Anti-Environmental Riders on FY 2013 Appropriations and Other Bills

AS OF 7/19/2012

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

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (H.R. 5973)

FY2013 Anti-Environmental Rider Ticker

	Enacted	Deleted*	Proposed
Agriculture Appropriations			**1**
Commerce, Justice, Science Appropriations			**3**
National Defense Authorization Act			**2**
Energy and Water Appropriations			**1**
Interior and Environment Appropriations		**1**	**34**
Total	**-**	**1**	**41**

(X) = Bill has been signed into law
(V) = Bill has been vetoed
* = includes provisions amended to no longer be objectionable

1) Section 733: Reducing USDA Oversight for Genetically Engineered Crops and Judicial Review – Seeks to strip federal courts of their authority to halt the sale and planting of an illegal, potentially hazardous Genetically Engineered crop and compel USDA to allow continued planting of the crop upon request. In addition to being an assault on the separation of powers outlined in the Constitution, the rider would also compel the Secretary of Agriculture to immediately grant any requests for permits to allow planting and commercialization of an unlawfully approved Genetically Engineered crop. With this provision in place, USDA may not be able to prevent costly contamination episodes which can threaten the environment, endangered species and cost farmers hundreds of millions of dollars in losses.

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

Commerce, Justice, Science, and Related Agencies Appropriations Act (H.R. 5326)

1) Section 553: Blocking the National Ocean Policy – Prevents the use of funds to implement America's National Ocean Policy that was put into place in 2010 through Executive Order 13547. The provision undercuts long-standing efforts to reform and improve our nation's system of ocean governance. It would prevent the National Oceanic and Atmospheric Administration (NOAA) and the National Science Foundation (NSF) – our nation's primary ocean management and science agencies – from participating in the National Ocean Council, the cabinet-level body for coordinating ocean issues across departments and economic sectors. The provision would also prevent NOAA and NSF from participating in the regionally-based ocean management system (Regional Planning

Bodies) established under the National Ocean Policy. Given that the National Ocean Policy's Draft Implementation Plan also includes a wide plethora of existing NOAA and NSF ocean programs and services such as marine debris cleanup, ocean acidification and climate change research, coastal and ocean charting and mapping, and efforts to restore estuaries like the Chesapeake Bay, it is unclear whether this provision, if it becomes law, will ultimately threaten existing programs and services that have become associated with the National Ocean Policy. At the very least, though, this provision will block NOAA and NSF from participating in any and all reforms to ocean governance that were recommended by the U.S. Commission on Ocean Policy and implemented through Executive Order 13547.

STATUS: This provision was offered as an amendment by Rep. Bill Flores (R-TX) on the House floor. On May 9, 2012, the amendment was agreed to by recorded vote 246 – 174 (Roll Call No. 234).

2) Section 562: Blocks Protections for Sea Turtles – In 2010 and 2011, record numbers of dead sea turtles washed ashore Gulf of Mexico beaches. In response to evidence that these turtles died as a result of drowning in shrimp fishing gear, the National Marine Fisheries Service has proposed a rule to close a loophole in existing regulations and require escape hatches for sea turtles in all shrimp trawls. This provision defunds implementation of the proposed regulation even before the 60 day public review process is completed. Economic concerns expressed by Representative Landry, the provision's proponent, are misplaced, as similar gear has been successfully used throughout most of the shrimp fishery for over 20 years. In addition, private sources have volunteered to make the required gear available to help offset the costs to fishermen. The National Marine Fisheries Service's rulemaking process should be allowed to proceed without interference.

STATUS: This amendment was offered by Rep. Jeff Landry (R-LA) on the House floor. On May 9, 2012, the amendment was agreed to by recorded vote 218 – 201 (Roll Call No. 236).

3) Section 559: Threatening Salmon Restoration in the San Joaquin River – Blocks funding to reintroduce salmon to the San Joaquin River – a key component of the 2006 bipartisan settlement agreement to restore the river. After the completion of Friant Dam by the federal government in the 1940's, nearly 95 percent of the San Joaquin River's flow was diverted, drying up the river and devastating salmon populations and commercial fisheries jobs. Funding is needed to continue fish reintroduction studies, complete permitting and environmental analysis, and begin reintroduction of salmon to the river. Passage of the amendment will undermine the settlement agreement and could force the case back into court. If the court takes over river restoration, water users and local farmers would be at risk of losing water supply and flood management projects provided by the settlement.

STATUS: This provision was offered as an amendment by Rep. Jeff Denham (R-CA) on the House floor. On May 9, 2012, the amendment was agreed to by voice vote. The same provision is included in H.R. 5325, the FY 2013 Energy and Water Development and Related Agencies appropriations bill.

National Defense Authorization Act (H.R. 4310)

1) Section 312: Exempting Lead Bullets from Regulation under the Toxic Substances Control Act – Would prohibit the Environmental Protection Agency from regulating the chemical composition within nearly all forms of ammunition, which is mostly made of lead under the Toxic Substances Control Act. 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 or other toxic minerals 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 chemical composition of ammunition, this rider would prohibit the EPA from ever taking the simplest steps at any point in the future to control the chemical composition of any type of ammunition, even if there was scientific evidence that simple changes to the chemical composition of these bullets could mitigate their environmental impacts.

STATUS: This provision was offered as an amendment by Rep. Jeff Miller (R-FL) at full committee. The amendment was adopted by a voice vote.

2) Section 316: Exemptions Harming Imperiled Sea Otters – Would create exemptions to the Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq., and the Marine Mammal Protection Act (MMPA), 16 U.S.C. § 1361 et seq., for military and fisheries activities that affect sea otters in Southern California listed as threatened under the Endangered Species Act. This provision has been advanced in response to the U.S. Fish and Wildlife's proposal to terminate the failed southern sea otter translocation and zonal management program that was authorized by Public Law 99-625 in 1986. The failed translocation program contained its own much narrower exemptions, which will be removed if the program is terminated, but there is no justification for the broad carve outs to the ESA and MMPA included in the Gallegly Amendment.

STATUS: This provision was offered as an amendment by Rep. Elton Gallegly (R-CA) and was agreed to by voice vote on May 17, 2012 as part of amendments en bloc offered on the House floor by Armed Services Committee Chairman Howard P. McKeon (R-CA).

Energy and Water Development and Related Agencies Appropriations Act (H.R. 5325)

1) Section 511: Threatening Salmon Restoration in the San Joaquin River – Blocks funding to reintroduce salmon to the San Joaquin River – a key component of the 2006 bipartisan settlement agreement to restore the river. After the completion of Friant Dam by the federal government in the 1940's, nearly 95% of the San Joaquin River's flow was diverted, drying up the river and devastating salmon populations and commercial fisheries jobs. Funding is needed to continue fish reintroduction studies, complete permitting and environmental analysis, and begin reintroduction of salmon to the river. Passage of the amendment will undermine the settlement agreement and could force the case back into court. If the court takes over river restoration, water users and local farmers would be at risk of losing water supply and flood management projects provided by the settlement.

STATUS: This provision was offered as an amendment by Rep. Don Young (R-AK) on behalf of Rep. Jeff Denham (R-CA). On June 5, 2012, the amendment was agreed to by voice vote. The same provision is included in H.R. 5326, the FY 2013 Commerce, Justice, Science and Related Agencies appropriations bill.

Department of the Interior, Environment, and Related Agencies Appropriations Act (H.R. 6091)

Title I – General Provisions

1) Section 112: Reducing the Public's Right to Participate in the Management of Public Lands – Requires 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 Section 112 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 and was also included in the final FY 2012 Consolidated Appropriations bill.

2) Section 113: Granting a Sweetheart Deal to Ranchers by Exempting Certain Types of Grazing from Environmental Requirements – During FY2013-2014, the trailing of livestock across public lands and the implementation of trailing practices by BLM shall not be subject to review under 102(2)(C) of NEPA. These activities are also not subject to protest under 'subpart E of part 4 of title 43' of CFR, 'and subpart 4160 of part 4100 of such title. This section would exempt a certain type of grazing permit called a "mobile permit" from complying with the National Environmental Policy Act (NEPA). Mobile permits that allow ranchers to "trail" their sheep or cattle from one point to another, as opposed to permitting grazing on a discrete piece of land for a fixed time. Because mobile permits allow livestock to move over broad swaths of land, they can impact native wildlife in ways that differ from other grazing methods. For this reason, exempting these permits from the environmental reviews required under NEPA will lead to great environmental harm. For instance, poorly managed trailing has been attributed to a number of wild bighorn sheep die-off's when diseased domestic sheep came into contact with bighorns. In one incident in 2009, eighty-eight wild bighorns and one wild mountain goat in Nevada died when they came into contact with one of these domestic sheep trails.

STATUS: This provision was included in the Chairman's mark and was also included in the final FY 2012 Consolidated Appropriations bill.

3) Section 114: Leaving Millions of Acres of Wilderness Quality Lands Open to Drilling, Mining, and Off-Road Vehicles – 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 in question 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. Although Congressional critics of Secretary Salazar's

Secretarial Order maintain that it usurped Congressional authority, in fact it in no way impaired the central role that Congress plays in designating Wilderness Areas under the Wilderness Act. Wilderness designation remains exclusively the prerogative of Congress. S.O. #3310 acknowledges this Congressional responsibility, but clarifies the BLM's to conduct periodic assessments of our public lands to determine suitability for protection as wilderness, and to manage such areas to protect such characteristics.

STATUS: This provision was included in the Chairman's mark and was also included in the final FY 2012 Consolidated Appropriations bill.

4) Section 117: Legislatively Delists Gray Wolves in Wyoming – Requires the Fish and Wildlife Service (FWS) to issue a final rule removing gray wolves in Wyoming from protection under the Endangered Species Act (ESA) 60 days after enactment. FWS published a proposed rule to delist Wyoming wolves on October 5, 2011, and reopened the comment period on May 1, 2012, to consider additional state statutes and modifications to their wolf management plan. The FWS is evaluating this information to determine whether there are adequate regulatory mechanisms to delist the species. The Wyoming wolf management plan and regulatory framework is inadequate to ensure a sustainable population of wolves in Wyoming. Current wolf population viability remains precarious yet the management plan would allow wolves to be killed by any means, anytime, and anywhere, even on national forests and other federal lands, in almost 90 percent of the state. Proponents have argued that the provision merely requires a timely decision and does not force a delisting. This assertion is disingenuous. Under the language of the ESA, FWS can issue a final rule in this case only if it decides to delist the species. As with similar language legislatively delisting wolves in the rest of the Northern Rockies in the final FY 2011 appropriations bill, Congress is once again pre-empting science and process under the ESA instead of letting federal biologists do their job and leaving gray wolves in Wyoming at the mercy of the disastrous state management plan.

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

Title III – Related Agencies, Department of Agriculture, Administrative Provisions, Forest Service

1) Facilitating Logging in Post-Burn Areas – Requires the Forest Service to seek an emergency exemption from NEPA in order to "restore and rehabilitate" areas over 250,000 acres that were burned by wildfire during 2011-2012. The Forest Service already has a variety of authorities that allow expedited action to quickly protect public safety, including authorities to remove hazard trees from roadsides, to implement Burned Area Emergency Recovery (BAER) practices, and to create defensible space in the immediate vicinities of communities at risk. The real outcome of this rider would be to enable logging on hundreds of thousands of post-burn acres, without having to conduct meaningful environmental review. Abundant science has shown that post-fire or "salvage" logging is not restorative in nature and can often be detrimental to long-term forest recovery including critical ecosystem functions such as soil stability and erosion control. University of Washington Professor Jerry Franklin has noted that logging dead trees often has greater negative impacts than logging of live trees and concluded that, "timber salvage is most appropriately viewed as a 'tax' on ecological recovery." Any post-fire logging beyond what is necessary to protect public safety will likely result in greater damage and be more costly to the communities within the burned areas area than any short term-gain from the sale of fire-damaged trees.

STATUS: This provision was offered as an amendment by Rep. Jeff Flake (R-AZ) at full committee. The amendment was adopted by a voice vote.

Title IV – General Provisions

1) Section 408: Putting National Forest Planning on Shaky Ground – Would allow for the new 2012 forest planning rule to be disregarded by permitting the Forest Service to choose to instead use the procedures of the old 1982 rule to revise forest management plans. Budget allocations and report language accompanying the rider would defund National Forest planning entirely. Our National Forest System totals 193 million acres, provides habitat for hundreds of fish and wildlife species, and provides water for over 60 million people. The purpose of the planning rule is to guide the development of management plans for each forest. These plans set the ground rules for developing conservation and restoration programs, creating and maintaining recreation opportunities such as trails, and determining where energy development and logging can occur. This provision undermines the forest planning process by allowing the Forest Service to disregard the new 2012 rule and return to 1982 procedures. It does not, however, provide for the substantive protections found in the 1982 rule. Instead, it would only allow the Forest Service to go back to the status quo that existed prior to the finalization of the 2012 rule, leaving forest planning in the limbo. This perpetuates uncertainty and stalls progress towards a forest restoration paradigm that supports forest and ecosystem health for our water and wildlife. While the provision does not force the Forest Service to disregard the new 2012 rule, it undermines the implementation of the new rule by creating uncertainty over what the Forest Service might do in the future or under a new administration. In addition, accompanying budget allocations and report language would entirely defund National Forest Planning, leaving forests unable to update their management plans, many of which are decades old and standing in the way of implementing collaborative restoration projects. This provision should be opposed – it is bad policy that destabilizes current efforts by the Forest Service to move forward on revising important forest plans.

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

2) Section 412: Grazing Permits Renewal and the Circumvention of NEPA – Extends the schedule for the review of grazing permits, by exempting NEPA compliance for permits that are in arrears or expired. Reviewing grazing permits under NEPA is one of the primary means by which the BLM and the Forest Service consider changes needed to improve resource conditions and protect important values on federal lands. Renewing, transferring, or issuing grazing permits without prerequisite NEPA analyses allows poorly managed and abusive grazing practices on over 200 million acres of federal rangelands to continue to degrade many of the unique resources found on federal lands, while also jeopardizing sensitive wildlife species such as sage-grouse that share the range. In 1974, the federal courts held in NRDC v. Morton that NEPA analysis for individual grazing allotments should be mandatory. However, 37 years later, over half of all federal grazing allotments have never been analyzed. Section 412 circumvents the efficacy of NEPA, while providing the grazing industry an indefinite blank check that provides livestock permittees the means to operate in a manner that puts sensitive wildlife species and ecological resources in peril.

STATUS: This provision was included in the Chairman's mark and was also included in the final FY 2012 Consolidated Appropriations bill.

3) Section 420: 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. This provision was originally included in the final FY 2010 Interior, Environment and Related Agencies appropriations bill (P.L. 111-88) and also was included in H .R. 2055, the Consolidated Appropriations Act, 2012 (Div. E Title IV, Sec. 426).

4) Section 421: Putting Blinders on Global Warming Pollution Accounting – Ties 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 FY08 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 to 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. This provision was originally included in the final FY 2010 Interior, Environment and Related Agencies appropriations bill (P.L. 111-88) and also was included in H .R. 2055, the Consolidated Appropriations Act, 2012 (Div. E Title IV, Sec. 427).

5) Section 422: Weakening the Clean Water Act – Would amend the Clean Water Act (CWA) to create a loophole for the timber industry, exempting it from CWA pollutant discharge permit requirements for silvicultural activities, including stormwater discharges and roads. For nearly forty years the CWA has improved and protected the quality of water in this country; this rider would take a chunk out of the CWA as a gift to a special interest. This loophole would prevent both the EPA and delegated states from utilizing one of the Act's most powerful tools to protect water quality on both public and private forested land. (According to the Forest Service, 66 million Americans' water comes from National Forests alone. In addition, water sources and many aquatic species are affected by the 154 million hectares of private forest lands). A federal court confirmed that the CWA does not allow an exemption of roads used for timber harvest from the Act's point source permit requirement designed to protect clean water. This rider is a knee-jerk reaction to this decision that would prevent states and the EPA from using permits to control water pollution caused by a broad suite of timber industry activities all over the country – including but not limited to discharges of stormwater directly to streams from roads. Not only has this rider received no public hearing, it is too broad and it doesn't address the real issue created by the court decision: how do we reduce forest road-derived point source pollution in a way that works for the timber industry

and protects our nation's valuable water resources? Instead, this exemption would allow discharges associated with a broad suite of timber management activities to proceed regardless of impacts to water, including most importantly those associated with roads. Roads are a leading threat to water quality in forested areas because they collect sediment-laden runoff that degrades water quality and alters hydrology to increase the threat of flooding. These effects can be severe, which is why the EPA and states require discharge permits for other types of industrial activities with similar impacts, including state highways, municipal stormwater, mining, and oil and gas drilling.

STATUS: This provision was included in the Chairman's mark and was originally included in the FY 2012 House Interior appropriations bill. The final FY 2012 Consolidated Appropriations bill included a one-year prohibition on requiring permits for silviculture roads.

6) Section 423: Undermining Permit Requirements for Endangered Antelope – Overturns a U.S. Fish and Wildlife Service requirement that exotic animal hunting ranches in the United States obtain permits before allowing hunts of three endangered antelope species: the scimitar-horned oryx, the dama gazelle, and the addax. Today, there are many commercial hunting lodges, mostly located in Texas, which offer hunters the opportunity to hunt captive-bred endangered species from Africa and Asia right here in the United States. When the scimitar-horned oryx, the dama gazelle, and the addax were listed as endangered in 2005, the FWS exempted commercial hunting lodges from the requirement to obtain a permit prior to hunting these species. In 2009, a Federal judge struck down the exemption because, without some way of tracking the number of animals hunted each year, there was no way of scientifically evaluating whether these hunts were consistent with the purpose of the Endangered Species Act—the recovery of endangered species. This provision would reinstate the 2005 permit exemption and preclude any further judicial review of the FWS's permit exemption. Despite the fact that the hunting of all of the other captive-bred endangered species in the United States requires a permit, and despite the fact that these permits only cost an average of $140/year, this rider would permanently deprive the FWS of any means of tracking or scientifically evaluating the conservation value of these hunting lodges.

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

7) Section 426: Rubber Stamps a Failed and Overpriced Forest Management Experiment – Extends the Quincy Library Group (QLG) forest management pilot for another year, until 2013. The QLG pilot was originally authorized in 1998, and despite well over a decade of trying, has never proven to be a successful model for forest collaboration. QLG relies on project design and environmental studies that are 15 years old and are no longer supported by best science, and it costs American taxpayers nearly $26 million a year on average. This $26 million a year is going to an area with a population of less than 60,000 people; meanwhile adjacent counties with a collective population of nearly 1 million are seeing their forest budgets stretched to the breaking point in order to cover the bill for QLG. Recent collaborative groups across the Sierra Nevada have been successfully using new models for science-based collaboration with great success, avoiding the conflict and litigation that grew out of the QLG collaborative model. Yet these successful efforts have struggled for funding. There is simply no reason to rubber stamp QLG's broken decision-making model for yet another year.

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

8) Section 431: Doubling Down to Exclude the Public – Amends the Federal Land Policy and Management Act to extend the maximum authorized term of federal grazing permits and leases from 10 to 20 years. The doubling of grazing permits will undercut opportunities to implement necessary management prescriptions as conditions warrant. A 20 year period without any requisite environmental review of individual livestock permits would undermine the fundamental goal of ensuring that the public can exercise its rights in a timely manner to directly contribute to the conservation of the nation's rangeland resources.

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

9) Section 432: Logging Without Laws – Undermines stewardship contracting and makes forests vulnerable to timber theft by allowing private logging companies, not collaborative groups or the Forest Service, to determine which trees will be cut during a timber sale. It does so by amending Section 14(g) of the National Forest Management Act (NFMA) to explicitly allow for "designation by prescription". Designation by prescription means that when a timber sale is offered, the Forest Service describes what the forest should look like after the timber cut is complete but allows the purchaser to decide what trees to cut in order to achieve that outcome. This effectively hands control of what trees will be cut to the purchaser, who has a financial incentive to cut more and/or bigger trees. Section 14(g) was designed specifically to prevent this type of conflict of interest. The sole benefit of designation by prescription is that it makes it less expensive to execute timber projects by eliminating the requirement that trees be individually marked for cutting. Designation by prescription is currently authorized for use in stewardship contracts, which we fully support. Stewardship contracts are used for most restoration-oriented forestry projects, are often developed with collaborative input, have monitoring requirements, and are executed by "best value" contractors who have shown experience and skills in restoration forestry. These factors effectively mitigate the risk of theft and misuse associated with designation by prescription, and the ability to use designation by prescription is one of the incentives companies have to bid on stewardship contracts. If designation by prescription were authorized for all timber sales, it would increase the risk of timber theft by bad actor timber companies and make stewardship contracting less appealing to bidders, undermining much of the tremendous progress the Forest Service has made towards shifting to a restoration forestry agenda.

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

10) Section 433: Halts Travel Management Planning on California's National Forests – Requires the Forest Service to halt development and implementation of the Travel Management Plans in California until it considers allowing off road vehicle (ORV) use on routes that are currently unauthorized and illegal. This expensive review of the unauthorized routes could take years, and in the meantime the Forest Service's ability to responsibly manage its road system – the primary threat to water quality on national forests – will be severely curtailed. This section also requires the Forest Service to change the classification of some existing roads to allow off road vehicles, even though ORV use is currently unauthorized due to safety and other concerns. Report language accompanying the rider takes the anti-travel management sentiment to the extreme, allowing the Forest Service to disregard plans developed through public process whenever "communities are dissatisfied." This could put an end to important travel management implementation all over the country. The Travel Management Plans that would be halted by this section were initiated by the Bush administration and have been developed over six years using millions of dollars in state and federal money with public input from thousands of stakeholders, including hunters, anglers,

campers, local elected officials, hikers, environmentalists, scientists, off-road vehicle enthusiasts, and the timber industry. This state specific rider would stop this progress in its tracks as a gift to a handful groups that were not happy with the outcome of the inclusive public process. In addition, it would interrupt the work of the Forest Service in California to protect natural resources, like water quality, while providing top notch recreational opportunities to all types of users.

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

11) Section 434: Blocking Guidance to Protect Streams and Wetlands Under the Clean Water Act – Would strip funding for the Environmental Protection Agency to adopt, implement, or enforce changes needed to guidance policies adopted by the Bush administration that leave many of the nation's waters unprotected. In May 2001, the Obama administration proposed guidance to amend the one adopted by the last administration; when the draft policy was published in the Federal Register last May, over 230,000 Americans responded, and well more than 90 percent who responded favored the policy. This new guidance would restore protections for many streams, wetlands, and better protect the rivers, lakes, streams, and bays they flow into and help keep clean. The streams the proposed EPA policy will safeguard serve as sources of drinking water for 117 million Americans. They are also where our families fish, swim, and boat and serve as vital habitat for fish and wildlife.

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

12) Section 435: Prohibiting Rules to Protect Streams from Surface Mining – Keeps the Office of Surface Mining Reclamation and Enforcement within the Department of Interior from continuing work to revise regulations, adopted in the waning days of the Bush administration, which opened up streams to destructive and polluting practices associate with surface coal mining. The rider refers to a "proposed" rule, but in fact the Federal Register notice referred to only identifies issues the OSM is considering to replace the "midnight regulation" adopted in December 2008 right before the Bush administration left office. The Bush rule repealed a Reagan-era stream protection regulation for surface coal mining known as the Stream Buffer Zone rule. The longstanding regulation stated that no surface mining can be permitted by OSM within 100 feet of a stream unless the permitting authority finds there will be no adverse effect on water quality or quantity. The Bush rule allows coal companies to place massive valley fills and waste impoundments directly in streams, effectively removing the buffer from the Buffer Zone rule for those coal mining activities that are the most damaging to streams. This rider prevents the Obama administration from developing a new rule to protect streams as the federal surface mining law requires.

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

13) Section 436: Unnecessary Delays to Update Stormwater Programs – Would prevent the EPA from using any funds to develop, adopt, implement, or enforce any regulations or guidance that would update existing stormwater programs to manage runoff from post-construction commercial or residential properties until 90 days after the Agency submits a study reviewing all regulatory options including an analysis of anticipated costs and benefits and relative cost-effectiveness and impact on water quality for each. This rider is an attempt to unnecessarily delay the EPA's ability to move forward on updating its stormwater programs to better protect clean water. Polluted stormwater runoff is one of the leading causes of pollution to our streams, rivers, and lakes across the country, and a significant cause of flooding and sewer overflows. This source

of pollution contaminates our water with pathogens, excess nutrients, and heavy metals that can put people's health at risk.

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

14) Section 437: Cutting the Public Out of Forest Service Decisionmaking – Repeals the Appeals Reform Act; excludes the public from appealing, objecting to, or even commenting on projects approved through Categorical Exclusions (i.e. projects exempted from environmental review). The Appeals Reform Act provides for appeals and notice and comment related to Forest Service projects, allowing for full public participation – this provision would completely repeal that act. This would mean that Forest Service actions, including Environmental Assessments, would be subject only to minimal and inconsistent NEPA requirements. This repeal puts Forest Service activities in a black box, out of public view, taking us back to an unfortunate past when a lack of transparency bred mistrust and ultimately litigation. It was this gridlock that led to the passage of the Appeals Reform Act in the first place. Taking it a step further, under this rider, projects approved by Categorical Exclusion from NEPA would no longer be open to appeal, objection, or even notice and comment by the public, making it nearly impossible for the public to find out about or provide input into Forest Service projects. Though last year's Forest Service appeals rider dramatically reduced the ability of the public to participate in Forest Service decision processes (Section 428 of division E of the Consolidated Appropriations Act, 2012), this new provision would cut off some projects from even a reduced amount of transparency and public input. Provisions like this continue to chip away at the processes that allow the public to participate in the management of publicly owned resources. When understood in combination with similar policy riders, the attack on public participation and the attempt to completely close off transparency is staggering.

STATUS: This provision was included in the Chairman's mark. A related provision was included in the final FY 2012 Consolidated Appropriations bill.

15) Section 438: Tying the Hands of Federal Land Managers – Imposes unnecessary limits on the ability of federal land managers to close lands to hunting, fishing or recreational shooting. Hunters and anglers are first and foremost conservationists and outdoor enthusiasts. They understand that sustaining fish and wildlife and protecting public safety sometimes requires them to set aside their rods and rifles. In tinder-dry forests, for example, federal land managers may need the flexibility to close some areas to target shooting in order to avoid sparking wildfires. Such closures should be driven by conditions on the ground and not arbitrary time limits selected by Congress.

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

16) Section 439: Blocking the National Ocean Policy – Prevents the use of funds to "develop, propose, finalize, administer, or implement" America's National Ocean Policy, which was put into place in 2010 through Executive Order 13547. The provision undercuts long-standing efforts to reform and improve our nation's system of ocean governance. It would stop the National Ocean Council – a cabinet-level coordinating body for ocean issues across departments and economic sectors – from even meeting. And the provision would also halt the formation of a more regionally-based management structure through Regional Planning Bodies. These ocean governance reforms would be stopped despite the fact that both a National Ocean Council and a system of regionally-based ocean management entities were key recommendations of the President Bush-appointed U.S. Commission on Ocean Policy in 2004. Given that the National Ocean Policy's Draft

Implementation Plan includes a wide plethora of existing ocean programs and services such as marine debris cleanup, ocean acidification and climate change research, coastal and ocean charting and mapping, and efforts to restore estuaries like the Chesapeake Bay, it is unclear whether this provision, if it becomes law, will ultimately threaten existing programs and services that are now associated with the National Ocean Policy. At the very least, though, this provision will block any and all reforms to ocean governance that were recommended by the U.S. Commission on Ocean Policy and implemented through Executive Order 13547.

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

17) Section 440: Emissions Control Area for Ocean Going Vessels – Ocean Going Vessels are probably the single largest source of air pollution that no one has ever thought about. On March 26, 2010, in response to proposals from the United States, Canada and France the International Maritime Organization (IMO) designated specific portions of United States, Canadian and French waters as an "Emission Control Area" for Ocean Going Vessels (ECA) and requiring ships that operate in these waters to reduce their emissions of nitrogen oxides (NOx), sulfur oxides (SOx), and fine particulate matter (PM2.5). EPA estimates that reducing pollution from ocean going vessels could prevent up to 14,000 premature deaths; 3,800 emergency room visits; and 4,900,000 cases of acute respiratory symptoms annually in 2020. By 2030 the cleanup of ocean going vessels and fuels will prevent up to 31,000 deaths. At the behest of the cruise line industry, the Interior and Environment Appropriations 2013 bill includes language that delays and weakens the implementation of the Emissions Control Area by creating an alternative compliance scheme that essentially lets cruise lines continue to burn fuel with excessive sulfur content while at sea in exchange for burning lower sulfur fuel while at berth. According to the U.S. Coast Guard and U.S. EPA in a letter to the International Maritime Organization, this practice will not provide pollution reductions or health benefits comparable to compliance with established international emissions standards.

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

18) Section 443: Undermining Requirements for Lead-Safe Practices – Prohibits funding for the EPA to implement the "lead contractor" rule until the agency approves a commercially available lead paint test kit. The amendment was adopted on a voice vote. EPA issued a rule requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Under the rule, beginning contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. Thousands of contractors have been trained under the new rules; this amendment will stop enforcement of this rule.

STATUS: This provision was offered as an amendment by Rep. Denny Rehberg (R-MT) at full Committee. The amendment was adopted by a vote of 27-20.

19) Section 444: Blocks a New Greenhouse Gas Standard for Automobiles After Model Year 2017 – Removes funding necessary for the EPA to implement the landmark National Program for new vehicle fuel economy and greenhouse emissions improvements beyond model year 2016 as authorized by the Clean Air Act. Furthermore, it removes EPA's funding to grant the State of California needed waivers to set its own motor vehicle GHG emissions reduction program as established under the CAA. While National Highway Traffic Safety Administration (NHTSA)

retains the ability to set fuel economy standards beyond 2016, the stringency of any future standards is completely uncertain. Today, the EPA and NHTSA are working with California to develop National Program standards for 2017-2025 that could save over 2.5 million barrels per day in 2030, roughly equivalent to US imports from Saudi Arabia, Iraq, Nigeria and Libya today. Removing EPA funding would put that program and its associated oil savings in jeopardy.

STATUS: This provision was offered as an amendment by Representative Steve Austria (R-OH) at full Committee. The amendment adopted by a vote of 26-18.

20) Section 445: Preventing the Proper Labeling of Toxic Pesticides – Would stop the Environmental Protection Agency from spending any funds to finalize guidance intended to clarify what constitutes a "false or misleading pesticide product brand name." Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), it is illegal to distribute or sell any pesticide that bears a false or misleading statement, such as to make a safety claim about the product or the ingredients in the product. To circumvent this rule, a number of pesticide companies are making inappropriate safety claims and are changing their company names or trademarks to include safety-related claims (e.g., "safe" "natural," "green") to appear that they are selling a safer version of a pesticide, despite that *all* pesticide products must meet the same safety standards under FIFRA. In some instances, companies have not only included these terms in their names but have also placed their names extremely close to the product name, often in very large text, to further create the illusion of a safer version. This rider would stop the EPA from finalizing this guidance, which has been nearly ten years in the making. This rider constitutes yet another handout to the pesticide industry at the cost of our safety. While opponents claim this guidance will affect thousands of products, it will really only affect a few hundred of the 20,000 products currently available. Further, most pesticide companies who have been playing by the rules and have not abused these labeling requirements, want the EPA to issue this guidance to level the playing field.

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

21) Section 447: Sticking Taxpayers With Cleanup Costs – Would prohibit the EPA from developing financial assurance requirements to help ensure that the hardrock mining industry, not taxpayers, foot the bill for environmental cleanup at mine sites. American taxpayers are potentially liable for billions in clean-up costs at hardrock mining sites due to inadequate insurance required for mining operations. The Government Accountability Office estimates that financial assurances were not adequate to pay all estimated costs for required reclamation at 25 of the 48 hardrock mines they examined. Due to their sheer size, enormous quantities of waste and the wide range of hazardous substances released into the environment, additional financial assurance for hardrock mines is needed to protect taxpayers and western waters.

STATUS: This provision was offered as an amendment by Rep. Cynthia Lummis (R-WY) at full Committee. The amendment was adopted by a vote of 27-19.

22) Section 448: Blocking Greenhouse Gas Standards for New and Existing Power Plants – Would prevent the Environmental Protection Agency from taking any action in FY13 related to the agency's proposed standard to reduce industrial carbon pollution and other greenhouse gases emitted from *new* power plants. The amendment would also block any EPA activity in FY13 on a standard—required by law but still under development—to reduce carbon pollution from *existing*

power plants. The draft standard for new power plants, released in March 2012, would take an important step forward in reducing emissions from the largest individual sources of carbon pollution in the United States. EPA has received more than two million comments in support of the draft standard, the largest number of comments ever submitted to the agency during a public comment period. These first-ever national industrial carbon pollution standards for power plants are essential to protect public health, spur innovation in clean technologies that will create more green jobs, and reduce the effects of climate change that worsen smog and triggers asthma attacks and other health consequences. Climate change is also driving more deadly heat waves and floods, threatening the survival of many species of wildlife, and increasing the spread of infectious diseases.

STATUS: This provision was offered as an amendment by Rep. Cynthia Lummis (R-WY) at full Committee. The amendment was adopted by a vote of 27 to 18.

23) Section 449: State Implementation Plan (SIP) Cost Manual Update – This provision and accompanying report language criticize the EPA for delaying state regional haze implementation plans and directs EPA to develop a seventh edition of the document entitled "EPA Air Pollution Control Cost Manual." This provision is a concern because it interferes with an agency process by requiring burdensome, duplicative and unnecessary reporting at a time when the agency's budget is being cut. Because of these cuts, the agency has missed dozens of statutory deadlines for adopting pollution control requirements mandated by law. Instead of developing yet another report, the agency should be allowed to focus on doing its job, protecting public health and the environment.

STATUS: This bill provision and accompanying report language were added by Rep. Lummis (R-WY) in full committee (Lummis amendment number 3 that also inserted Sec. 450). The amendment was adopted by voice vote.

24) Section 450: Comments on Air Quality Models – This provision and accompanying report language direct EPA to update guidance and solicit comments on updates on revising the Agency's 'Guideline on Air Quality Models.' This not only interferes with other EPA priorities (see Sec. 449 above), but directs EPA to allow "flexible" modeling approaches, a vague term that will at best spur litigation and at worst lead to industry and states engaging in creative jiggering of models by to produce the desired results, rather than scientifically accurate assessments. This provision is a significant concern because the whole idea of having uniform modeling requirements is to avoid such game-playing. The current rules already provide a process for permit applicants to secure approval of alternative models – provided they show that the alternative performs as well or better than the preferred model. Likewise, Congress should not be dictating that EPA adopt a specific model (i.e., "the most recently published version of the CALPUFF" model); rather, that is something that should be vetted through the experts, as is done in regular modeling conferences that EPA holds.

STATUS: This bill provision and accompanying report language were added by Rep. Lummis (R-WY) in full committee (Lummis amendment number 3 that also inserted Sec. 449). The amendment was adopted by voice vote.

IN HOUSE INTERIOR APPROPRIATIONS COMMITTEE REPORT (House Report #112-589)

1) EPA Science and Technology Account – Directs EPA to discontinue the use of any resources for review of environmental justice impacts of hydraulic fracturing. EPA is doing the right thing by investigating environmental justice issues and the potential impacts on low-income communities compared to wealthier communities. In addition, EPA has an obligation and responsibility to do so

under the requirements of Executive Order 12,898. Denying these funds would continue a national trend where we subject our poorest and neediest communities to toxic pollution that may threaten their health. – **(REPORT LANGUAGE)**

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

2) Avoiding Protections for Four Endangered Salamanders – Requires that, within 90 days, the Fish and Wildlife Service (FWS) produce conservation recommendations for four Texas salamanders that would aid in the preclusion of their listing under the Endangered Species Act (ESA). While seemingly benign on its face, this bill could have considerable negative ramifications for the four imperiled Texas salamanders and for the entire listing process under the ESA. FWS considers the four salamander species – the Georgetown salamander, the Jollyville salamander, the Salado Salamander, and the Austin blind salamander – endangered due to rapid urbanization and insufficient regulatory protections for both water quality and spring flows in salamander habitat. FWS anticipates proceeding with a listing decision for each species under the ESA this fall (76 Fed. Reg. 66370). This bill requires FWS to define voluntary conservation measures that could prevent listing each species. This is problematic for several reasons. First, the language gives FWS only 90 days to complete the very detailed process of evaluating the biological needs of the species and determining what conservation measures are necessary to bring each species back to a place where it is no longer imperiled. Second, there is no trial period for these voluntary conservation measures to ensure that they will work. Finally, and most importantly, this information will presumably be used to pressure FWS to avoid listing these species, even when the effectiveness of the conservation measures is questionable. Allowing unproven conservation measures to replace stringent ESA protections for these endangered salamanders will not only further imperil these four species, it will also set a dangerous precedent for avoiding ESA listing for countless endangered species in the future. – **(REPORT LANGUAGE)**

STATUS: This language was added to the report in the manager's amendment during markup in the full Committee.

3) Directing EPA to Report on the Clean Air Act's Regional Haze Program – This amendment directs EPA to provide a report on the Clean Air Act's regional haze program to the House Appropriations Committee regarding state implementation plans. The amendment includes an inaccurate description of the status of the regional haze program. That program is required under the Clean Air Act to provide for clear views in our national parks and other special areas. Air quality and clarity either remains impaired or has become even more impaired at many of our nation's most valuable and iconic national parks, wildlife refuges and other significant places, including the Grand Canyon, Yosemite and Great Smoky. Historically, states have been (1) unwilling to act or (2) acting in ways that are inadequate or inconsistent with the Clean Air Act's regional haze program to address this problem. This has prompted EPA action to fill the void and develop corrective plans as the statute requires. **– (REPORT LANGUAGE)**

STATUS: This language was added to the report in full Committee markup in an amendment offered by Rep. Jeff Flake (R-AZ) in full committee (Flake amendment number 2). The amendment passed by voice vote.

4) Increasing Reporting Under the Equal Access to Justice Act – The Equal Access to Justice Act (EAJA), signed by President Reagan, allows parties with legitimate claims against the federal government to get reimbursed for their attorneys' fees and other costs when they win. (The ESA has similar provisions.) EAJA allows reimbursements for Social Security recipients, people seeking disability benefits, small businesses, veterans, and groups representing consumer or environmental

interests. But report language in the Interior-EPA bill singles out certain environmental and natural resources cases for different treatment: onerous, intrusive reporting requirements that could have a chilling effect on legitimate claims – and eventually even set a bad precedent for other parties with legitimate claims under EAJA, such as disabled veterans and senior citizens. Fair, reasonable reporting requirements – such as those originally required by EAJA but done away with by the Republican-controlled Congress in 1995 – make sense. But the approach taken by the Interior-EPA committee report does not. EAJA is an important deterrent against unjustified government actions. When President Reagan signed EAJA into law, he said: "I support this important program that helps small businesses and individual citizens fight faulty government actions by paying attorneys' fees in court cases or adversarial agency proceedings where the small business or individual citizen has prevailed and where the government action or position in the litigation was not substantially justified." Such claims should not be discouraged. – **(REPORT LANGUAGE)**

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

***) Undermining Protections for Bighorn Sheep** – Notwithstanding other law/regulations, no funds are allowed that would place additional restrictions on domestic sheep grazing as managed by the USFS or the BLM for allotments with potential contact between domestic sheep and bighorns. This rider was first incorporated in FY12, and an expanded version of this language was reported in the FY13 Interior Subcommittee mark. But Congressman Simpson voluntarily withdrew this language during the FY13 full Appropriations Committee markup. At the full committee markup, Congressman Simpson indicated his preference to hold further "roundtable" discussions to negotiate a potential resolution that may appear in a future manager's mark. Such a rider would likely be unnecessary given that the USFS and the BLM have already adopted a robust wild bighorn sheep management plan – developed through a consensus driven stakeholder process – that in practice, has capably resolved conflicts between grazing domestic sheep and wild bighorn sheep populations.

STATUS: This provision was included in the Chairman's mark and a similar provision was included in the final FY 2012 Consolidated Appropriations bill. Chairman Mike Simpson (R-ID) removed the provision as part of the manager's amendment during the full Committee markup.

American Forests • American Rivers • Animal Welfare Institute • Center for Biological Diversity • Defenders of Wildlife • Earthjustice • Earthworks • Environment America • Great Old Broads for Wilderness • Klamath Forest Alliance • KS Wild • League of Conservation Voters • Los Padres ForestWatch • National Estuarine Research Reserve Association • Natural Resources Defense Council • Ocean Conservancy • Oregon Natural Desert Association • Pacific Coast Federation of Fishermen's Associations • Save Our Wild Salmon Coalition • Sierra Club • Southern Environmental Law Center • The Center for Plant Conservation • The Lands Council • The Wilderness Society • Ventana Wilderness Alliance • Western Nebraska Resources Council • Western Watersheds Project • WildEarth Guardians • Wilderness Workshop

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