

NORTHWEST DEFENSE

The Newsletter of the Northwest Environmental Defense Center



WINTER 2003

Democratic Presidential Candidates - How Do They Rate On The Environment?

So, after three years of riding the corporate-driven, fossil-fuel-burning Bush Bus, traveling under “Clear Skies,” through “Healthy Forests” and “Roadless Areas,” u-turning at “no net loss of wetlands,” and briefly stopping to snowmobile in Yellowstone before continuing on to military exemptions or Yucca Mountain, you’re thinking maybe it’s time for someone else to take the wheel. But who? We offer a brief factual overview of a few of the hopeful democratic candidates’ environmental records. The candidates are divided into two categories - candidates with congressional voting records and candidates without. League of Conservation Voters (LCV) ratings of the 107th Congress are provided for Candidates with voting records. For more information visit www.lcv.org.

CANDIDATES WITH VOTING RECORDS- 107th CONGRESS

SENATOR JOHN EDWARDS: Voted pro-environment on 9 of 16 issues. Received an LCV rating of 68%.

Marks Against: Voted against amendments increasing fuel efficiency for light trucks and requiring a 20% renewable energy portfolio for electric utilities by 2020. Supported a temporary block requiring hydraulic fracturing from oil and gas development to be conducted in compliance with the Safe Drinking Water Act. Voted to approve a nuclear waste repository at Yucca Mountain, an earthquake prone location 90 miles from Las Vegas. Voted to block an amendment to prevent factory farms from receiving federal subsidies.

Marks For: Voted against classifying municipal waste incineration as renewable energy, drilling in the Artic Refuge, and the Trade Act of 2002. Voted to increase air conditioner efficiency by 30%. Offered legislation to delay the Bush administrations rollback of the CAA new source review program until a study of its health effects could be completed. Also, committed to enacting a nationwide moratorium on the construction and expansion of new CAFOs.

SENATOR JOE LIEBERMAN: Voted pro-environment on 13 of 16 issues. Received an LCV rating of 88%.

Marks Against: Voted to reauthorize the Price-Anderson Act that limits nuclear accident liability. Supported the Trade Act of 2002, reauthorizing Fast Track authority to negotiate trade agreements, which Congress cannot amend. Voted for a provision in the energy bill to classify municipal solid waste incineration as renewable energy.

Marks For: Outspoken opponent to drilling in the Artic Refuge - successfully filibustered the Murkowski-Stevens amendment to include drilling in the energy bill, continues to threaten a filibuster

of any drilling amendment. Introduced “cap and trade” legislation to limit greenhouse gas emissions.

SENATOR JOHN KERRY: Voted pro-environment on 15 of 16 issues. Received an LCV rating of 92%.

Marks Against: Voted to reauthorize Fast Track trade negotiation authority, despite proposing an unsuccessful amendment to prevent future trade agreements from including provisions similar to NAFTA Chapter 11.

Marks For: Holds the highest career LCV rating of any presidential candidate at 92%. Strongly opposed drilling in the Artic Refuge as a solution in the energy bill and instead proposed an amendment to raise fuel economy standards for cars and trucks. Proposed an amendment to the Trade Act of 2002 to protect US environmental laws from trade challenges by foreign investors. Proposed legislation to inject more money into the Superfund for cleanup of the nation’s most toxic sites.

REPRESENTATIVE DICK GEPHARDT: Voted pro-environment on 7 of 8 issues. Received an LCV rating of 91%.

Marks Against: Originally voted to cap farm subsidies for a single farm operator, limiting the amount of subsidies large agribusinesses could receive and increasing the amount of money available for conservation efforts. However, ultimately reversed this position in subsequent vote on the same issue.

Marks For: Voted against military exemptions under the Migratory Bird Treaty Act and the Endangered Species Act. Voted to prevent oil drilling off the coast of California, and against the nuclear repository at Yucca Mountain. Voted against the Trade Act of 2002. Voted for an amendment to prevent the federal government from issuing new agricultural leases in the Klamath Basin that would have severe environmental impacts.

REPRESENTATIVE DENNIS KUCINICH: Voted pro-environment on 8 of 8 issues. Received an LCV rating of 95%. Kucinich is the Candidate endorsed by LCV.

Marks Against: There are no recent environmental marks against Representative Kucinich.

Marks For: Voted for capping farm subsidies to agribusinesses and to prevent the federal government from issuing environmentally damaging commercial farming leases in the Klamath Basin. Voted against drilling off the coast of California, creating a nuclear repository at Yucca Mountain, and exempting the military from the ESA and MBTA. One of the only US officials to attend the World Summit on Sustainable Development.

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Air and Toxics

For the last several years the Air and Toxics group has mainly reviewed and commented on Title V air permit renewals. Title V requires all applicable Clean Air Act (CAA) pollution guidelines, monitoring standards, and record keeping be included in one permit. Title V also provides specific public participation requirements. Our comments generally address compliance with the Title V requirements themselves. Specifically, comments address whether all the applicable requirements and monitoring standards are in the permit. This year we continued review of Title V permits, and are in the process of developing a systematic approach so that students can easily comment.

However, this fall we expanded the scope of our activities. One new activity is the Civil Rights Act project. The Environmental Protection Agency (EPA) has regulations implementing its duties under Title VI of the Civil Rights Act ("Title VI"). Those regulations go beyond the statute insofar as they prohibit discriminatory effects as well as intentional discrimination. Facially neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and there is no less discriminatory alternative. Title VI regulations require that anyone receiving money from the EPA to keep records of their own compliance with Title VI must provide some sort of grievance procedure for the public. The Oregon Department of Environmental Quality (DEQ) receives money from the EPA to run its air program. DEQ, like virtually all other air permitting authorities in the country, is not fulfilling its obligations under Title VI. We are currently developing a model comment, for future incorporation into Title V comments, where appropriate, that will: 1) systematically raise the issue of DEQ's requirement to comply with Title VI and; 2) in the meantime use the Title V process as a surrogate. We are coordinating with Environmental Justice Advocates on this project and it should be fully in place early next semester.

Next semester we plan to develop a roadmap for greater involvement in non-attainment and attainment new source review, for use by future generations. New source review provides enhanced opportunities for public participation. Currently, we do not take advantage of those opportunities. Given that we are the Air and Toxics group, next semester we plan to focus on the second part of our name, by looking at statewide compliance with the Emergency Planning and Community Right to Know Act (EPCRA). This investigation primarily uses EPA's database established pursuant to EPCRA.

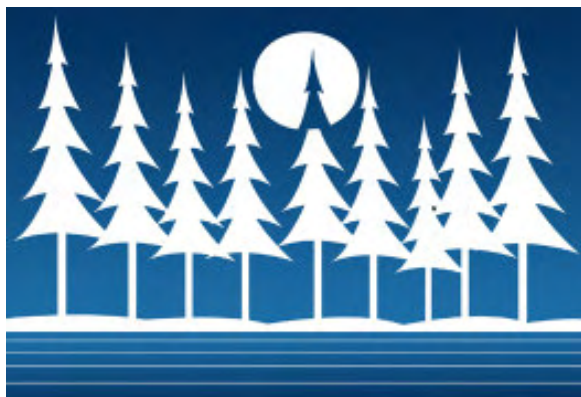


Lands and Wildlife

The Forest Service, Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS) have kept the Lands and Wildlife group busy! The Forest Service continues to propose timber sales in areas burned during the last two summers. Fire has shaped forest ecosystems for thousands of years; in fact, it is often a critical ingredient for a forest health. Once burned, however, these landscapes are fragile. The best available science has confirmed that post-fire salvage logging is one of the most ecologically destructive forms of logging. This hasn't stopped the Forest Service from proposing sales in these areas. Students have already commented on five post-fire salvage projects this semester, and there are many more to come. On our radar screen is the Biscuit Fire Draft Environmental Impact Statement. The Biscuit Fire burned approximately 500,000 acres of the Siskiyou National Forest in the summer of 2002. The Forest Service is proposing to log 550 million board feet from the fire area, an amount greater than all public lands logging proposed in the Pacific Northwest last year. The sale also proposes logging in 12,000 acres of inventoried roadless areas as well as within Late Successional Reserves. NEDC will submit substantive comments on this project and other post-fire salvage proposals throughout the year.

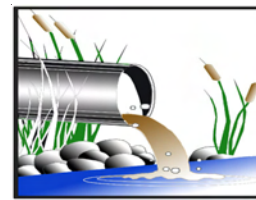
A number of students were involved in wildlife projects this year. The FWS recently proposed critical habitat for the Pierson's milk-vetch, an ESA-listed plant that only occurs in a small area in Southern California. The plant's habitat continues to be degraded by off-road vehicles. Following a court order, FWS proposed designating critical habitat for the species, at the same time also proposing to de-list the species altogether. Students commented on both of these proposals. The BLM also concocted an interesting species proposal this fall. Seeking to keep the sage grouse off the endangered species list, the BLM created a conservation strategy for the bird. Students commented not only on the legal underpinnings of the proposal, but also on the scientific support (or lack thereof) that the BLM used to shore up its strategy.

Students have also commented on and appealed green timber sales, a ski area expansion proposal, a critical habitat proposal, a recovery plan for big horn sheep, and a grazing management plan for an area of Southeastern Oregon. As the public lands and wildlife agencies continue to produce proposals to degrade our public lands and wildlife, our Lands and Wildlife students will continue to meet these challenges head on, using legal tools to protect our fragile ecosystems.



Water and Wetlands

NEDC's Water & Wetlands group worked hard submitting comments on the EPA's proposed revision to temperature and dissolved oxygen standards for Oregon, Allweather wood treatment facilities, and Portland Meadows this fall semester. They also worked on a CWA Sec. 401 certification for a dredge-and-fill project at Sundial Marine on the Columbia River. Additionally, students are researching Oregon's proposed assumption of the CWA Sec. 404 wetlands permitting program under the Clean Water Act (CWA). Finally, as part of NEDC's ongoing concentrated animal feedlot operation (CAFO) project, a student is helping to post pictures of CAFOs in violation of the CWA on our website. Guest speakers have included Karen Russell, NEDC board member, treasurer, and senior staff attorney at WaterWatch; and Joe Whitworth, executive director of Oregon Trout. If you are interested in working on a permit comment or completing research, come to our Tuesday meetings. For more information contact Alex (afidis@lclark.edu) or Brenda (blr@lclark.edu). The winter holidays are a great time to knock out a few comments.



NEDC Embarks on Storm Water Sampling Project

Given the growing lack of regulatory oversight by state and federal environmental agencies, independent citizen-initiated environmental monitoring efforts are more important than ever. Last year, the Oregon Department of Environmental Quality (DEQ) had a single full-time staff person dealing with problems arising from storm water run-off for the entire northeast corner of the state. That employee has recently been asked to assume permit writing tasks previously shouldered by other DEQ staff members, leaving even less storm water oversight in the region. This lack of oversight results in major industrial storm water pollution problems and extensive Clean Water Act non-compliance. Only a small portion of all industrial sites have taken the initial step of applying for a storm water discharge permit. At the sites that obtained permits, widespread permit violations and failures to submit required sampling data and reports are the norm rather than the exception.

NEDC is working hard to fill this void in storm water pollution regulation. This winter, NEDC students, members and staff will be paddling through the Columbia Slough in northeast Portland to collect storm water samples from industrial outfalls. Run-off from industrial sites typically contains a host of heavy metals and other toxic pollutants. Preventing these pollutants from initially entering the water is much easier than removing them afterwards. NEDC anticipates using the data it collects to take whatever steps necessary to ensure Portland's industrial sites obtain proper storm water discharge permits from Oregon DEQ and utilize appropriate technology to comply with the terms of those permits.

First year student and NEDC board member J.D. Semones helped craft a monitoring plan that will enable NEDC to target known sources of illegal storm water pollution. "The ability to combine a day of paddling along a waterway with an environmental advocacy goal makes all the hard work worthwhile," according to J.D. Please contact Mark at mrsr@nedc.org if you would like to paddle in the Slough with us this winter.

NEDC Seeks to Defend Public Participation

NEDC filed two separate lawsuits against the state of Oregon in the last two weeks of October. The suits deal with the water pollution permitting processes of Oregon's Concentrated Animal Feeding Operations and an Oregon shipyard. The permitting processes offer no opportunity for concerned citizens and local communities to comment or request a public hearing, and they occur completely behind closed doors, out of view of the public. For a digital version of the state court Petition for Review in either case, please contact Mark at msr@nedc.org.

Land-use Decision Protects Chum Salmon

In a landmark land-use decision, the City of Vancouver, Washington has denied a Vancouver developer's plans to cut a grove of trees on land he recently acquired on the north shore of the Columbia River just east of the I-205 bridge. The land is directly adjacent to one of only three known spawning sites in the lower Columbia River used by chum salmon, a threatened species under the Endangered Species Act. Several of the trees the developer planned to remove were ancient cedars over 200 years in age.

In his tree removal application, the developer implied that the acre-sized clearance was necessary to support a lawn for recreational activities such as badminton, volleyball and croquet. In its thoroughly researched and well-supported decision, the City denied the developer's proposal in full, stating there were "feasible and prudent" alternatives for the proposed activities on existing cleared areas, even citing to playing area requirements from the respective sports associations (including figures from the International Badminton Federation and US Croquet Association).

NEDC submitted comments on behalf of a coalition of 19 environmental organizations, and a number of the mitigation requirements proposed in those comments were adopted by the City. These requirements dramatically scale back the proposed project, but will only kick in if the developer is successful in getting the denial of his tree removal permit overturned through the land-use appeal process. The protective mitigation requirements approved by the City include:

- 1) a restriction on the use of local well-water for lawn watering, given the importance of the property's geomorphology to the chum salmon;
- 2) no new areas of grass or lawn may be established on the property, given concerns related to the application of pesticides and herbicides;
- 3) an existing gravel driveway may not be paved or widened due to concerns that additional impervious surface may serve as a vector for petrochemical pollutants;
- 4) no-cut buffers are extended in order to protect an adjacent wetland; and
- 5) only a very limited number of small diseased or damaged trees may be cut.

Given the diminution in value of the property for development use, it is likely that the developer will agree to transfer the property to a willing group of purchasers who intend to place the parcel under conservation ownership. Professor Mary Wood, Director of the University of Oregon School of Law's Environment and Natural Resources Law program, was an integral force in support of increased protection for the site.

NEDC members will visit the site at 3:00 p.m. on Friday, Dec. 5th near the peak of the chum salmon run. You are cordially invited to join us. Witnessing the chum spawning on the shores of the Columbia River is a timeless spectacle. Friends and family are invited as well. Please contact Mark at msr@lclark.edu for details.



TEAM NEDC Portland Marathon Fundraiser a Resounding Success

On October 5th, a dozen NEDC students, supporters, and board members participated in the Portland Marathon on behalf of NEDC in one of the most successful fundraising events in NEDC's 33-year history! Thanks to those of you who pledged your support for their efforts, and thanks to Clif Bar for sponsoring Team NEDC.

FLYING ABOVE THE MANURE

NEDC, with the assistance of Lighthawk, conducted aerial surveillance of some Oregon Concentrated Animal Feeding Operations (CAFOs) in the vicinity of Albany, Oregon this past September. NEDC will conduct additional fly-overs throughout the winter months over operations that present pollution concerns across the state. The images obtained during the flight were taken at the tail end of the driest time of the year in the Willamette Valley, and are compelling because they provide clear evidence of imminent, yet avoidable pollution problems. NEDC provided notice to the operations of our concern that failure to adequately control polluted run-off and direct discharge from their facilities is in violation of state and federal law. It is our hope that these operators take our concerns to heart and make the basic infrastructural upgrades necessary to contain manure and other waste products as soon as possible.

We compiled the images and developed a slideshow on our website in order to provide a clear picture of the imminent pollution problems that could be avoided with limited infrastructural changes or retrofitting. Many Oregon CAFOs have already made these necessary upgrades, but some have not. Please feel free to browse the photos on our website and return later this winter to see if our next round of photos of the same CAFOs captures facilities updated to comply with the law or avoidable water quality violations.



FORESTS NEED FIRE

Functioning forests need fire. While thinning may be appropriate in limited circumstances to allow forests to return to a natural fire regime, the fear of catastrophic wildfire has been used to justify increased logging activity and to smear environmentalists opposing commercial logging on federal land.

In its bid to address fire in our forests, the U.S. Senate recently passed the Healthy Forests Restoration Act of 2003 (HFRA). The bill is now bound for a conference committee that will reconcile the differences between the House and Senate versions. Bush has indicated that he will sign it when it emerges from committee.

The Act authorizes the appropriation of \$760 million for hazardous fuel reduction projects, at least half of which must be used for projects in the wildland-urban interface. This provision has potentially positive impacts and will provide funding to protect communities at risk and reduce the need to log mature trees to fund non-commercial thinning projects. However, the other half of the money can be spent far from communities at risk and is likely to be spent on actions that would further degrade our forest.

The Act contains several disturbing provisions. The most troubling are the restrictions placed on public review of fuel reduction projects. The Act binds the hands of the agency in its development of alternatives. Under the HFRA an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for a fuel reduction project can only consider three alternatives: no action, the proposed alternative and one other alternative. Because the federal courts have recognized that the alternatives analysis is the heart of the examination required under the National Environmental Policy Act (NEPA), this provision will significantly impair the integrity of the agency's environmental analysis. Another unsettling provision dramatically limits administrative review of fuel reduction projects. Administrative review of an EA or EIS can only occur *before* the agency makes its final decision. The bill also restricts the venue of a challenge to a fuel reduction project to the District Court for the district where the project is located—bad news for activists in extremely conservative districts. Finally, the Act creates a new categorical exclusion category for “research treatments” of up to 1,000 acres.

We need to reintroduce natural fire regimes to our forests. But the HFRA is a cynical and destructive attempt to achieve this goal. As a result, we are entering a new and frightening era in our battle to protect our public forests.



CANDIDATES WITHOUT VOTING RECORDS- WHAT DO THEY SAY?

GENERAL WESLEY CLARK: Lacking previous political experience and absent any voting record, it is difficult to determine where Gen. Clark's rhetoric ends and his policies begin. This difficulty is furthered by the absence of any environmental policy plan from Clark's campaign.

Statements: General Clark is inclined "not to support drilling" in the Artic Refuge because the "gains in terms of US energy independence are relatively marginal." He would "have no hesitancy in enforcing trade agreements" but would "like to see them have better environmental standards abroad." Finally, Clark states: "There is something called global warming and it's just getting started as China and India modernize."

GOVERNOR HOWARD DEAN: As Governor of Vermont, Dean has set emissions goals for the state consistent with the Kyoto Protocol. His energy policy focuses on increased fuel efficiency and a large portfolio of renewable energy. Dean is a strong supporter of NAFTA and the World Trade Organization.

Statements: "...I supported NAFTA, I supported the WTO. We benefited in Vermont from trade... we have to go back and revise every single trade agreement that we have to include... environmental standards." "The future is family farms and we've got to maintain them and we've got to change the agricultural program in this country dramatically to support family farms."

Welcome to the Board!

At NEDC's annual retreat at Westwind, we elected three new board members:

Laurie Rule, staff attorney at Advocates for the West, in Boise, Idaho.

JD Semones, first year student at Lewis & Clark Law School.

Chaitna Sinha, second year student at Lewis & Clark Law School.

Also, many thanks to Brooks Foster and Kristen Ruether for their time and dedication to NEDC. Brooks and Kristen stepped down as board members, and their presence will be missed. Thanks!

Bullitt Grant Matches Your Contributions

The Bullitt Foundation recently awarded NEDC the largest grant in our history. As part of this grant the Foundation will match individual contributions to NEDC, up to \$10,000. Because of this grant, your NEDC donation counts now more than ever. Please take the time to make your donation today. For more information contact Hillary at hprugh@nedc.org or 503.768.6673.

More Than Just Compliance

NEDC-initiated Clean Water Act citizen suits have forced the installation of appropriate treatment technology by companies and municipalities throughout the Pacific Northwest, and often have even stopped the discharge of pollution altogether. However, when NEDC resolves a Clean Water Act lawsuit, it looks to generate more than just compliance with the law. It also seeks to recoup, in some fashion, the ill-gotten economic benefit polluting companies have enjoyed over their competitors by Clean Water Act compliance failure.

In addition to compliance with the law, recent NEDC Clean Water Act settlements have generated thousands of dollars for a host of environmentally beneficial projects. These projects include:

- Columbia Slough revegetation efforts by the city of Portland
- Biodiversity educational programming for teachers and students at the Jackson Bottom Wetlands Preserve Educational Center in Hillsboro
- A bank-stabilization and native vegetation planting project by Oregon Trout at the mouth of Tryon Creek, an urban tributary of the Willamette River which is home to populations of wild winter steelhead and coho salmon;
- A water-quality monitoring project in southern Oregon's Rogue River basin to be performed by the Klamath Siskiyou Wildlands Center;
- Funds provided to the River Network to purchase land and easements for much-needed Willamette River riparian greenspace.

With your continued support, NEDC can keep working to stop current water pollution throughout the region, and to restore places harmed by past illegal actions.

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