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H. R. 585

To direct the President to enter into an arrangement with the National Academy of Sciences to evaluate certain Federal rules and regulations for potentially harmful impacts on public health, air quality, water quality, plant and animal wildlife, global climate, or the environment; and to direct Federal departments and agencies to create plans to reverse those impacts that are determined to be harmful by the National Academy of Sciences.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 2009

Ms. LEE of California (for herself, Mr. STARK, Mr. KUCINICH, Mr. GRIJALVA, Mr. CONYERS, and Mr. RUSH) introduced the following bill; which was referred to the Committee on Science and Technology, and in addition to the Committees on Transportation and Infrastructure, Natural Resources, Agriculture, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To direct the President to enter into an arrangement with the National Academy of Sciences to evaluate certain Federal rules and regulations for potentially harmful impacts on public health, air quality, water quality, plant and animal wildlife, global climate, or the environment; and to direct Federal departments and agencies to create plans to reverse those impacts that are determined to be harmful by the National Academy of Sciences.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Environment and Public Health Restoration Act of 2009''.

SEC. 2. FINDINGS.

(a) GENERAL FINDINGS.—The Congress finds as follows:

(1) As human beings, we share our environment with a wide variety of habitats and ecosystems that nurture and sustain a diversity of species.

(2) The abundance of natural resources in our environment forms the basis for our economy and has greatly contributed to human development throughout history.

(3) The accelerated pace of human development over the last several hundred years has significantly impacted our natural environment and its resources, the health and diversity of plant and animal wildlife, the availability of critical habitats, the quality of our air and our water, and our global climate.

(4) The intervention of the Federal Government is necessary to minimize and mitigate human impact on the environment for the benefit of public health, maintain air quality and water quality, sustain the

diversity of plants and animals, combat global climate change, and protect the environment.

(5) Laws and regulations in the United States have been created and promulgated to minimize and mitigate human impact on the environment for the benefit of public health, maintain air quality and water quality, sustain wildlife, and protect the environment.

(6) Such laws include the Antiquities Act of 1906 (16 U.S.C. 431 et seq.) initiated by President Theodore Roosevelt to create the national park system, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500), the Clean Water Act of 1977 (Public Law 95–217), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96–510), the Endangered Species Act of 1973 (Public Law 93–205), and the National Forest Management Act of 1976 (Public Law 94–588).

(7) Attempts to repeal or weaken key environmental safeguards pose dangers to the public health, air quality, water quality, wildlife, and the environment.

(b) FINDINGS ON CHANGES AND PROPOSED CHANGES IN LAW.—The Congress finds that, since 2001, the following changes and proposed changes to existing law or regulations have negatively impacted or will negatively impact the environment and public health:

(1) CLEAN WATER.—

(A) On May 9, 2002, the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers put forth a final rule that reconciled section 404 regulations of the Clean Water Act by redefining the term ''fill material'' and amending the definition of the term ''discharge of fill material'', reversing a 25-year-old Clean Water Act regulation. The new rule fails to restrict the dumping of hardrock mining waste, construction debris, and other industrial wastes into rivers, streams, lakes, and wetlands. The rule further allows destructive mountaintop removal coal mining companies to dump waste into streams and lakes, polluting the surrounding natural habitat and poisoning plants and animals that depend on those water sources.

(B) On February 12, 2003, the Environmental Protection Agency published the rule

"National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations"—new livestock waste regulations that aimed to control factory farm pollution but which would severely undermine existing Clean Water Act protections. This regulation allows large-scale animal factories to foul the Nation's waters with animal waste, allows livestock owners to draft their own pollution-management plans and avoid groundwater monitoring, legalizes the discharge of contaminated runoff water rich in nitrogen, phosphorus, bacteria, and metals, and ensures that large factory farms are not held liable for the environmental damage they cause. In a 2005 Federal Court Decision (Waterkeeper Alliance et al. v. EPA, 399 F.3d 486 (2nd Cir. 2005)), major parts of the rule were upheld, others vacated, and still others remanded back to the EPA. On November 20, 2008, the Environmental Protection Agency published a revised final rule which undermines environmental protection provisions by removing mandatory permitting requirements and allowing large animal

farms to self-certify the absence of pollutant discharge activity.

(C) On March 19, 2003, the Environmental Protection Agency published a new rule regarding the Total Maximum Daily Load program of the Clean Water Act, which regulates the maximum amount of a particular pollutant that can be present in a body of water and still meet water quality standards. The new rule withdrew the existing regulation put forth on July 13, 2000, and halted momentum in cleaning up polluted waterways throughout the country. By abandoning the existing rule, the Environmental Protection Agency is undermining the effectiveness of clean-up plans and is allowing States to avoid cleaning polluted waters entirely by dropping them from their clean-up lists. Waterways play a crucial role in the lives of Americans and are critical to the livelihood of fish and wildlife. By dropping the July 2000 rule, cleanup of existing polluted rivers, shorelines, and lakes will be delayed, harming more fish and wildlife and worsening the quality of drinking water.

(D) On December 2, 2008, the Environmental Protection Agency and Army Corps of Engineers jointly issued a Guidance Document in the form of a Legal Memorandum, titled ''Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States''. This new guidance dictates enforcement actions under the Clean Water Act, and calls for a complicated ''case-by-case'' analysis to determine Clean Water Act jurisdiction for waterways that do not flow all year long. Such actions endanger small streams and wetlands that serve as important habitats for aquatic life, which play a fundamental role in safeguarding sources of clean drinking water and mitigate the risks and effects of floods and droughts. Further, the definition provided therein for ''waters of the United States'' is applicable to the Clean Water Act as a whole, potentially affecting programs that control industrial pollution and sewage levels, prevent oil spills, and set water quality standards for all waters in the United States protected under the Clean Water Act.

(2) FORESTS AND LAND MANAGEMENT.—

(A) On December 3, 2003, the President signed into law the Healthy Forests Restoration Act of 2003 (Public Law 108–148). Although the law attempts to reduce the risk of catastrophic forest fires, it provides a boon to timber companies by accelerating the aggressive thinning of backcountry forests that are far from at-risk communities. The law allows for increased logging of large, fire-resistant trees that are not in close proximity of homes and communities; it undermines critical protections for endangered species by exempting Federal land management agencies from consulting with the United States Fish and Wildlife Service before approving any action that could harm endangered plants or wildlife; and it limits public participation by reducing the number of environmental project reviews.

(B) On April 21, 2008, the Department of Agriculture issued a Final Planning Rule and Record of Decision for National Forest System Land Management Planning. Similar to rules enacted by the Administration on January 5, 2005, later remanded back to the agency in

Federal district court for violating the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the Administrative Procedure Act (Citizens for Better Forestry v. U.S. Dept. of Agriculture, 481 F. Supp. 2d 1059 (N.D. Cal. 2007)), this revised rule eliminates strict forest planning standards established in 1982, and opens millions of acres of public lands to damaging and invasive logging, mining, and drilling operations. These regulations would reverse more than 20 years of protection for wildlife and national forests by removing the overall goal of ensuring ecological sustainability in managing the national forest system, weakening the National Forest Management Act of 1976, and effectively ending the review of forest management plans under the National Environmental Policy Act of 1969.

(C) On September 20, 2006, the District Court for the Northern District of California vacated the Protection of Inventoried Roadless Areas rule, enacted on May 13, 2005, which gave State Governors 18 months to petition the Federal Government to either restore the previous rule for their States, or submit a new

management and development plan for national forest areas inventoried under the rule. Despite the enjoinment of the Administration's 2005 rule, and the subsequent restoration of the original Roadless Area Conservation Rule, the U.S. Forest Service has continued to allow States to petition for a special rule under the authority of the Administrative Procedure Act, publishing a final special rule for Idaho on October 16, 2008. As a result, 58.5 million acres of wild national forests are still vulnerable to logging, road building, and other developments that may fragment natural habitats and negatively impact fish and wildlife.

(D) On November 17, 2008, the Department of the Interior's Bureau of Land Management (BLM) signed the Record of Decision (ROD) amending 12 resource management plans in Colorado, Utah, and Wyoming opening up 2,000,000 acres of public lands to commercial tar sands and oil shale exploration and development. On November 18, 2008, the BLM published a final rule for Oil Shale Management setting the policies and procedures for a commercial leasing program for the manage-

ment of federally owned oil shale in these 3 States. Previously barred by a Congressional Moratorium on the commercial leasing regulations for oil shale until September 30, 2008, the development of oil shale on public lands poses a serious threat to land conservation, endangered and threatened species, and critical habitat. Domestic shale oil production permitted by these regulations is highly water and energy intensive, the impacts of which will intensify existing water scarcity in the arid Western Region and potentially degrade air and water quality for surrounding populations.

(3) CLEAN AIR.—On March 27, 2008, the Environmental Protection Agency issued a new rule revising National Ambient Air Quality Standards for Ozone (NAAQS), which sets new EPA air pollution limits for ground level ozone, or smog, allowed in the air. Despite a requirement that directs the EPA to set air pollution limits low enough, and with a ''margin of safety'' sufficient to protect even the most sensitive groups, this new rule sets primary and secondary standards at .075 parts per million, well above the lower level of .060 found to affect some healthy individuals. The Clean Air Scientific Advi-

sory Committee unanimously recommended a range of .060 to .070 for the primary ozone NAAQS. Because existing law allows nonattainment areas up to twenty years to meet air quality standards, the long-term implications of this new standard and its extensive impact on public health across the country necessitate standards supported by available scientific data in order to ensure adequate public protection from serious diseases linked to ozone pollution including asthma, emphysema, and bronchitis. Thirteen states have filed suit against this rule alleging that the newly promulgated Federal ozone standards fail to protect the elderly, children and people with respiratory ailments, such as asthma.

(4) SCIENTIFIC REVIEW.—On December 16, 2008, the U.S. Fish and Wildlife Service of the Department of the Interior and the National Oceanic and Atmospheric Administration of the Department of Commerce jointly issued a new rule amending regulations governing interagency cooperation under section 7 of the Endangered Species Act of 1973 (ESA). This rule undermines the intention of the ESA to protect species and the ecosystems upon which they depend by allowing Federal agencies to carry out, permit, or fund an action without proper

environmental review and expert third-party consultation from Federal wildlife experts. Under this new rule, Federal agencies can unilaterally circumvent the formal review process, eliminating longstanding and scientifically grounded safeguards that serve to protect the biodiversity of our Nation's ecosystems and avert harm to thousands of endangered and threatened species.

SEC. 3. STATEMENT OF POLICY.

It is the policy of the United States Government to work in conjunction with States, territories, tribal governments, international organizations, and foreign governments in order to act as a steward of the environment for the benefit of public health, maintain air quality and water quality, sustain the diversity of plant and animal species, combat global climate change, and protect the environment for future generations to enjoy.

SEC. 4. STUDY AND REPORT ON PUBLIC HEALTH OR ENVIRONMENTAL IMPACT OF REVISED RULES, REGULATIONS, LAWS, OR PROPOSED LAWS.

(a) STUDY.—Not later than 30 days after the date of enactment of this Act, the President shall enter into an arrangement under which the National Academy of Sciences will conduct a study to determine the impact on public health, air quality, water quality, wildlife, and the

environment of the following regulations, laws, and proposed laws:

(1) CLEAN WATER.—

(A) Final Revisions to the Clean Water Act Regulatory Definitions of ''Fill Material'' and ''Discharge of Fill Material'', finalized and published in the Federal Register on May 9, 2002 (67 FR 31129), amending title 40, Code of Federal Regulations, part 232.

(B) Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations in Response to the Waterkeeper Decision, finalized and published in the Federal Register on November 20, 2008 (73 FR 225), amending title 40 Code of Federal Regulations, parts 9, 122, and 412.

(C) A March 19, 2003, rule published in the Federal Register (68 FR 13608) withdrawing a July 13, 2000, rule revising the Total Maximum Daily Load program of the Clean Water Act (65 FR 43586), amending title 40, Code of Federal Regulations, parts 9, 122, 123, 124, and 130.

(D) Official Guidance Document, ''Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States'', issued on December 2, 2008, relating to jurisdiction under the Clean Water Act, section 404.

(2) FORESTS AND LAND MANAGEMENT.—

(A) Healthy Forests Restoration Act of 2003, signed into law on December 3, 2003 (Public Law 108–148).

(B) National Forest System Land Management Planning Rule, finalized and published in the Federal Register on April 21, 2008 (73 FR 21468), replacing the 2005 final rule (70 FR 1022, Jan. 5, 2005), as amended March 3, 2006 (71 FR 10837) and the 2000 final rule adopted on November 9, 2000 (65 FR 67514) as amended on September 29, 2004 (69 FR 58055), amending title 36, Code of Federal Regulations, part 219.

(C) The application of the Administrative Procedure Act (5 U.S.C. 551 to 559, 701 to 706, et seq.), such that States may petition for a special rule for the roadless areas in all or part of said State.

(D) Record of Decision, ''Oil Shale and Tar Sands Resources Resource Management Plan Amendments'', issued on November 17, 2008, along with the Final Rule, Oil Shale Management-General, published in the Federal Register on November 18, 2008 (73 FR 223), amending title 43, Code of Federal Regulations, parts 3900, 3910, 3920, and 3930.

(3) CLEAN AIR.—Final Rule, National Ambient Air Quality Standards for Ozone, published in the Federal Register on March 27, 2008 (73 FR 16436), amending title 40, Code of Federal Regulations, parts 50 and 58.

(4) SCIENTIFIC REVIEW.—Final Rule, Interagency Cooperation Under the Endangered Species Act, published in the Federal Register on December 16, 2008, amending title 50, Code of Federal Regulations, part 402.

(b) METHOD.—In conducting the study under subsection (a), the National Academy of Sciences may utilize and compare existing scientific studies regarding the regulations, laws, and proposed laws listed in subsection (a).

(c) REPORT.—Under the arrangement entered into under subsection (a), not later than 270 days after the date on which such arrangement is entered into, the Na-

tional Academy of Sciences shall make publicly available and shall submit to the Congress and to the head of each department and agency of the Federal Government that issued, implements, or would implement a regulation, law, or proposed law listed in subsection (a), a report containing—

(1) a description of the impact of all such regulations, laws, and proposed laws on public health, air quality, water quality, wildlife, and the environment, compared to the impact of preexisting regulations, or laws in effect, including—

(A) any negative impacts to air quality or water quality;

(B) any negative impacts to wildlife;

(C) any delays in hazardous waste cleanup that are projected to be hazardous to public health; and

(D) any other negative impact on public health or the environment; and

(2) any recommendations that the National Academy of Sciences considers appropriate to maintain, restore, or improve in whole or in part protections for public health, air quality, water quality, wildlife, and the environment for each of the regulations, laws, and proposed laws listed in subsection

(a), which may include recommendations for the adoption of any regulation or law in place or proposed prior to January 1, 2001.

SEC. 5. DEPARTMENT AND AGENCY REVISION OF EXISTING RULES, REGULATIONS, OR LAWS.

Not later than 180 days after the date on which the report is submitted pursuant to section 4(c), the head of each department and agency that has issued or implemented a regulation or law listed in section 4(a) shall submit to the Congress a plan describing the steps such department or such agency will take, or has taken, to restore or improve protections for public health and the environment in whole or in part that were in existence prior to the issuance of such regulation or law.

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