service to exempt a project entirely from all public administrative appeals due to an “emergency.” However, “emergency” is not defined, and the Forest Service would have complete discretion to exercise this ultimate power to exclude the public. Not only is the process this section puts in place overly restrictive, it also removes opportunities for the public and agency officials to work together to find a solutions. The post-decisional appeals process currently in place, which would be supplanted, guarantees members of the public the opportunity to meet with Forest Service officers to discuss and potentially dispose of appeals without having to do a formal review, whereas section 437 does not. The formal review process, which would be disposed of as well, provides a fair and efficient method for dealing with the public’s concerns. This rider shortchanges the public's current right for meaningful public participation in projects and activities implementing forest plans.

*STATUS: This provision was included in the chairman’s mark.*

**9) Section 438: Weakening the Clean Water Act** – Would amend the Clean Water Act (CWA) to create a loophole for the timber industry, exempting it from pollutant discharge permit requirements for silvicultural activities. For nearly forty years the CWA has improved and protected the quality of water in this country; this rider would take a chunk out of the CWA as a gift to a special interest. This loophole would prevent both the EPA and delegated states from utilizing one of the Act’s most powerful tools to protect water quality on both public and private forested land. (According to the Forest Service, 66 million Americans’ water comes from National Forests alone. In addition, water sources and many aquatic species are affected by the 154 million hectares of private forest lands). A federal court recently confirmed that the CWA does not allow an exemption of roads used for timber harvest from the Act’s point source permit requirement designed to protect clean water. This rider is a knee-jerk reaction to this decision that would prevent states and the EPA from using permits to control water pollution caused by a broad suite of timber industry activities all over the country – including but not limited to discharges of stormwater directly to streams from roads. Not only has this rider received no public hearing, it is too broad and it doesn’t address the real issue created by the court decision: how do we reduce forest road-derived point source pollution in a way that works for the timber industry and protects our nation’s valuable water resources? Instead, this exemption would allow discharges associated with a broad suite of timber management activities to proceed regardless of impacts to water, including most importantly those associated with roads. Roads are a leading threat to water quality in forested areas because they collect sediment-laden runoff that degrades water quality and alters hydrology to increase the threat of flooding. These effects can be severe, which is why the EPA and states require discharge permits for other types of industrial activities with similar impacts, including state highways, municipal stormwater, mining, and oil and gas drilling.

*STATUS: This provision was included in the chairman’s mark.*

**10) Section 439: Stormwater Discharge** – This rider essentially prevents the Environmental Protection Agency (EPA) from updating its stormwater discharge regulations or permits to manage runoff from post-construction sites. Increasing development and antiquated, over-taxed wastewater treatment systems mean that when it rains, untreated sewage and polluted stormwater can pour directly into rivers from sewage treatment plants and dirty streets and parking lots. Stormwater runoff can pollute our water with pathogens, excess nutrients, heavy metals and other contaminants

that put people's health at risk. These are the same rivers, lakes and other water bodies that we rely upon as drinking water sources and for fishing and swimming. Preventing EPA from updating and making its stormwater safeguards more effective puts clean water at risk. This rider blocks EPA's ability to use funds under this bill or any other bill to develop, adopt, implement, or enforce new stormwater regulations or guidance that would manage runoff from post-construction commercial or residential properties until 90 days after the Agency submits a study reviewing all regulatory options, including an analysis of anticipated costs and benefits and relative cost-effectiveness and impact on water quality for each. If this rider passes, EPA would be unable to work on anything besides this report and would be unable to move forward with plans to update its stormwater standards until at least 3 months after the report's release. This rider will significantly delay efforts by the Agency to improve the programs that help to keep our water clean.

*STATUS: This provision was included in the chairman's mark.*

**11) Section 441: The "Dirty Air in the Lone Star State" Rider** – This rider prevents EPA from taking any action related to so-called "flexible" air permitting that the agency previously has found to violate the Clean Air Act. What the rider fails to mention is that the "flexible" air permitting described in Section 441: (1) only occurs in Texas, since no other state has similarly violated the law; and (2) results in excessive and unlawful amounts of air pollution. In 2010, EPA told Texas that it had to stop writing air pollution permits that failed to conform to the Clean Air Act and allowed excessive levels of harmful air pollution. When Texas refused to enforce the law, EPA went straight to the companies that had received these permits and asked them to obtain permits that complied with the law. By July of 2011, all 136 companies that received these more lax permits had agreed to update their permits to comply with the Clean Air Act. EPA and industry in Texas have worked together to ensure that Texans receive the same clean air health protections as the rest of us. This rider is a direct attack on these EPA-business agreements, and the rider is designed to allow Texas to continue to violate the law and issue permits that allow companies in their state to pollute more than anywhere else in the nation. Congress should not grant Texas this free pass that puts not only Texans but all other Americans at risk of breathing dirty air from Texas industry.

*STATUS: This provision was included in the chairman's mark.*

**12) Section 442: Attacking protections for Endangered and Threatened Wild Bighorn Sheep** – Section 442, along with section 120, eliminates nearly all protections for bighorn sheep in the western United States, forbidding federal agencies from protecting this key wild species. Instead, it allows domestic sheep, which transfer deadly diseases to bighorns, to graze on western lands with impunity. A century ago, bighorn sheep thrived in the West, with numbers in the millions. But contact with diseases carried by domestic sheep has reduced overall bighorn populations to the thousands. Given that context, federal agencies were charged with reducing interactions between the two species—an effort that has been remarkably successful. This provision would undo this work and numerous federal court rulings in favor of bighorn restoration, along with preventing Endangered Species Act protections for certain subspecies of bighorn, all to benefit a handful of sheep ranchers in Idaho who refused to work with federal agencies in reducing conflicts. If these earmarks pass, it will jeopardize the very existence of bighorns in the West, while forfeiting the millions of dollars generated from hunting and recreation associated with viable bighorn populations.

*STATUS: This provision was included in the chairman's mark.*



**13) Section 443: Giving a Free Pass to Pollute to Oil Companies** – Limits the EPA’s ability to regulate air emissions from offshore drilling in the Atlantic, Pacific and Arctic Oceans, and the Eastern Gulf of Mexico. Specifically, it would exempt offshore oil drilling companies from applying pollution control technology to vessels such as ice-breakers, which in the Arctic Ocean can account for up to 98 percent of air pollution from drilling; shorten the length of time that drilling operations are regulated under the CAA; measure air pollution onshore instead of at the drill site; and remove the administrative appeal process for everyone. Offshore drilling is a dirty business. For example, air emissions from Shell’s proposed Arctic drilling program in 2010 would have resulted in as much particulate matter into the air as over 825,000 cars traveling 12,000 miles; as much CO<sub>2</sub> as the annual household emissions of 21,000 people; over 1000 tons of NO<sub>2</sub>, a pollutant associated with respiratory illness; and over 57 tons of PM<sub>2.5</sub>, a pollutant linked to respiratory illness and climate change.

*STATUS: This provision was included in the chairman’s mark.*

**14) Section 444(c): Polluter Paradise** – This rider would require EPA to stop all work to update clean air standards for dangerous smog, soot and other air pollution if so-called “background” levels of that pollution *anywhere* in the country are occasionally higher than the standards needed to protect public health. For example, this rider would mean that no place in the country could have health standards better than the air quality next to a Hawaiian volcano where background pollution levels are regularly unhealthy. This sneak attack would negate years of success cleaning up air pollution, putting tens of thousands of Americans’ lives at risk. That means millions of people would be forced breathe dirty, unsafe air if *just one* place in the entire country has different “background” levels of air pollution. Section 444(c) literally means that no place in the country could have health standards better than the air quality next to a Hawaiian volcano. The same perverse consequences would result when wildfires cause unhealthy background levels of soot and smog pollution, or when thunderstorms cause background ozone levels to exceed health-based smog standards by temporarily sucking stratospheric ozone down to ground level. Section 444(c) also could block Clean Air Act pollution controls designed to protect people in downwind states from air pollution coming from upwind states, if these measures had the incidental effect of reducing pollution beyond background levels in any locale. These so-called “good neighbor” provisions of the Clean Air Act have reduced millions of tons of dangerous air pollution and have been used successfully by EPA under the past three presidents. Thus, the bill would reward upwind polluters and punish Americans living in downwind states with the dirtiest air. Because section 444(c) also applies to standards to protect us from pollution in drinking water, rivers, and hazardous waste sites, the same perverse consequences could occur under other federal health and environmental laws.

*STATUS: This provision was included in the chairman’s mark.*

**15) Section 445: Lifting the Grand Canyon Uranium Mining Moratorium** – Section 445 would allow for extensive uranium mining directly adjacent to the Grand Canyon, potentially endangering an iconic landmark as well as some of America’s most important water resources. There is an ongoing environmental review process on whether to allow additional uranium mines near the Grand Canyon and the Bureau of Land Management has selected the full withdrawal of 1 million acres from any future uranium claims as the administration’s “preferred alternative.” This rider would short circuit that ongoing review and ensure that any and all future uranium claims around the Grand Canyon would be likely to go forward, even though uranium mining has a dreadful

environmental legacy in the Southwest, lacks strong environmental and health protections, and is at best be marginally competitive in the world uranium market. A rider that interferes with ongoing environmental reviews is objectionable simply as a matter of precedent, but it's even more egregious when it sacrifices the landscapes and water resources of the Grand Canyon region.

*STATUS: This provision was included in the chairman's mark.*

**16) Section 446: Halts Travel Management Planning on California's National Forests –** Requires the Forest Service to halt development and implementation of the Travel Management Plans in California until it considers allowing off road vehicle (ORV) use on routes that are currently unauthorized and illegal. This expensive review of the unauthorized routes could take years, and in the meantime the Forest Service's ability to responsibly manage its road system – the primary threat to water quality on national forests – will be severely curtailed. This section also requires the Forest Service to change the classification of some existing roads to allow off road vehicles, even though ORV use is currently unauthorized due to safety and other concerns. Report language extends this direction to beyond California to the entire country. The Travel Management Plans that would be halted by this section were initiated by the Bush administration and have been developed over six years using millions of dollars in state and federal money with public input from thousands of stakeholders, including hunters, anglers, campers, local elected officials, hikers, environmentalists, scientists, off-road vehicle enthusiasts, and the timber industry. This state specific rider would stop this progress in its tracks as a gift to a handful groups that were not happy with the outcome of the inclusive public process. In addition, it would interrupt the work of the Forest Service in California to protect natural resources, like water quality, while providing top notch recreational opportunities to all types of users.

*STATUS: This provision was included in the chairman's mark.*

### ***Title V – Reducing Regulatory Burdens Act of 2011***

**1) Letting More Pesticides In Our Waters By Axing Clean Water Act Protections –** Would create a loophole for pesticide applicators to spray toxic chemicals directly into our waterways without complying with the only statute that was created to protect our waterbodies and us. Currently, EPA has identified more than 1,000 water ways in the United States that are impaired by pesticides. An important tool in protecting our waterways from further contamination is the National Pollution Discharge Elimination System under the Clean Water Act (CWA), whereby pesticide applicators must comply with specific permit conditions when they are applying pesticides directly into waterways. However, Title V seeks to exempt all pesticide applications from the CWA. Contrary to claims by supporters of Title V, there is no duplication between CWA protections and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA covers pesticide manufacturers in the sale and distribution of pesticides around the U.S.; the CWA permit covers pesticide applicators to ensure that they are using pesticides in a way that protects our waterways. Furthermore, the CWA permit does not cover most agricultural practices – agricultural stormwater run-off into waterways and return flows from irrigated agriculture are already exempted from the CWA. EPA's general pesticide permit allows pesticide spraying – it simply requires some important steps that should be taken when spraying to protect our waterways. Elimination of EPA's pesticide permit will mean even more of these toxic poisons in the rivers that we fish in, the lakes that we swim in, and the streams that provide our drinking water.

*STATUS: This provision was included in the chairman's mark.*

### ***Amendments Added in House Appropriations Committee Markup***

**1) Anti-Wildlife, Pro-Poisons Rider** – The EPA estimates that more than one billion tons of pesticides are used each year in the United States. These chemicals, which include broad spectrum killers dating back to World War II, seriously harm America's endangered species including salmon, frogs, birds, and sea turtles. Pesticides also threaten human health, especially the health of young children. While pesticides in our waterways and air affect everyone, farmworkers and local communities are often at the greatest risk. Under the U.S. Endangered Species Act, the EPA must consult with federal wildlife agencies to mitigate the harms that registered pesticides pose to threatened and endangered species. This amendment prohibits the EPA from implementing any measures recommended by federal wildlife experts to protect endangered species from pesticides. This spells disaster for species that are already on the brink of extinction due to pesticides and other harms. For example, the National Marine Fisheries Service (NMFS) has found that the use of 24 particularly toxic pesticides and herbicides is harming listed Pacific salmon. NMFS has recommended reasonable mitigation measures such as no-spray buffer zones around waterways to protect endangered salmon from these particular poisons. This amendment would prevent the EPA from implementing any of NMFS's recommendations, further harming not only imperiled salmon and fishing jobs, but also human health.

*STATUS: This provision was offered as an amendment at Full Committee by Rep. Ken Calvert (R-CA). The amendment was adopted on a voice vote.*

**2) Spreading Death and Disease from Cement Pollution** – Rep. Carter's amendment blocks EPA health protections that would control smog, soot, mercury and other toxic pollutants emitted by cement plants, some of the worst industrial polluters of any kind. This policy rider will put America's children and elderly at risk of more asthma attacks, respiratory disease, and premature death. Controlling cement plants' air pollution will prevent up to 2,500 premature deaths, 1,000 heart attacks, 1,500 emergency room visits, and over 100,000 missed work days every year. Mercury is a dangerous brain poison that especially harms the development and learning abilities of children and the unborn. Cement plants are one of the largest industrial emitters of mercury pollution in the country, and the rider prohibits EPA from enforcing safeguards already on the books to reduce mercury and other toxic pollution.

*STATUS: This provision was offered as an amendment at Full Committee by Representative John Carter (R-TX). The amendment was adopted on a voice vote.*

**3) Leaving Millions of Acres of Wilderness Quality Lands Open to Drilling, Mining and Off-road Vehicles** – Rep. Lummis' amendment blocks the Bureau of Land Management's Wild Lands Initiative, which was implemented in order to correct the Bush administration's incorrect interpretation of the Federal Land Policy & Management Act. Under the Wild Lands policy, BLM resumes its obligation to inventory and manage lands that qualify for wilderness protection. The intent of the wild lands policy is to identify lands that qualify for wilderness and manage to protect those values so that Congress can make decisions regarding ultimate Wilderness designations. It entails a robust process that includes public input and allows agency discretion regarding specific proposed projects. Special places like the Greater Canyonlands Region in Utah, South Shale Ridge in Colorado and Adobe Town in Wyoming are examples of lands that would get a new chance for protection under the Wild Lands policy. While a funding limitation was inserted in the final

FY11 Continuing Resolution, it is important that Congress remove this amendment and remind BLM of its obligation to both inventory and protect lands with wilderness characteristics.

*STATUS: This provision was offered as an amendment at Full Committee by Rep. Cynthia Lummis (R-WY). The amendment was adopted on a voice vote.*

**4) Prohibits Funding for the EPA to Finalize a New Greenhouse Gas Standard for Automobiles After Model Year 2017** – This amendment removes funding necessary for the EPA to implement the landmark National Program for new vehicle fuel economy and greenhouse emissions improvements beyond model year 2016 as authorized by the Clean Air Act. Furthermore, it removes EPA’s funding to grant the State of California needed waivers to set its own motor vehicle GHG emissions reduction program as established under the CAA. While National Highway Traffic Safety Administration (NHTSA) retains the ability to set fuel economy standards beyond 2016, the stringency of any future standards is completely uncertain. Today, the EPA and NHTSA are working with California to develop National Program standards for 2017-2025 that could save over 2.5 million barrels per day in 2030, roughly equivalent to US imports from Saudi Arabia, Iraq, Nigeria and Libya today. Removing EPA funding would put that program and its associated oil savings in jeopardy.

*STATUS: This provision was offered as an amendment at Full Committee by Representative Steve Austria (R-OH). The amendment passed on a vote of 27 to 20.*

**5) More Soot Pollution, Anti-Science** – Rep. Flake’s amendment blocks critical public health protections establishing how much soot pollution in the air is unhealthy for Americans to breathe. The amendment blocks EPA from taking account the best scientific and medical information and updating clean air standards for “coarse particle pollution” or PM<sub>10</sub>, sometimes called soot. These standards are necessary to protect all Americans against unsafe particle pollution, which is a mixture of materials such as metals, smoke, acids, dirt, pollen, and molds. It is dumped into our air by industrial air polluters such as chemical plants and incinerators, as well as vehicles. When inhaled, these particles can cause serious health problems, including: asthma attacks, especially in children; increased rates of hospitalization for strokes and heart failure; heart attacks; and death from respiratory and cardiovascular causes. Because of the severe health problems associated with soot pollution, the Flake amendment would mean: more emergency room visits; more missed days of school and work; more use of inhalers; and increased risk of premature death from respiratory problems. This amendment would prevent EPA from doing its job to protect public health. Years of work and taxpayer dollars would be thrown away, all to benefit polluters. This rider has nothing to do with “farm dust” as some claim. In setting clean air standards like these, EPA does not mandate pollution reductions from any specific sources or sectors, EPA never has adopted pollution control obligations for farm dust, and the agency has said it has no intention of doing so now.

*STATUS: This provision was offered as an amendment at Full Committee by Representative Jeff Flake (R-AZ). The amendment passed on a vote of 29 to 18.*

**6) Sticking Taxpayers With Cleanup Costs** – This amendment would prohibit the EPA from developing financial assurance requirements to help ensure that the hardrock mining industry, not taxpayers, foot the bill for environmental cleanup at mine sites. American taxpayers are potentially liable for billions in clean-up costs at hardrock mining sites due to inadequate insurance required for mining operations. The GAO estimates that financial assurances were not adequate to pay all

estimated costs for required reclamation at 25 of the 48 hardrock mines they examined. Due to their sheer size, enormous quantities of waste and the wide range of hazardous substances released into the environment, additional financial assurance for hardrock mines is needed to protect taxpayers and western waters.

*STATUS: This provision was offered as an amendment at Full Committee by Rep. Denny Rehberg (R-MT). The amendment passed on a vote of 28 to 17.*

**7) Spreading Mercury Poisoning, Death and Asthma Attacks** – Rep. Lummis’ amendment denies EPA funding to carry out and enforce the Clean Air Act’s forthcoming Mercury and Air Toxics standards for power plants, and the recently finalized Cross-State Air Pollution Rule to cut smog and soot pollution from power plants. Blocking the Cross- State Air Pollution Rule for even one additional year would result in: between 13,000 and 34,000 lives lost due to smog and soot pollution; 15,000 more heart attacks, 400,000 more asthma attacks, 19,000 more hospital and emergency room visits; and 1.8 million days of missed work or school. Blocking EPA’s proposed Mercury and Air Toxics power plant standards by even one year would mean: up to 17,000 premature deaths; 11,000 heart attacks; 120,000 more asthma attacks; and 12,200 more hospital and emergency room visits. Power plants are far and away the single largest industrial source of mercury, arsenic, and acid gas pollution in the United States. Mercury is a dangerous brain poison that especially harms the development and learning abilities of children and the unborn. This rider sets the stage for further delays in cleaning up smog, soot and toxic pollution that threaten our children, our communities, and the unborn. The amendment is just another corporate giveaway that would block EPA’s health professionals and scientists from doing their job to cut extremely dangerous air pollution.

*STATUS: This provision was offered as an amendment at Full Committee by Representative Cynthia Lummis (R-WY). The amendment passed on a vote of 25 to 20.*

**8) Allowing Toxic Slime in Our Waters From Manure, Fertilizer and Sewage** – One of the most egregious anti-environmental measures, with both local and national ramifications, is the Diaz-Balart amendment aimed at stopping EPA from using its funding to implement, administer or enforce new water quality standards for Florida’s lakes and flowing waters, which were finalized in November. This amendment, supported by industry groups in Florida and nationwide, would even stop public education or enforcement of this rule to protect Florida’s waters from excess nutrient pollution from sewage, manure and fertilizer. This pollution has caused huge toxic algae blooms of green slime in many of Florida’s waters including the St. John’s River. In 2008, testing by the Florida Department of Environmental Protection (FDEP) revealed that 1,000 miles of the state’s rivers and streams, 350,000 acres of Florida’s lakes and 900 square miles of its estuaries were contaminated by nutrient pollution from sewage discharges and fertilizer or manure runoff. This pollution is jeopardizing the health of aquatic ecosystems and fisheries, public health, the ability to swim and boat in lakes and rivers, and Florida’s most important industry - tourism. Yet for more than a decade the state failed to finalize standards to reduce this pollution. Earthjustice, representing the Conservancy of Southwest Florida, Florida Wildlife Federation, Sierra Club, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper petitioned the EPA to compel such standards. In August 2009, the EPA entered into a consent decree with the environmental groups, committing to propose numeric nutrient criteria for lakes and flowing waters in Florida within a year, as well as criteria for estuarine waters a year thereafter. As a result, EPA finalized water quality standards for lakes and flowing waters in Florida in November 2010. Rep. Diaz-Balart’s amendment

would prohibit funding for EPA to continue to develop and enact these water quality standards, as well as to implement the public education outreach envisioned.

*STATUS: This provision was offered as an amendment at Full Committee by Representative Mario Diaz-Balart (R-FL). The amendment passed on a vote of 26 to 19.*

**9) Ballast Water** – The amendment prohibits any EPA funds – including Great Lakes restoration money through the Great Lakes Restoration Initiative or state revolving funds – from going to any Great Lakes state that has set stronger ballast water standards (either tougher numeric standards or faster implementation requirements) than weaker international standards or potentially weaker federal standards being developed by the U.S. Coast Guard. This amendment clearly applies to New York, which has been a leader in developing protective standards that will require the shipping industry to begin treating its ballast water before discharging it to eliminate invasive species threats. New York’s leadership has also been critical to driving the development of stronger regulations at the federal level. The language of this amendment is ambiguous, however, and could apply to strip all EPA funding from any Great Lakes state that has any requirements, including timelines, that are more stringent than federal or international requirements. This could include Wisconsin, Ohio, Illinois, Indiana, and Minnesota, all of which have required that existing IMO technologies be in use on vessels by deadlines that are likely more stringent than what the Coast Guard will require. Michigan could also be threatened by this legislation, if the Michigan Department of Environmental Quality determines that technologies that have been approved by the Coast Guard are not safe for use in Michigan waters.

*STATUS: This provision was offered as an amendment at Full Committee by Representative Steven LaTourette (R-OH). The amendment was adopted on a voice vote.*

**10) Pesticide Labels** – The amendment prohibits funding for the EPA to implement a regulation to restrict information provided on pesticide labels. The amendment was adopted on a voice vote. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states that it shall be unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded with misbranded being defined as labeling that bears any statement, design, or graphic representation which is false or misleading in any particular. In 2008, EPA ordered Scotts Miracle-Gro Co., located in Marysville, Ohio, a town within Rep. LaTourette’s district, to stop selling and distributing four pesticide products. Two of these products are illegal because they were never registered with EPA and display invalid registration numbers on the labels. The other two products are currently registered with EPA. However, Scotts sold and distributed these products before they were registered, which is a violation of federal law. The labels on these two products make false or misleading claims or fail to provide adequate safety instructions to protect people and the environment. The LaTourette amendment would stop the EPA from properly enforcing its regulations to prevent misleading labeling on pesticides. Improperly labeled products may lead to misuse which might harm people and the environment.

*STATUS: This provision was offered as an amendment at Full Committee by Representative Steven LaTourette (R-OH). The amendment was adopted on a voice vote.*

**11) Regulation of Ammonia Emissions** – This amendment would prevent the EPA from setting a Clean Air Act standard for ammonia. Several federal agencies, including EPA, have documented ammonia’s acute and chronic adverse health effects. Numerous peer-reviewed studies further

demonstrate that ambient ammonia pollution in some rural communities near factory farms currently exceeds recommended exposure levels, and citizens living near these operations have experienced adverse health effects. Ammonia gas also reacts with other gases to form ammonium aerosols, inhalable small particles that further endanger public health.

*STATUS: This provision was offered as an amendment at Full Committee by Representative Tom Cole (R-OK). The amendment was adopted on a voice vote.*

**12) Wetlands Designation** – The amendment prohibits funding for the EPA to designate new wetlands in emergency disaster areas. The amendment was adopted on a voice vote. The Emerson amendment prohibits EPA from regulating wetlands that were part of an emergency disaster area. One reason these areas were flooded is that they are in floodplains because they are wetlands. This amendment would encourage development in wetlands that have already been such to disaster assistance and encourage more risky development. (In other bills, the proponents also have amendments to not map these flooded areas as floodplains.)

*STATUS: This provision was offered as an amendment at Full Committee by Representative Jo Ann Emerson (R-MO). The amendment was adopted on a voice vote.*

**13) Lead Contractor Rule** – The amendment prohibits funding for the EPA to implement the "lead contractor" rule until the agency approves a commercially available lead paint test kit. The amendment was adopted on a voice vote. EPA issued a rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Under the rule, beginning contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. Thousands of contractors have been trained under the new rules; this amendment will stop enforcement of this rule.

*STATUS: This provision was offered as an amendment at Full Committee by Rep. Denny Rehberg (R-MT). The amendment was adopted on a voice vote.*

## **IN HOUSE INTERIOR APPROPRIATIONS COMMITTEE REPORT**

### ***TITLE I***

**1) Powerlines Trampling National Parks** – The Dent Amendment tries to force the National Park Service and other federal agencies to cut short their environmental review of a major transmission project that is currently slated to cut through the Delaware Water Gap and the Appalachian Trail, two of the most visited units in the National Park system. The proposed Susquehanna to Roseland 500-kV transmission line could be re-routed to avoid or mitigate harm to these parklands, and there appear to be more cost-effective approaches to ensuring grid reliability than investing over a billion dollars in this particular project. These environmentally and economically preferred alternatives must receive meaningful consideration in the Park Service's Environmental Impact Statement ("EIS"). This Amendment seeks to prevent the Park Service from fulfilling its stewardship obligations to prevent impairment of park resources, and it threatens to saddle ratepayers with avoidable costs. There is no need to rush the EIS process and compel a final Record of Decision in October 2012. The in-service date for the line has been pushed back already to 2015 without jeopardizing grid reliability, and it is now unclear whether the project will be needed

at all, given decreasing electricity demand in the relevant service areas, increasing availability of energy efficiency and demand response resources, and the approval of other transmission projects that will serve the same load centers. Finally, this Amendment sets a dangerous precedent in rewarding developers for initiating the NEPA process very late in the overall project approval process. **(REPORT LANGUAGE)**

*STATUS: This provision was offered as an amendment at Full Committee by Rep. Charlie Dent (R-PA). The amendment was adopted by a voice vote.*

**2) Increasing Reporting Under the Equal Access to Justice Act** – The Equal Access to Justice Act (EAJA), signed by President Reagan, allows parties with legitimate claims against the government to get reimbursed for their attorneys fees and other costs when they win. (The ESA has similar provisions). The EAJA allows reimbursements for social security recipients, people seeking disability benefits, small businesses, people who are targets of racial discrimination, veterans, and groups representing consumer or environmental interests. But report language in the Interior-EPA bill singles out certain environmental and natural resources cases for different treatment: onerous, intrusive reporting requirements that could have a chilling effect on legitimate claims – and eventually even set a bad precedent for other parties with legitimate claims under EAJA, such as disabled veterans and civil rights plaintiffs. Fair, reasonable reporting requirements – such as those that exist in the EAJA statute books and that provide for government accountability and public awareness – make sense. But the approach taken by the Interior-EPA bill does not. EAJA is an important deterrent against unjustified government actions. When President Reagan signed EAJA into law, he said: *“I support this important program that helps small businesses and individual citizens fight faulty government actions by paying attorneys’ fees in court cases or adversarial agency proceedings where the small business or individual citizen has prevailed and where the government action or position in the litigation was not substantially justified.”* As such, such claims should not be discouraged. **(REPORT LANGUAGE)**

*STATUS: This language was included in the committee report accompanying the legislation.*

**3) Bad Boiler MACT Report Language** – The Committee provides guidance urging the EPA to abandon its proposal—currently under reconsideration—to reduce toxic emissions from industrial boilers. Pollutants like lead, benzene, fine particulates and mercury are emitted from industrial boilers around the nation. Cleaning up toxic emissions from these sources are expected to save up to 6,500 lives each year. Committee also offers baseless claims that industry is incapable of reducing harmful emissions and adequately protecting the public. **(REPORT LANGUAGE)**

*STATUS: This language was included in the committee report accompanying the legislation.*

### **TITLE III – RELATED AGENCIES: USDA FOREST SERVICE**

**1) Wyoming Wilderness Giveaway: Secret Earmark Threatens Wilderness Study Area** – Report language includes an earmark designed to benefit a single private company in Wyoming. The language directs the Forest Service to ignore existing law, a judicial decree, and common sense by dramatically expanding authorized commercial activities and use of motorized vehicles in a wilderness study area established 27 years ago. The report language—inserted with no public discussion or debate—directs the Forest Service to violate a court order to uphold the Wyoming Wilderness Act, which required the Forest Service to maintain the wilderness character of designated wilderness study areas and capped motorized vehicle use at 1984 levels. At the request of a single company that seeks to expand its commercial use of an area reserved for wilderness study by



Congress, the committee report offers a secret giveaway: unchecked commercial and motorized use of the area. Such use would significantly diminish the wilderness values of the wilderness study area, adversely affect quiet recreation opportunities, and degrade important winter wildlife habitat.  
**(REPORT LANGUAGE)**

*STATUS: This language was included in the committee report accompanying the legislation.*

***Alaska Wilderness League • American Rivers • Bark • Biodiversity Conservation Alliance • Center for Biological Diversity • Center for Native Ecosystems • Chesapeake Bay Foundation • Clean Water Action • Conservation Law Foundation • Defenders of Wildlife • Earthjustice • Earthworks • Endangered Species Coalition • Environment America • Farmworker Association of Florida • Geos Institute • Great Old Broads for Wilderness • League of Conservation Voters • Natural Resources Defense Council • Northwest Center for Alternatives to Pesticides • Northwest Environmental Advocates • Oregon Citizens for Safe Drinking Water • Oregon Environmental Council • Oregon Toxics Alliance • Oregon Wild • Pacific Coast Federation of Fishermen's Associations • Personal Exposure to Pesticides • Pesticide Free Zone • Quiet Use Coalition • Save Our Wild Salmon • Sierra Club • Southern Environmental Law Center • Southern Utah Wilderness Alliance • TEDX (The Endocrine Disruption Exchange) • The Wilderness Society • Union of Concerned Scientists • WildEarth Guardians • Wilderness Workshop***

The organizations listed above do not necessarily work on or have expertise on every provision in this list.