

# Anti-Environmental Riders on FY 2018 Appropriations and Other Must-Pass Bills

AS OF 12/19/17

\*) indicates a provision that has been deleted or amended and is no longer objectionable. Please consult the STATUS line for further details.

<b><u>FY2018 Anti-Environmental Rider Ticker</u></b>			
	Enacted	Deleted*	Proposed
<b>Tax Cuts and Jobs Act</b>			1
<b>House National Defense Authorization (X)</b>	0	2	2
<b>House Energy and Water Approp.</b>			8
<b>Senate Energy and Water Approp.</b>			1
<b>House Commerce, Justice, Science Approp.</b>			1
<b>House Financial Services Approp.</b>			1
<b>House Interior and Environment Approp.</b>			41
<b>Senate Interior and Environment Approp.</b>			33
<b>House Disaster Supplemental</b>			1
<b>Total</b>		2	89
(X) Bill has been signed into law (V) Bill has been vetoed * Includes provisions amended to no longer be objectionable			

## Tax Cuts and Jobs Act (H.R. 1)

### *Title II*

**1) Section 20001: Oil and Gas Program** – This provision would authorize a “competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain” of the Arctic National Wildlife Refuge, our nation’s largest wildlife refuge and one of the most untouched wildlife havens left in the world. The Secretary of the Interior is directed to make at least two lease sales that are not fewer than 400,000 acres each, and he is authorized to issue any rights-of-way or easements throughout the Coastal Plain to facilitate the oil and gas program. The Coastal Plain, where drilling would occur, is the biological heart of the refuge. The refuge contains nesting habitat for about 200 species of migratory birds; critical denning habitat for threatened polar bears; spawning streams for Dolly Varden and other fish species; and room to roam for caribou, wolves, muskoxen, Dall sheep, Arctic foxes and many other wildlife species.

*STATUS: This provision was packaged with the tax bill through the budget reconciliation process. After the House and Senate passed their own versions of the tax bill, the conference committee produced a final bill that contains this provision. The House and Senate were expected to pass this legislation the week of December 18, 2017 with a goal of sending it to the president on Wednesday, December 20, 2017.*

## **National Defense Authorization Act, 2018 (H.R. 2810)**

### ***Title XXVIII – Military Construction General Provisions – Subtitle D – Military Land Withdrawals***

#### **1) Section 2831 and 2) Section 2832: Circumvent Process for Withdrawal of Public Lands –**

This language would amend the Sikes Act by eliminating the U.S. Fish and Wildlife Service as the requisite agency to coordinate on preparation of integrated natural resources management plans for military installations. The provisions could prevent the federal agency best equipped to advise on wildlife management and threatened and endangered species conservation from engaging in these planning processes. The language also eliminates the Congressionally mandated renewal process under the National Environmental Policy Act, excluding robust, transparent public participation in decision-making for withdrawals of public lands for military use across the West, and abdicating Congress' role as final arbiter of these planning processes. These provisions threaten hundreds of thousands of acres of public land, including national wildlife refuges (such as Desert and Stillwater refuges in Nevada), jeopardizing wildlife, public access and recreation, and affecting other lawful multiple uses. The language would circumvent the current withdrawal process (and public review) by allowing the Secretary of the Interior to administratively permit temporary use of public lands for military purposes. The language also would allow the Secretary of the Interior to transfer administrative jurisdiction of parcels of public land no larger than 5,000 acres to military departments, excluding public input on these decisions.

*STATUS: This provision was originally included in the Chairman's mark for the House Armed Services Subcommittee on Readiness. The provision was removed from the final National Defense Authorization Act for Fiscal Year 2018, H.R. 2810.*

## **Energy and Water Development and Related Agencies Appropriations Act (H.R. 3266/H.R. 3354)**

### ***Title I – General Provisions – Corps of Engineers – Civil***

**1) Section 107: Reinforcing Clean Water Act Exemptions** – This provision would prevent the Army Corps of Engineers from requiring a permit “for the activities identified in subparagraphs (A) and (c) of section 404(f)(1).” This has been interpreted as reinforcing existing Clean Water Act exemptions for discharges of dredged or fill material associated with farming, ranching, and forestry.

*STATUS: This provision was included in the Chairman's mark. This provision has been included in final appropriations bills since FY 2016.*

**2) Section 108: Endanger Clean Water Protections** – This provision would allow EPA and the Army Corps of Engineers to repeal the 2015 Clean Water Rule without following laws that would

otherwise apply to such an action. That means the agencies could ignore public input in repealing the rule, or adopt a rule without any reasonable justification. By contrast, the Clean Water Rule was the result of public engagement and scientific analysis. It is unconscionable that Members of Congress want to carve out an exemption to longstanding transparency and good governance laws for the purposes of dismantling clean water protections.

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

## ***Title II – General Provisions – Department of the Interior***

**1) Section 203: Stop San Joaquin River Restoration** – This provision would prohibit implementation of the San Joaquin River Restoration settlement between the United States, Friant Water Authority, and conservation and fishing groups to restore the river as required under state and federal law. This would prevent funding for water supply and flood control projects that benefit local farmers, and likely lead the parties back to court because it would allow some 60 miles of California's second longest river to remain completely dry in violation of state law.

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

## ***Title V – General Provisions***

**1) Section 505: Block Funds for the National Ocean Policy** – This provision impedes the full implementation of the National Ocean Policy, a commonsense policy with bipartisan roots and support. This rider would limit coordination between agencies, states, and stakeholders, adversely affect the marine environment and resources that sustain ocean industries, and undermine valuable ocean planning work being voluntarily undertaken in states and regions around the country.

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

**2) Section 507: Block Funds for Shutting Down Yucca Mountain** - This provision would prevent the government from shutting down the proposed nuclear waste repository at Yucca Mountain in Nevada.

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

**3) Section 511: Block Cape Wind Project:** – This provision would prevent the Department of Energy from doing anything to further the Cape Wind Project off the coast of Massachusetts.

*STATUS: This provision was sponsored by Rep. Steve Stivers (R-OH) and was included in en bloc amendments offered on the House floor by Energy and Water appropriations subcommittee chair Mike Simpson (R-ID). On July 26, 2017, the en bloc amendments passed by voice vote.*

**4) Section 518: Put Blinders on Cost of Climate Change** – This provision would block any consideration of the costs of carbon pollution on the rest of the world. This would bar the Department of Energy (DoE) from assessing and weighing the full costs of extreme weather or other climate impacts caused by our pollution, and the full benefits of any actions to improve energy efficiency or clean up carbon pollution.

*STATUS: This provision was added on the House floor by Rep. Paul Gosar (R-AZ). On July 26, 2017, the amendment passed by voice vote.*

**5) Section 519: Block Energy Efficiency Standards for Light Bulbs** – This provision would block the Department of Energy from implementing and enforcing common sense energy efficiency standards for light bulbs. By all reasonable measures the transition has been a success, and efficient incandescent bulbs are among the variety of choices available for consumers. Reinstating this provision will prevent DoE from enforcing the standards against inefficient, noncompliant bulbs.

*STATUS: This provision was added on the House floor by Rep. Michael Burgess (R-TX). On July 26, 2017, the amendment passed by voice vote. This provision has been in final appropriations bills since FY 2012.*

## **Energy and Water Development and Related Agencies Appropriations Act (S. 1609)**

### ***Title III – Department of Energy – Energy Programs – General Provisions***

**1) Section 307: Altering our Nuclear Waste Storage Strategy:** This provision would allow nuclear waste to be stored in private facilities. The rider severs any meaningful linkage between the storage and disposal of nuclear waste by exploring storage as a viable option for dealing with nuclear waste from the nation’s weapons programs and nuclear power plants. This dangerous precedent breaks with over 50 years of scientific consensus that supports permanent isolation in deep geological repositories as the only technically, economically, and ethically viable waste disposal option. The substantial distinction between nuclear waste storage and nuclear waste disposal must be preserved and never be blurred.

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

## **Commerce, Justice, Science, and Related Agencies Appropriations Act (H.R. 3267/H.R. 3354)**

### ***Title V – General Provisions***

**1) Section 553: Block Funds for the National Ocean Policy** – This provision impedes the full implementation of the National Ocean Policy, a commonsense policy with bipartisan roots and support. This rider would limit coordination between agencies, states, and stakeholders, adversely affect the marine environment and resources that sustain ocean industries, and undermine valuable ocean planning work being voluntarily undertaken in states and regions around the country.

*STATUS: This provision was added on the House floor by Rep. Bill Flores (R-TX). On September 13, 2017, the amendment passed 216-199.*

## **Financial Services and General Government Appropriations Act (H.R. 3280/H.R. 3354)**

### ***Title VII – General Provisions – Government-Wide***

**1) Section 745: Block Implementation of Flood Risk Mitigation** – This provision would prevent implementation of new measures to protect public infrastructure from flooding. The federal flood protection standard is meant to increase our resilience to future flooding, protecting lives and reducing taxpayer dollars spent to rebuild after a disaster. The provision only serves to harm the American public.

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

## **Interior, Environment, and Related Agencies Appropriations Act (H.R. 3354)**

### ***Title I – General Provisions – Department of the Interior***

**1) Section 111: Reduce the Public's Right to Participate in the Management of Public Lands** – This provision would require that a prospective plaintiff exhaust all administrative remedies before filing a citizen suit challenging a Bureau of Land Management decision concerning grazing on 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 this provision 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. The same provision has been included in the final appropriations bills since FY 2012 as a temporary requirement; however, this provision would make the requirement permanent.*

**2) Section 113: Imperil Sage-Grouse** – This provision would prohibit the U.S. Fish and Wildlife Service (FWS) from conducting a new status review for the imperiled greater sage-grouse or Columbia basin sage-grouse for at least another year. In September 2015, FWS determined that the greater sage-grouse was not warranted for listing under the Endangered Species Act, and withdrew the species from the candidate species list. FWS cited unprecedented, landscape-scale cooperation on conservation efforts as reducing threats to sage grouse. However, Secretary of the Interior Ryan Zinke has initiated a process that will likely result in the severe weakening of the National Greater Sage-Grouse Planning Strategy. Sage-grouse populations are continuing to decline. Given the new administration's effort to undermine the Planning Strategy, the ability to protect sage-grouse under the ESA is more crucial than ever.

*STATUS: This provision was included in the Chairman's mark. This rider has been included in Omnibus appropriations bills since FY 2015.*

**3) Section 116: Legislatively Delist Gray Wolves in Wyoming and the Great Lakes** – This provision would override a unanimous D.C. Circuit Court of Appeals decision issued on August 1,

2017 and remove existing federal protections for wolves in Michigan, Minnesota, and Wisconsin. It would also codify a recent D.C. Circuit Court of Appeals decision that stripped ESA protections for wolves in Wyoming. Finally, the rider would preclude judicial review of these wolf delistings, thus furthering a damaging trend of Congress undermining the ability of Americans to seek out justice and defend our civil rights, public health, and environment.

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

**4) Section 117: Block ESA Protections for Wolves in the Continental U.S.** – This provision would block federal funding for the endangered gray wolf throughout the continental United States. The gray wolf is currently listed as endangered in most of the lower-48 states. While the return of gray wolves in the northern Rocky Mountains and the Great Lakes has been an incredible success story, this iconic American species still only occupies a small portion of its former range and wolves have only just started to re-enter areas like northern California, where there are large swaths of suitable habitat. This rider would reverse the incredible progress that the ESA has achieved for this species over the past few decades and could once again put the gray wolf at risk of extinction.

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

### ***Title III – Related Agencies – Department of Health and Human Services – Agency for Toxic Substances and Disease Registry – Toxic Substances and Environmental Public Health***

**1) Delay and Weaken Critical Health Assessments in Communities with Superfund Sites –** This provision would limit the health studies that the Agency for Toxic Substances and Disease Registry (ATSDR) is required to do by removing both the deadlines and the guidelines for studying the impacts of chemical exposure on communities that petition for help. This provision would remove the right of citizens to petition the government from timely assistance after toxic chemical exposure. ATSDR health assessments provide invaluable information concerning the threats posed by the contaminated sites to nearby communities. This provision would weaken the requirement for the ATSDR to perform health assessments under Section 104(i)(6)(A) of CERCLA by removing the one-year deadline for completing assessments for Superfund sites on the National Priorities List, the list of the most contaminated sites in the nation. The provision also allows ATSDR to skirt its responsibility to complete a full "health assessment" by permitting the agency to substitute a less rigorous (undefined) health study. Removing this one-year deadline for these critical health assessments and diminishing the comprehensiveness of the assessments constitutes a threat to human health.

*STATUS: This provision was included in the Chairman's mark. The same provision has been included in the final appropriations bills since FY 2014.*

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

**1) Section 417: Clean Air Act Permits for Greenhouse Gas Emissions Produced by Livestock Waste** – Despite clear evidence that factory farms contribute significantly to anthropogenic emissions of methane, nitrous oxide, hydrogen sulfide, and ammonia, the Environmental Protection Agency (EPA) has not required animal feeding operations to meet any testing, performance, or emission standards under the Clean Air Act. This provision would prevent the use of the Clean Air Act permitting tools to control greenhouse gases from the largest sources of livestock waste.

*STATUS: This provision was included in the Chairman's mark. The same provision has been included in the final appropriations bills since FY 2010.*

**2) Section 418: Put Blinders on Global Warming Pollution Accounting** – This provision would tie EPA's hands on climate change science and impede the agency's ability to gather critical baseline data on greenhouse gas (GHG) emissions by barring EPA from implementing its rule on mandatory reporting of greenhouse gases from manure management systems (CAFOs). Congress wisely recognized that emissions data on all sectors is needed to craft effective climate change policies when it established the statutory requirement in the FY 2008 Consolidated Appropriations Act for "mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States." Congress should not now insist that the EPA put up blinders with respect to the very largest industrial animal agriculture facilities – those emitting 25,000 metric tons or more of GHG emissions per year. Domestically, manure management and enteric fermentation are responsible for about one-third of all anthropogenic methane emissions, and methane is more than 20 times as potent a GHG as carbon dioxide. In 2008, methane emissions from manure management were 54 percent higher than in 1990. In addition, the direct and indirect emissions of nitrous oxide – 310 times as potent a GHG as carbon dioxide – from manure management increased 19 percent between 1990 and 2008. As other countries around the globe are collecting similar information from animal agriculture, such an amendment would hamper the United States' ability to be a leader on international efforts to assess and combat climate change. It would also undercut the potential to accurately account for and give credit for GHG emissions reduction measures taken by agricultural entities.

*STATUS: This provision was included in the Chairman's mark. The same provision has been included in the final appropriations bills since FY 2010.*

**3) Section 420: Exempt Lead Bullets and Fishing Tackle from Regulation under the Toxic Substances Control Act** – This provision would prohibit the Environmental Protection Agency and all federal land management agencies from regulating the use of lead in ammunition, ammunition components and fishing tackle under the Toxic Substances Control Act or any other law. In 1991, the federal government banned the use of lead shot for all waterfowl hunting because of the extensive scientific evidence that lead shot was poisoning millions of ducks, geese, and swans each year. Besides waterfowl hunting ammunition, there are currently no other regulations or limitations on the use of lead in ammunition. Today, spent ammunition represents one of the largest sources for lead entering the environment, and continues to poison millions of birds and thousands of mammals each year. A 2012 study in the Proceedings of the National Academy of Sciences concluded that critically endangered California Condors continue to be poisoned by lead from ammunition in "epidemic proportions." Despite the fact that the EPA has not taken any steps to regulate the use of lead in ammunition, this rider would prohibit the EPA from taking steps to control the use of lead in any type of ammunition and fishing tackle, even if there was scientific evidence that simple changes to the chemical composition of these items could mitigate their environmental impacts.

*STATUS: This provision was included in the Chairman's mark. The same provision has been included in the final appropriations bills since FY 2015.*

**4) Section 423: Prolongs Livestock Grazing on National Grasslands without Environmental Review and Public Input** – This provision would continue grazing under certain grazing permits on public lands without any assessment or accounting for current range condition, impacts on

wildlife, watersheds and other public values, or complicating factors such as drought or invasive species that may advise a change in management.

*STATUS: This provision was included in the Chairman's mark. The provision was included in H.R. 244, The Consolidated Appropriations Act, 2017*

**5) Section 428: Eliminates Consideration of Carbon Pollution from Burned Biomass** – This provision requires all biomass burned for electricity production to be considered to have zero carbon pollution despite the fact that emissions from wood biomass are often higher than those from coal. This language threatens the long-term health of forests by encouraging the burning of trees to generate electricity and worsens climate change by pretending climate-changing emissions don't exist.

*STATUS: This provision was in the Chairman's mark. The provision was included in H.R. 244, The Consolidated Appropriations Act, 2017 as a temporary requirement; however, this provision would make the requirement permanent.*

**6) Section 430: Expanding Exemptions for Dumping Pollution into Our Waterways** – This provision would more easily allow polluters to dump dredged or fill material into our waterways by exempting pollutant discharges that Congress intended to be covered by the Clean Water Act. These discharges damage or destroy streams and wetlands without adequate environmental review, even though the Clean Water Act would otherwise require such oversight. The quality of water national park and public lands visitors expect depends on strong water protections, which this provision (and others), prohibit.

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

**7) Section 431: Endanger Clean Water Protections** – This provision would allow EPA and the Army Corps of Engineers to repeal the 2015 Clean Water Rule without following laws that would otherwise apply to such an action. That means the agencies could ignore public input in repealing the rule, or adopt a rule without any reasonable justification. By contrast, the Clean Water Rule was the result of public engagement and scientific analysis. It is unconscionable that Members of Congress want to carve out an exemption to longstanding transparency and good governance laws for the purposes of dismantling clean water protections.

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

**8) Section 432: Block Updates to National Ozone Standard** – This provision would permanently block or delay updates to the national ozone standard. Ozone – or smog – causes breathing problems, asthma attacks, and even premature death. EPA finalized an updated national ozone standard last year; the previous standard allowed ozone levels known to be harmful, and can mislead people who rely on information about their local air quality – like parents of children with asthma – into thinking the air is safe to breathe on a day when it actually is not. This rider contradicts requirements of the Clean Air Act that require review and revision of the standard every 5 years, based on the science. Requiring that 85% of nonattainment counties under the 2008 standard, as of 2014, achieve full compliance before EPA can update the standard will lead to more asthma attacks and premature deaths, and more times that families won't have accurate information as to the quality of their air.

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

**9) Section 433: Leave Taxpayers with Cleanup Costs** – This provision would block EPA from implementing, enforcing or finalizing the requirement that hard rock mining sites carry insurance to cover possible environmental damage. This provision will likely leave cleanup costs to the taxpayers under Superfund instead of making the responsible party pay for the damage they caused.

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

**10) Section 434: Prohibit Proper Management of Dangerous Industrial Farm Waste** – This amendment would prohibit EPA from writing any rule that would require the largest industrial animal farms (Concentrated Animal Feeding Operations, or CAFOs) to properly store, transport, or dispose of their wastes, including the hundreds of millions of tons of manure they generate annually. CAFO wastes contain dangerous pollutants that can increase the risk of birth defects, infant deaths, diabetes, and cancer. When not handled properly, CAFO wastes endanger drinking water sources and pose a particularly severe risk to rural communities reliant on well water.

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

**11) Section 435: Block Funds for the National Ocean Policy** – This provision impedes the full implementation of the National Ocean Policy, a commonsense policy with bipartisan roots and support. This rider would limit coordination between agencies, states, and stakeholders, adversely affect the marine environment and resources that sustain ocean industries, and undermine valuable ocean planning work being voluntarily undertaken in states and regions around the country.

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

**12) Section 436: Tie the Hands of Federal Land Managers** – This provision elevates hunting, fishing and shooting as priority uses on public lands by prohibiting the U.S. Forest Service and the Bureau of Land Management from balancing these activities with other multiple uses of the public domain. While the vast majority of public lands will always be available for sporting pursuits, federal law also requires these agencies to consider other public values, such as endangered species protection, habitat conservation, commercial development and other recreational activities, when planning for federal land use and management.

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

**13) Section 437: Requires Vacant Grazing Allotments Be Made Available without Review or Public Input** – This provision mandates that Bureau of Land Management and Forest Service lands damaged by drought or wildfire are made available for grazing. Although the lands may be severely damaged, the terms of the new permits are the same as prior to the drought or wildfire that made the lands unusable. Moreover, because “the National Environmental Policy Act shall not apply” to these decisions, it is unlikely the permits will reflect the current conditions of the lands or their suitability for grazing. By waiving NEPA, the public land use is unjustifiably removed from public scrutiny, input, and accountability.

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

**14) Section 445: Exempts from ESA Export Licensing Requirements** – This provision would broadly exempt thousands of species of echinoderms, commonly known as sea urchins and sea

cucumbers, from existing export licensing requirements under Section 9(d)(1) of the Endangered Species Act (ESA), unless the species is already protected under the ESA, the Lacey Act, or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It would prevent the U.S. Fish and Wildlife Service from enforcing Section 9(d)(1) of the ESA or compiling wildlife trade data such as exports or transshipments with respect to these species for at least a year. This exemption impacts the conservation of numerous imperiled marine species and obstructs efforts to prevent wildlife trafficking and illegal trade.

*STATUS: This provision was sponsored by Rep. Bruce Poliquin (R-ME) and was included in en bloc amendments offered on the House floor by Interior appropriations subcommittee chair Ken Calvert (R-CA). On 9/7/2017, the en bloc amendments passed by voice vote.*

**15) Section 446: Upends 15-year Planning Process on New Plan for Dog Management in Golden Gate National Recreation Area** – This provision would discard a 15-year planning process by the National Park Service to ensure all recreationists can enjoy the Golden Gate National Recreation Area (GGNRA). GGNRA is the only national park site to allow off-leash dog walking and the new plan would limit off-leash dog walking to specific areas to ensure recreation opportunities for all visitors. Preventing the implementation of this plan will cast aside over a decade of public input.

*STATUS: This provision was sponsored by Rep. Jackie Speier (D-CA) and was included in en bloc amendments offered on the House floor by Interior appropriations subcommittee chair Ken Calvert (R-CA). On 9/7/2017, the en bloc amendments passed by voice vote.*

**16) Section 448: Block Needed Pay Flexibility to Attract the Best Talent** – This provision would block EPA from utilizing the Title 42 Special Pay Program – an important program that allows agencies to offer higher pay in certain specialized fields and provide recruitment and retention bonuses. It is important for agencies to have pay flexibilities and other tools and incentives available so that they are able to compete in the labor market for top-notch talent. Taking this authority away from EPA is yet another attempt to weaken the effectiveness of our environmental laws by preventing EPA from meeting its staffing needs.

*STATUS: This provision was sponsored by Rep. Michael Burgess (R-TX) and added on the House floor.*

**17) Section 449: Make Boundary Waters Land in Superior National Forest Available for Destructive Mining** – This provision would block the ongoing two-year Forest Service study of mining in the Boundary Waters watershed and make 234,328 acres of public lands and wildlife habitat on Superior National Forest in Northeast Minnesota available for destructive sulfide-ore mining. It would also negate the input 125,000 citizens who have submitted comments during the scoping phase and the more than 3,000 people who participated in the Forest Service – BLM listening sessions.

*STATUS: This provision was sponsored by Rep. Tom Emmer (R-MN) and was included in en bloc amendments offered on the House floor by Interior appropriations subcommittee chair Ken Calvert (R-CA). On 9/7/2017, the en bloc amendments passed by voice vote.*

**18) Section 450: Prevent Reporting of Dangerous Pollution** – This provision would prevent the EPA from requiring industrial animal production facilities to report the quantities of even extremely dangerous substances that they release into air, even in emergencies, and even when such releases endanger neighbors. The amendment also prevents EPA from enforcing the law with respect to

these facilities. People who live near these facilities deserve the same protections as people who live near other sources of dangerous industrial pollution.

*STATUS: This provision was added on the House floor by Rep. Billy Long (R-MO). On September 7, 2017, the amendment passed by voice vote.*

**19) Section 451: Punitive Elimination of Authority to Designate New National Heritage Areas** – Colorado’s three existing National Heritage Areas, Cache la Poudre, South Park and Sangre de Cristo, protect a variety of cultural, historic, natural, scenic and recreational resources. They work in partnership with the National Park Service and other state and local partners to provide public access to those resources and an enhanced public awareness of their value. It is the purview of Congress, moved by the will of the public, to designate new National Heritage Areas. This provision would eliminate the authority to establish new NHAs anywhere in the State of Colorado based upon the whim of one member of Congress.

*STATUS: This provision was added on the House floor by Rep. Ken Buck (R-CO). On September 7, 2017, the amendment passed by voice vote.*

**20) Section 453: Shortchanging Royalty Payment** – This provision would prevent the Bureau of Land Management from accurately measuring and reporting oil production on federal lands. The effect is to prevent federal agencies from ensuring that all royalties that are due are paid.

*STATUS: This provision was added on the House floor by Rep. Bruce Westerman (R-AR). On September 7, 2017, the amendment passed by voice vote.*

**21) Section 454: Blocking Wildlife Conservation Rules** – This provision would block implementation of critical rules regulating non-subsistence hunting in Alaska national preserves. At present, the National Park Service does not allow aggressive, scientifically indefensible “predator control” sport-hunting practices including spotlighting denning bears and cubs as they hibernate. The agency arrived at these regulations through an open, public process in 2015 and the technical advice of wildlife managers. This amendment will set back efforts to clarify appropriate National Park Service jurisdiction.

*STATUS: This provision was added on the House floor by Rep. Don Young (R-AK). On September 7, 2017, the amendment passed 215-196.*

**22) Section 455: Undermine Chesapeake Bay Cleanup** – This provision would undermine the successful cooperative federalism of the Chesapeake Bay cleanup and will severely hamper progress being made to clean up local waters. The cleanup is working, and the current process has given the states more control than ever in seeking a solution to the degraded waters of the region, while taking advantage of federal resources to help the states meet their commitments.

*STATUS: This provision was added on the House floor by Rep. Robert Goodlatte (R-VA). On September 7, 2017, the amendment passed 214-197.*

**23) Section 456: Denying Climate Change** – This provision would roll back the Clean Air Act and would block any potential plan to address climate change. Instead of listening to the national security experts, faith leaders, scientists, energy innovators, health professionals and many others who are sounding the alarm on climate change and have implored our nation’s elected officials to support action, this amendment simply seeks another way to say “no.”

*STATUS: This provision was added on the House floor by Rep. Scott Perry (R-PA). On September 7, 2017, the amendment passed by voice vote.*

**24) Section 457: Lowball Oil and Gas Royalties** – This prevents the Bureau of Land Management from accurately measuring and reporting oil and gas production on federal lands. The effect of the rider is to lowball royalties owed to American taxpayers.

*STATUS: This provision was added on the House floor by Rep. Steve Pearce (R-NM). On September 7, 2017, the amendment passed by voice vote.*

**25) Section 458: Block ESA Protections for Numerous Species** – This provision would devastate conservation and recovery efforts for listed species by blocking federal funding for a protected species any time the FWS fails to meet its obligation to complete a five-year review of the species' status as required by the ESA. The agencies are often prevented from completing these reviews on time due to lack of funding or competing priorities. This provision would leave nearly 1,000 species currently awaiting five-year reviews in a state of limbo, because they would retain their ESA status, but it would block all federal funding for recovery efforts, law enforcement efforts, and consultations.

*STATUS: This provision was added on the House floor by Rep. Doug Lamborn (R-CO). On September 7, 2017, the amendment passed by voice vote.*

**26) Section 459: Block ESA Protections for Preble's Meadow Jumping Mouse** – This provision would block federal funding for the threatened Preble's meadow jumping mouse under the ESA, thwarting recovery efforts for this western species. The Preble's meadow jumping mouse continues to experience habitat loss and face other threats throughout its range. This provision would eliminate crucial recovery programs for the mouse that require federal funding, such as Habitat Conservation Plans, and create uncertainty for stakeholders as to whether projects can go forward without violating the ESA.

*STATUS: This provision was added on the House floor by Rep. Doug Lamborn (R-CO). On September 7, 2017, the amendment passed by voice vote.*

**27) Section 460: Harm Public Health and Waste Natural Gas** – This rider seeks to prohibit funds from being used to implement the BLM's Methane Waste Rule, a commonsense, cost-effective safeguard. BLM's rule simply requires the oil and gas industry to use cost-effective technologies and practices to reduce venting and flaring as well as find and fix leaks from oil and gas infrastructure on public lands - protecting taxpayers, public health and the environment. Blocking this rule would harm public health, waste hundreds of millions of dollars of natural gas, and reduce revenue to the federal government and Western states. The Trump administration is attempting to delay both the BLM and EPA methane rules through multiple channels. The administration announced that it was delaying the EPA methane rule and key portions of the BLM methane rule on June 5 and 15, respectively. These efforts have been thwarted by the courts. On July 3, the D.C. Circuit Court of Appeals ruled that the EPA's attempt to suspend its methane rule was illegal. And on October 4, the U.S. District Court for the Northern District of California ruled that the Trump administration had illegally suspended the BLM methane rule. Both EPA and BLM are working through administrative proceedings to delay, rescind or rewrite the rules, but none of these rulemakings have been finalized to date. Accordingly, both rules are currently in place.

*STATUS: This provision was added on the House floor by Rep. Steve Pearce (R-NM). On September 8, 2017, the amendment passed 216-186.*

**28) Section 461: Limiting attorneys' fees** – This provision seeks to discourage citizens from enforcing essential protections of the ESA, the Clean Air Act, and the Clean Water Act. This rider targets court settlements involving congressionally mandated federal agency actions, including requirements to protect public health and the environment. Congress long ago recognized that the government needs citizens to be partners in enforcing all manner of America's laws, including environmental protection laws. This principle is enshrined in the numerous federal laws that provide reasonable fee recovery for successful citizen plaintiffs. This amendment would change this by barring payment of citizens' legal fees whenever parties avoid costly litigation by agreeing to a settlement, thereby favoring continued litigation over settlement.

*STATUS: This provision was added on the House floor by Rep. Jason Smith (R-MO). On September 8, 2017, the amendment passed by voice vote.*

**29) Section 462: Block Methane Pollution Standard** – This provision would block EPA from implementing its Methane Pollution Standard, the first-ever limits on methane pollution from the oil and gas sector (the largest emitter of methane). EPA's standards require proven, low-cost safeguards that will yield net climate benefits of \$170 million in 2025 and will generate significant public health benefits as well by curbing smog and soot-forming Volatile Organic Compound (VOC) emissions and hazardous air pollutants. The Trump administration is attempting to delay both the BLM and EPA methane rules through multiple channels. The administration announced that it was delaying the EPA methane rule and key portions of the BLM methane rule on June 5 and 15, respectively. These efforts have been thwarted by the courts. On July 3, the D.C. Circuit Court of Appeals ruled that the EPA's attempt to suspend its methane rule was illegal. And on October 4, the U.S. District Court for the Northern District of California ruled that the Trump administration had illegally suspended the BLM methane rule. Both EPA and BLM are working through administrative proceedings to delay, rescind or rewrite the rules, but none of these rulemakings have been finalized to date. Accordingly, both rules are currently in place.

*STATUS: This provision was added on the House floor by Rep. Markwayne Mullin (R-OK). On September 13, 2017, the amendment passed 218-195.*

**30) Section 463: Put Blinders on Cost of Climate Change** – This provision would require the federal government to blind itself to the economic costs of climate change. These costs, which affect businesses, families, governments and taxpayers, could reach hundreds of billions of dollars through rising healthcare costs, destruction of property, increased food prices, and more.

*STATUS: This provision was added on the House floor by Rep. Markwayne Mullin (R-OK). On September 13, 2017, the amendment passed 225-186.*

## **In House Interior Appropriations Committee Report (House Report 115-238)**

**1) Chilling Citizen Enforcement with Punitive Reporting Requirements** – Language in the report would direct the Department of the Interior, the Forest Service and the Environmental Protection Agency to produce "detailed" reports on the cost of successful enforcement actions filed by individuals and organizations in federal court – reports identifying anyone who recovers litigation

expenses from the government, and any judges who approve such reimbursements. Despite the importance of citizen suits in protecting Americans' public health and environment, language in the House report subjects them to a punitive set of reporting requirements that target every citizen and judge involved. Reasonable reporting provisions – like those Congress removed from the Equal Access to Justice Act in 1995 – provide an important means of agency oversight. The more onerous and intrusive requirements of this language threaten to chill citizen enforcement of federal law.

*STATUS: This language was included in the Committee report accompanying the legislation. Similar language has been included since FY 2015.*

**2) Urge Excessive and Inappropriate Involvement by States in ESA Decisions** – Extensive language in the report pressures the Fish and Wildlife Service to allow states significant leverage in Endangered Species Act decisions and implementation. The agency already fully follows the direction in the ESA “cooperate to the maximum extent practicable with the states,” yet the language incorrectly states that failures to cooperate with the states have engendered much of the controversy surrounding the ESA. The language also urges state involvement in any judicial actions related to ESA decisions and for states and non-governmental partners to lead recovery plan development and implementation which are the FWS responsibilities under the law.

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

**3) Inappropriately Exempt Areas from ESA Critical Habitat** – Language in the report directs the FWS to exclude flood control areas from critical habitat designation under the Endangered Species Act such as for the Western distinct population segment of the yellow-billed cuckoo. The language is counter to the requirement in the ESA to designate critical habitat for listed species.

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

**4) Urge Disproportionate Consideration of Non-Regulatory Conservation Actions** – Language in the report states that the Fish and Wildlife Service does not adequately include non-regulatory conservation actions when making listing decisions under the Endangered Species Act and that the Committee expects FWS to work with states to develop a more reasonable policy. FWS already does this under their Policy for the Evaluation of Conservation Efforts for Making Listing Decisions (PECE). PECE contains guidance on the degree to which the Service must consider voluntary conservation measures adopted by states and private entities. In some instances, PECE has been used to avoid listing a species or to impact the listing of a species as threatened as opposed to endangered – FWS already is quite liberal in implementing this policy.

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

**5) Question Classification of Mexican Wolves and Red Wolves** – Language in the report directs the Fish and Wildlife Service to review and determine whether the Mexican gray wolf is a genetically valid subspecies and whether the red wolf is a genetically valid species and report to Congress within a year. Regarding Mexican wolf, the Service already went through an exhaustive study when the determination was made that the Mexican gray wolf should be listed as a subspecies. Regarding red wolf, the Service is already reviewing the taxonomy of the red wolf. Both the Wildlife Management Institute and a team of outside scientists have looked at this issue. At this time, the best available

science still supports genetic/taxonomic distinction for the red wolf, and thus the species continues to warrant protection.

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

**6) Abandon Rules to Regulate Dangerous Solvents** – Language in the report encourages EPA to abandon the three proposed rules to regulate dangerous solvents. These are the first proposed rules to regulate existing chemicals under the Toxic Substances Control Act (TSCA) since asbestos in 1989. The language is particularly striking since the recently passed TSCA rewrite specifically authorized EPA to move forward with these regulations. The House rider will further delay protecting people from these toxic solvents that have already been extensively studied and linked to death and illness.

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

## **Interior, Environment, And Related Agencies Appropriations Act (Senate Chairmen’s Mark)**

### ***Title I – General Provisions – Department of the Interior***

**1) Section 111: Reduce the Public’s Right to Participate in the Management of Public Lands** – This provision would require that a prospective plaintiff exhaust all administrative remedies before filing a citizen suit challenging a Bureau of Land Management decision concerning grazing on 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 this provision 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. The same provision has been included in the final appropriations bills since FY 2012 as a temporary requirement; however, this provision would make the requirement permanent.*

**2) Section 112: Leave Millions of Acres of Wilderness Quality Lands Open to Drilling, Mining, and Off-Road Vehicles** – This provision inappropriately and unnecessarily restricts the Secretary of the Interior’s ability to implement Secretarial Order #3310, thereby hindering the Bureau of Land Management’s ability to protect wilderness quality but unprotected lands from damaging activities. The Secretarial Order simply directs and instructs the BLM to comply with its existing statutory obligations to protect lands managed by the BLM that harbor wilderness and other “natural” values. The Secretarial Order corrects an aberrant policy adopted by former Secretary of the Interior Gale Norton that severely restricted the BLM’s ability to properly identify and manage lands containing wilderness characteristics, a policy that overturned two decades of bipartisan agreement regarding the BLM’s statutory obligation to assure that environmentally sensitive areas are unimpaired for future generations.

*STATUS: This provision was included in the Chairman's mark. The same provision has been included in the final appropriations bills since FY 2012.*

**3) Section 114: Imperil Sage-Grouse** – This provision would prohibit the U.S. Fish and Wildlife Service (FWS) from conducting a new status review for the imperiled greater sage-grouse or Columbia basin sage-grouse for at least another year. In September 2015, FWS determined that the greater sage-grouse was not warranted for listing under the Endangered Species Act, and withdrew the species from the candidate species list. FWS cited unprecedented, landscape-scale cooperation on conservation efforts as reducing threats to sage grouse. However, Secretary of the Interior Ryan Zinke has initiated a process that will likely result in the severe weakening of the National Greater Sage-Grouse Planning Strategy. Sage-grouse populations are continuing to decline. Given the new administration's effort to undermine the Planning Strategy, the ability to protect sage-grouse under the ESA is more crucial than ever.

*STATUS: This provision was included in the Chairman's mark. This rider has been included in Omnibus appropriations bills since FY 2015.*

**4) Section 120: Legislatively Delist Gray Wolves in Wyoming and the Great Lakes** – This provision would override a unanimous D.C. Circuit Court of Appeals decision issued on August 1, 2017 and remove existing federal protections for wolves in Michigan, Minnesota, and Wisconsin. It would also codify a recent D.C. Circuit Court of Appeals decision that stripped ESA protections for wolves in Wyoming. Finally, the rider would preclude judicial review of these wolf delistings, thus furthering a damaging trend of Congress undermining the ability of Americans to seek out justice and defend our civil rights, public health, and environment.

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

**5) Section 121: Block Protections for Lesser Prairie Chicken** – This provision would block the U.S. Fish and Wildlife Service from taking any steps to list the lesser prairie chicken under the ESA. First petitioned for listing in 1995, the bird was listed as threatened in April 2014, but the listing was overturned by the U.S. District Court for Texas in September 2015. The bird has lost more than 80 percent of its traditional habitat due to human activities such as oil and gas drilling, ranching and construction of power lines and wind turbines. Its population declined by more than half just between 2012 and 2013. FWS is still evaluating whether the bird needs to be re-proposed for listing based on current conservation efforts and new data and the agency should be free to make that determination based on scientific information, not political considerations.

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

### ***Title III – Related Agencies – Department of Health and Human Services – Agency for Toxic Substances and Disease Registry – Toxic Substances and Environmental Public Health***

**1) Delay and Weaken Critical Health Assessments in Communities with Superfund Sites** – This provision would limit the health studies that the Agency for Toxic Substances and Disease Registry (ATSDR) is required to do by removing both the deadlines and the guidelines for studying the impacts of chemical exposure on communities that petition for help. This provision would remove the right of citizens to petition the government from timely assistance after toxic chemical exposure. ATSDR health assessments provide invaluable information concerning the threats posed

by the contaminated sites to nearby communities. This provision would weaken the requirement for the ATSDR to perform health assessments under Section 104(i)(6)(A) of CERCLA by removing the one-year deadline for completing assessments for Superfund sites on the National Priorities List, the list of the most contaminated sites in the nation. The provision also allows ATSDR to skirt its responsibility to complete a full "health assessment" by permitting the agency to substitute a less rigorous (undefined) health study. Removing this one-year deadline for these critical health assessments and diminishing the comprehensiveness of the assessments constitutes a threat to human health.

*STATUS: This provision was included in the Chairman's mark. The same provision has been included in the final appropriations bills since FY 2014.*

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

**1) Section 416: Clean Air Act Permits for Greenhouse Gas Emissions Produced by Livestock Waste** – Despite clear evidence that factory farms contribute significantly to anthropogenic emissions of methane, nitrous oxide, hydrogen sulfide, and ammonia, the Environmental Protection Agency (EPA) has not required animal feeding operations to meet any testing, performance, or emission standards under the Clean Air Act. This provision would prevent the use of the Clean Air Act permitting tools to control greenhouse gases from the largest sources of livestock waste.

*STATUS: This provision was included in the Chairman's mark. The same provision has been included in the final appropriations bills since FY 2010.*

**2) Section 417: Put Blinders on Global Warming Pollution Accounting** – This provision would tie EPA's hands on climate change science and impede the agency's ability to gather critical baseline data on greenhouse gas (GHG) emissions by barring EPA from implementing its rule on mandatory reporting of greenhouse gases from manure management systems (CAFOs). Congress wisely recognized that emissions data on all sectors is needed to craft effective climate change policies when it established the statutory requirement in the FY 2008 Consolidated Appropriations Act for "mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States." Congress should not now insist that the EPA put up blinders with respect to the very largest industrial animal agriculture facilities – those emitting 25,000 metric tons or more of GHG emissions per year. Domestically, manure management and enteric fermentation are responsible for about one-third of all anthropogenic methane emissions, and methane is more than 20 times as potent a GHG as carbon dioxide. In 2008, methane emissions from manure management were 54 percent higher than in 1990. In addition, the direct and indirect emissions of nitrous oxide – 310 times as potent a GHG as carbon dioxide – from manure management increased 19 percent between 1990 and 2008. As other countries around the globe are collecting similar information from animal agriculture, such an amendment would hamper the United States' ability to be a leader on international efforts to assess and combat climate change. It would also undercut the potential to accurately account for and give credit for GHG emissions reduction measures taken by agricultural entities.

*STATUS: This provision was included in the Chairman's mark. The same provision has been included in the final appropriations bills since FY 2010.*

**3) Section 419: Exempt Lead Bullets and Fishing Tackle from Regulation under the Toxic Substances Control Act** – This provision would prohibit the Environmental Protection Agency

and all federal land management agencies from regulating the use of lead in ammunition, ammunition components and fishing tackle under the Toxic Substances Control Act or any other law. In 1991, the federal government banned the use of lead shot for all waterfowl hunting because of the extensive scientific evidence that lead shot was poisoning millions of ducks, geese, and swans each year. Besides waterfowl hunting ammunition, there are currently no other regulations or limitations on the use of lead in ammunition. Today, spent ammunition represents one of the largest sources for lead entering the environment, and continues to poison millions of birds and thousands of mammals each year. A 2012 study in the Proceedings of the National Academy of Sciences concluded that critically endangered California Condors continue to be poisoned by lead from ammunition in “epidemic proportions.” Despite the fact that the EPA has not taken any steps to regulate the use of lead in ammunition, this rider would prohibit the EPA from taking steps to control the use of lead in any type of ammunition and fishing tackle, even if there was scientific evidence that simple changes to the chemical composition of these items could mitigate their environmental impacts.

*STATUS: This provision was included in the Chairman’s mark. The same provision has been included in the final appropriations bills since FY 2015.*

**4) Section 422: Prolongs Livestock Grazing on National Grasslands without Environmental Review and Public Input** – This provision would continue grazing under certain grazing permits on public lands without any assessment or accounting for current range condition, impacts on wildlife, watersheds and other public values, or complicating factors such as drought or invasive species that may advise a change in management.

*STATUS: This provision was included in the Chairman’s mark. The provision was included in H.R. 244, The Consolidated Appropriations Act, 2017*

**5) Section 424: Expanding Exemptions for Dumping Pollution into Our Waterways** – This provision would more easily allow polluters to dump dredged or fill material into our waterways by exempting pollutant discharges that Congress intended to be covered by the Clean Water Act. These discharges damage or destroy streams and wetlands without adequate environmental review, even though the Clean Water Act would otherwise require such oversight. The quality of water national park and public lands visitors expect depends on strong water protections, which this provision (and others), prohibit.

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

**6) Section 428: Eliminates Consideration of Carbon Pollution from Burned Biomass** – This provision requires all biomass burned for electricity production to be considered to have zero carbon pollution despite the fact that emissions from wood biomass are often higher than those from coal. This language threatens the long-term health of forests by encouraging the burning of trees to generate electricity and worsens climate change by pretending climate-changing emissions don't exist.

*STATUS: This provision was in the Chairman’s mark. The provision was included in H.R. 244, The Consolidated Appropriations Act, 2017 as a temporary requirement; however, this provision would make the requirement permanent.*

**7) Section 430: Requires Vacant Grazing Allotments Be Made Available without Review or Public Input** – This provision mandates that Bureau of Land Management and Forest Service lands

damaged by drought or wildfire are made available for grazing. Although the lands may be severely damaged, the terms of the new permits are the same as prior to the drought or wildfire that made the lands unusable. Moreover, because “the National Environmental Policy Act shall not apply” to these decisions, it is unlikely the permits will reflect the current conditions of the lands or their suitability for grazing. By waiving NEPA, the public land use is unjustifiably removed from public scrutiny, input, and accountability.

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

**8) Section 431: Overturns Court of Appeals Decision** – This provision would overturn a 9<sup>th</sup> Circuit Court of Appeals decision (*Cottonwood Environmental Law Center v. U.S. Forest Service* 789 F.3d 1075 (9th Cir. 2015) (Cottonwood case)) that found that federal agencies must comply with ESA implementing regulations that require the agencies to re-consult with the U.S. Fish and Wildlife Service (FWS) on discretionary federal actions – including land management plans – when a new species is listed, critical habitat is designated, or other new pertinent information on a listed species becomes available. This rider provides a sweeping waiver from ESA re-consultation requirements for all completed federal actions that do not authorize ground-disturbing activities, including forest planning activities. Barring re-consultation will result in management plans (which govern logging and resource development on public lands) that fail to address up-to-date science; new species’ status, and/or cumulative effects of development on species. Each of these failings would further imperil threatened and endangered species while also increasing the cost and burden of project implementation and species recovery.

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

**9) Section 433: Reverse Bush Administration Rejection of Extremely Destructive Agricultural Drainage Project** – This provision would reverse the U.S. Environmental Protection Agency’s (EPA’s) veto of the Army Corps of Engineers’ proposed Yazoo Backwater Pumps project in the Mississippi River Delta region and direct the Corps to immediately initiate the project’s construction. This agricultural drainage project will drain and damage up to 200,000 acres of ecologically rich wetlands—an area larger than all 5 boroughs of New York City—in the Mississippi Delta. The wetlands that will be destroyed, including bottomland hardwood forests, are among the richest areas of waterfowl habitat and biological diversity in North America. This rider would undo the Bush Administration’s nine-year-old decision and direct the Corps to construct the project, “[n]otwithstanding the final determination of the Environmental Protection Agency ... or any other provision of law (including the ESA)... immediately and without delay or administrative or judicial review.” The FWS has concluded that this project is likely to adversely affect the federally endangered pondberry plant unless the Corps strictly adheres to the reasonable and prudent alternatives recommended by FWS.

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

**10) Section 434: Endanger Clean Water Protections** – This provision would allow EPA and the Army Corps of Engineers to repeal the 2015 Clean Water Rule without following laws that would otherwise apply to such an action. That means the agencies could ignore public input in repealing the rule, or adopt a rule without any reasonable justification. By contrast, the Clean Water Rule was the result of public engagement and scientific analysis.

It is unconscionable that Members of Congress want to carve out an exemption to longstanding transparency and good governance laws for the purposes of dismantling clean water protections.

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

**11) Section 435: Block Funds for Clean Air Protections in Alaska**– This provision is a give-away to the oil and gas and mining industries, who unsuccessfully sued EPA to stop these basic health protections. It would allow industrial incinerators in Alaska to avoid using available pollution controls and to emit unlimited quantities of harmful pollution, including particulate matter, lead, cadmium, mercury, and dioxins.

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

### ***Title V – Wildfire Disaster Funding***

**1) Section 501: Wildfire Disaster Funding** – The Wildfire funding language provides access to disaster funding and minimizes transfers. It is not a comprehensive solution, however, because it does not address the erosion to all forest programs from the increasing impact of firefighting costs (known as the growing ten-year average). Specifically, the bill calls only for Wildfire suppression expenditures in excess of 100 percent of the rolling ten-year average to qualify for disaster funding through a disaster cap adjustment which is capped at \$2 billion. After that, the Secretary is required to request any levels beyond what is appropriated and/or above the capped level, or revert to transferring funds from non-suppression accounts. The language is also problematic because instead of a clean fire funding fix, it is paired with environmental rollbacks for forest management as detailed below.

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

**2) Section 505: Undermine NEPA** – This provision would limit National Environmental Policy Act (NEPA) environmental analysis consideration of alternatives to action (the proposed forest management activity) or no action. This “take it or leave it” approach strikes at the heart of NEPA and is the antithesis of the thoughtful project review that leads to win-win outcomes under law. To minimize environmental damage, NEPA supports sound environmental decisions by diligently evaluating and publicly disclosing potential harm from a range of program and project alternatives. Limiting NEPA reviews to only the proposed action and “no action” alternatives threatens the public’s ability to engage in the development of projects and forecloses the consideration of alternatives that can allow a project to proceed while avoiding or mitigating its environmental impacts. Additionally, action/no action limitations could lead to the rejection of beneficial projects that could be agreeably modified through the consideration of other alternatives.

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

**3) Section 508: Undermine Management of Tongass National Forest** – This provision would roll back the 2016 Land Management Plan amendment for the Tongass National Forest in Alaska, which establishes a track to move the nation’s largest national forest out of the practice of industrial clear-cutting of old-growth timber, which in turn supports the region’s sustainable industries (fisheries, tourism) that rely on intact forests and watersheds. This rider would delay any transition away from the controversial practice of old-growth clear-cutting until a new study of the timber viability of all young growth stands in the Tongass is completed – including stands that have already

been found unsuitable for timber production, and even though an ongoing study of young growth in timber areas is already mostly complete. The 2016 plan amendment was finalized after extensive public comment – including endorsement by the Tongass Advisory Committee, a group of diverse local interests including the timber industry and the State of Alaska.

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

**4) Section 509: Exempt Alaska from Landmark Forest Conservation Rule** – This provision would exempt the state of Alaska from the 2001 Roadless Area Conservation Rule (“Roadless Rule”), one of the most significant forest conservation measures of the last century that protects nearly 50 million acres of wild national forest lands nationwide from logging and new logging roads. Alaska holds a quarter of all protected roadless areas in the national forest system (the Tongass and the Chugach National Forests). On Sept. 21, 2017, the U.S. District Court for the District of Columbia [struck](#) down the state of Alaska’s latest attempt to seek an exemption to the rule. The Roadless Rule continues to be enormously popular nationwide, winning support from millions of Americans when originally proposed 16 years ago and again later when threatened with rollback. It was adopted to help control the Forest Service’s multi-billion-dollar road maintenance backlog, to reduce conflict and controversy over creeping loss of intact public wildlands, to protect water supply for 60 million people, and to preserve wildlife habitat and other vanishing natural values on public lands. The Tongass National Forest was included – with almost universal support from commenters – expressly because it harbors undeveloped wildlands on a scale unknown elsewhere in the national forest system. Scientific evidence demonstrated that undeveloped roadless areas are essential to the health of Southeast Alaska’s extraordinary salmon runs and important to the subsistence practices of Alaska Natives.

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

## **In Senate Interior Appropriations Committee Explanatory Statement**

**1) Red Cliffs National Conservation Area** – The language included in the Senate explanatory statement directs the BLM to promote the issuance and development of a northern corridor right-of-way in Washington County, Utah and arguably, through the Red Cliffs National Conservation Area. This language contradicts a highly important piece of the Washington County Growth and Conservation Act that was carefully negotiated and constructed for years and passed in the Omnibus Public Land Management Act of 2009. It also would have direct impacts to the federally-listed desert tortoise, sensitive cultural resources, recreation and other resources that the National Conservation Area was established to protect.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**2) Urge Extinction Declaration for Red Wolves** – Language in the explanatory statement encourages the FWS to grant the request of a state agency – the North Carolina Wildlife Resources Commission – to end the red wolf recovery program in FY 18 and declare the red wolf extinct. Congress should not be intervening in decision-making by expert federal wildlife biologists under the ESA. Those decisions should be based on the best available science, as directed under the ESA.

The red wolf recovery program has been incredibly effective and a model for endangered species protection nationwide, including the very successful gray wolf reintroduction in the West.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**3) Inappropriately Facilitate Intervention in ESA Litigation** – Language in the explanatory statement urges the Fish and Wildlife Service not to enter into any multi-species settlement agreements on petitions for listing species under the Endangered Species Act unless State and local governments where the species are located are party to the agreement. The language would make it easier for states and other affected parties to intervene in ESA litigation. Intervention in legal cases is governed by civil procedure laws that apply evenly across civil cases. Relaxing the general intervention requirements for ESA cases could open the door for the same in other environmental cases or even non-environmental cases. Additionally, this would make any litigation under the ESA considerably more cumbersome. Requiring sign-off from states and counties before a settlement is approved would reduce the incentive for timely resolutions to ESA cases and fuel the argument that citizen suits unnecessarily delay or impede project advancement. It would make settlements regarding endangered species practically impossible, particularly in relation to species that have a large geographic range. ESA opponents often contend that time consuming, lengthy litigation causes delays in development. Settlements should be encouraged, not made impossible.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**4) Create Burdensome Reporting Requirement** – Language in the explanatory statement directs the Fish and Wildlife Service to develop a plan to publish all data and materials used in Endangered Species Act listing determinations on the internet. Much of the data is already available, but there may be instances in which the publication of all data may not be advisable – for example in situations where public disclosure of data could further imperil the species at issue or when scientists have not yet completed peer review and publication of their work. Depending on the level of detail required the directive could also create bureaucratic hurdles that could delay species protection and cost an already underfunded agency to divert funds away from conservation efforts.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**5) Legacy Roads and Trails** – The explanatory statement proposes to make Legacy Roads and Trails projects compete amongst the general Capital Improvements and Maintenance Program. The Legacy Roads and Trails (LRT) program provides essential targeted funding to restore watersheds, improve recreational access, protect aquatic species and advance collaborative restoration projects. Incorporating LRT into the general Capital Improvements and Maintenance Program greatly curtails the targeted nature of this program and the distinct needs it addresses within the forest system.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**6) Protecting Taxpayers from Exorbitant Cleanup Costs:** Language in the explanatory statement erroneously suggests that EPA's work to protect communities from toxic waste is not necessary. This language aims to protect the most dangerous industries that handle hazardous substances from financial liability for the toxic messes that they create. The Superfund Act was written to protect the public from hazardous spills and pollution and to hold violators accountable. Thirty years later, a range of industries declare bankruptcy and opt out of their financial obligations while communities are left with poisoned soil and water, and taxpayers get stuck with an exorbitant cleanup bill. Metal

(hard rock) mining is the leading source of hazardous materials production and release in the U.S. In 2012, the EPA reported that the metal mining industry is the largest toxic polluter, releasing over 1.4 billion tons of pounds (about 40 percent of the total released by US industry). Taxpayers are already liable for billions in cleanup costs at hard rock mining sites due to inadequate insurance required for mining operations. EPA must protect human health and the environment, and hold polluters accountable by establish financial assurance regulations for the hard rock mining sector.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**7) Right to Know for Rural Communities:** By raising misleading "privacy for agricultural producers" concerns, language in the explanatory statement seeks to distract from a right-to-know issue for rural communities that are exposed to hazardous air emissions, such as ammonia and hydrogen sulfide, from Concentrated Animal Feeding Operations (CAFOs). CAFOs generally house thousands of animals in large sheds and store vast amounts of animal waste in giant lagoons that can be as large as a football field. These industrial facilities have a distinctive shed-lagoon-sprayfield layout that is readily identifiable from satellite imagery, so their locations are by no means private. CAFOs produce more animal sewage than major cities, and this sewage releases ammonia and hydrogen sulfide into our air. These two toxic gases affect the health of communities near these facilities, causing decreased lung capacity, nausea, burning airways and sinuses, and loss of voice. Hydrogen sulfide has caused multiple worker deaths at livestock facilities. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) require CAFOs, like all other industrial facilities, to report release of large quantities of toxic gases—and not merely “odors”—into the environment.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**8) Advocate a Dirty Truck Loophole** – Language in the explanatory statement urges EPA to reconsider reopening a loophole that allows for super-polluting trucks. The loophole allowed old, dirty truck engines to be sold in a new chassis, allowing them to circumvent emissions control requirements that apply to new trucks. Glider kit vehicles’ emissions can be as much as 450 times higher than those of new trucks meeting current standards. EPA’s previous decision to close the loophole would prevent up to 1600 premature deaths over the lifetimes of vehicles sold in 2017 alone.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**9) Allow Waste Coal Plants to Emit More Pollution** – Language in the explanatory statement directs EPA to weaken the Mercury and Air Toxics Standards for waste coal-fired power plants to emit more sulfur dioxide. [Sulfur dioxide can cause breathing problems, asthma exacerbations, and reduced lung function.](#) Even worse, sulfur dioxide also forms [particle pollution that can shorten life, cause heart attacks and lung cancer.](#)

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**10) Oppose Cleanup of Harmful Ozone Pollution** – Language in the explanatory statement expresses concern that the implementation of EPA’s more protective standard for ozone pollution will bring new parts of the country into nonattainment. Ground-level ozone, often called smog, causes breathing problems, asthma attacks, and premature death. In 2015, based on a thorough review of current science, EPA strengthened limits on ozone pollution to better protect health. If

areas of the country are not meeting these health-based standards, the solution is to work with the communities to clean up the pollution under the Clean Air Act – not to ignore the problem and continue putting kids with asthma and other vulnerable populations at risk.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**11) Allow harmful pollution from some diesel generators** – Language in the explanatory statement encourages EPA to exempt certain remote diesel generators from having to use particulate matter filters, putting health at risk in these communities. Particulate matter causes premature death and cardiovascular and respiratory harm, and is linked to cancer.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

**12) Undermine Scientific Research on Fracking** – Language in the explanatory statement directs EPA to conduct a study with a third-party partner on the effectiveness of environmental protections related to fracking. Rather than call for sound science, however, it signals that EPA should work with an organization friendly to industry, toward the likely end of a study that favors them.

*STATUS: This language was included in the explanatory statement accompanying the legislation.*

## **Making further supplemental appropriations for the fiscal year ending September 30, 2018, for disaster assistance for Hurricanes Harvey, Irma, and Maria, and calendar year 2017 wildfires, and for other purposes (H.R. 4667)**

**1) Undermine ESA and FEMA Processes Regarding Floodplain Management** – The Disaster Supplemental Relief bill for Hurricanes Harvey, Irma, and Maria (H.R. 4667) contains damaging language that would undermine the Endangered Species Act (ESA), exempts the Federal Emergency Management Agency (FEMA) from its legal obligations regarding floodplain management, and severely undercut FEMA’s ability to safeguard our nation’s endangered and threatened wildlife. Section 2029 of H.R. 4667 would exempt FEMA from its existing responsibility under section 7 of the ESA and its implementing regulations to address through the consultation process the indirect effects – i.e. impacts that are caused by the action but occur later in time – of its National Flood Insurance Program and other flood programs on listed species and critical habitat. For example, this language would effectively nullify the National Marine Fisheries Service’s (NMFS) jeopardy Biological Opinion on FEMA’s flood insurance program in Oregon. In the opinion, NMFS concluded that FEMA’s management of the program has led to detrimental development in Oregon’s floodplains, jeopardizing threatened and endangered fish species and dependent orca. The Opinion has provided a reasonable and prudent alternative that not only safeguards imperiled species, but that also could serve as an essential blueprint for modernizing the NFIP to reduce flood risk to vulnerable communities across the country and protect beneficial floodplain functions. Section 2029 does even further damage by exempting FEMA from liability for any violations of section 9 that result from non-federal actions covered by a FEMA flood program. This exemption could increase potential liability under section 9 of the ESA for individuals and businesses that engage in development activities occurring in areas covered by the flood insurance program. This damaging legislation both exempts FEMA from its legal responsibility to consult with federal

wildlife agencies to examine the effects its flood insurance program has on endangered and threatened species and allows the agency to escape liability for violations of the ESA.

*STATUS: This provision was included in H.R. 4667 as introduced in the House by Appropriations Committee Chairman Rodney Frelinghuysen (R-NJ) on December 18, 2017.*

**Alaska Wilderness League \* American Bird Conservancy \* American Forests  
American Lung Association \* American Rivers \* Animal Welfare Institute \* Born Free USA  
Californians for Western Wilderness \* Center for Biological Diversity \* Clean Water Action  
Citizens for a Healthy Community \* Conejos Clean Water  
Conservatives for Responsible Stewardship \* Conservation Lands Foundation  
Defenders of Wildlife \* Earthjustice \* Earthworks \* Endangered Species Coalition  
Environment America \* Environmental Protection Information Center  
Environmental Protection Network \* Friends of Blackwater \* Friends of the Earth  
Friends of the Sonoran Desert \* Great Old Broads for Wilderness \* Hip Hop Caucus  
Institute for Fisheries Resources \* International Fund for Animal Welfare  
International Marine Mammal Project of Earth Island Institute \* Klamath Forest Alliance  
League of Conservation Voters \* Los Padres ForestWatch  
Native Plant Conservation Campaign \* Natural Resources Defense Council \* Oceana  
Ocean Conservancy \* Pacific Coast Federation of Fishermen's Associations \* Quality Parks  
Restore America's Estuaries \* San Juan Citizens Alliance \* Save EPA \* Sierra Club  
Southeast Alaska Conservation Council \* Southern Environmental Law Center  
The Wilderness Society \* Turtle Island Restoration Network \* Ventana Wilderness Alliance  
Western Environmental Law Center \* Western Nebraska Resources Council  
Western Watersheds Project \* WildEarth Guardians \* Wilderness Workshop  
Wolf Conservation Center**

*Individual organizations listed above oppose one or more riders on this list but may not necessarily work on or have expertise on every provision.*