



Western Environmental Law Center

November 26, 2008

Mr. John Leshy and Mr. David Hayes
President-elect Obama Transition Team
Washington, DC

Dear Mr. Leshy and Mr. Hayes:

The Western Environmental Law Center is pleased to provide its environmental policy recommendations to you, in your capacity as leaders of the President-elect's transition team.

The Western Environmental Law Center, a non-profit public interest law firm with offices in Oregon, Montana, Colorado and New Mexico, has a unique perspective on the environmental needs of the West. For fifteen years, we have steadfastly protected the iconic West's landscapes and wildlife, and the unique communities of Americans privileged to call this region home.

It is from this perspective that we submit the following recommendations for how the Obama administration can protect and preserve the West for future generations. We know that you are inundated with proposals, so we limit ours to those ideas that may not be well represented.

Protect wildlife corridors to provide ecological resiliency in the face of global warming. The Obama administration should protect pathways for wildlife movement so the West's native species can endure the dramatic ecosystem shifts that are resulting from global warming. This includes the following:

1. Reinstate defensible standards in both Forest Service and Bureau of Land Management Land Management Plans that designate specific management areas for wildlife corridors, i.e. Designated Corridors. In planning a Designated Corridor, the agencies should:
 - a. Map wildlife corridors for species of concern;
 - b. Allow for wildlife movement as the first and foremost land use, whereby all projects, activities, and infrastructure authorized in Designated Corridors will be designed, timed and/or located to allow continued successful movement of the focal species;
 - c. Develop a Memorandum of Understanding between federal land management agencies and local land authorities to protect Designated Corridors across jurisdictional boundaries; and
 - d. Work with the Western Governors' Association to implement its Wildlife Corridors Initiative unanimously adopted in September 2007 and the corresponding policy tools it adopted in June 2008.



2. Develop “Smart from the Start” renewable energy zones and transmission lines that both protect wildlife corridors and crucial habitat, and promote the immediate development of clean energy sources. Taking the needs of wildlife into consideration when planning renewable energy development will minimize opposition from conservation/wildlife organizations, which would otherwise support renewable energy projects. “Smart from the Start” includes the following:
 - a. Screen important federal lands and develop Candidate Study Areas that are compatible with renewable energy development, similar to what the Western Governors’ Association is doing at the state level;
 - b. Work with members of Congress to develop pilot projects that quickly develop renewable energy sources, benefit the renewable industry, and protect wildlife corridors and public lands as a demonstration of how these projects can occur in a positive, proactive working environment; and
 - c. Provide federal funding for states to map and designate wildlife corridors that will then be integrated into state and federal permitting processes for renewable energy development.

Promote responsible agricultural practices at concentrated feeding operations. The Obama administration should institute a comprehensive approach to regulating industrial agriculture, specifically concentrated animal feeding operations (CAFOs). CAFOs, particularly industrial dairies pollute surface waters, ground waters and the air devastating communities in California, Idaho, Washington, New Mexico and west Texas, as well as other areas of the country. We would gladly work with EPA to focus on the serious environmental issues facing the impacted communities.

This includes the following:

1. Rescind the recent Bush Administration CAFO regulations and start over to, among other things, require Clean Water Act discharge permits (NPDES) for all large CAFOs (over 1000 animal units).
2. Close the loophole on current exemptions for CAFOs from the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) reporting requirements.
3. Require Clean Air Act operating permits - under Title V and MACT - for large CAFOs.
4. Work with states to require comprehensive groundwater monitoring systems around CAFOs.

Implement innovative Smart Growth policies to encourage healthy, livable communities. The Obama administration can curb the growth of unhealthy western communities that degrade the American West’s environment and our quality of life by using the reauthorization of the Transportation Bill (2009) as a vehicle to:

1. Require state and local agencies to prepare land use and transportation plans that reduce Vehicle Miles Traveled and greenhouse gas emissions from the transportation sector by at least 25% by 2025.
2. Provide funding for safe passage for wildlife over and under roadways in critical wildlife corridors.
3. Provide funding to restore and protect streams impacted by roads, and provide aquatic fish passage under roadways.
4. Increase the federal to state match for public transportation projects from a 50-50 to 80-20 ratio.



5. Develop habitat connectivity plans for each state, to be incorporated into transportation planning and project selection, as well as State Wildlife Action Plans.

Reverse global warming. The Obama administration must take specific action to arrest global warming by aggressively reducing greenhouse gas emissions within the United States and exercising leadership on the world stage to reverse present global emission trends. This includes the following:

1. Using existing law, including the Clean Air Act, to:
 - a. Impose a moratorium on the building of new coal-fired power plants;
 - b. Regulate CO₂ as a pollutant;
 - c. Reverse EPA's 2008 decision denying a waiver of federal pre-emption needed by California and other states to enforce state greenhouse gas tailpipe emission standards on new vehicles;
 - d. Regulate greenhouse gas emissions from new and existing (re-built) non-road vehicles and engines (granting WELC's petition on this issue); and
 - e. Regulate black carbon as a greenhouse gas pollutant from all major sources, including power producers, industry, new vehicles, and existing heavy-duty vehicles.
2. Press for national legislation that imposes substantial enforceable monetary incentives to achieve the maximum feasible reduction of greenhouse gas emissions over-and-above those to be obtained under standards and mandates otherwise imposed by law. Any cap and trade measure should provide a meaningful price floor for allowances, 100% of which would be auctioned, assurance of a corresponding decline in the cap for reductions realized by voluntary action, and strict limits on the use of offsets.
3. Press for national legislation that eliminates all subsidies for the fossil fuel industry and shifts funding to research into renewable energy.
4. Press for national legislation that ensures that all mature and old-growth forests on federal lands receive permanent protection from logging in order to continue and expand forest sequestration of carbon. Such legislation should also provide strong incentives for states to protect their stands of mature and old-growth forests.
5. Undertake international action to ensure deep reductions of greenhouse gas emissions and the reduction of aerosols with high global warming potential or effects.

Promote responsible natural resource extraction and energy development.

1. Coal: The use of coal within the U.S. must be restricted to domestic power generation, and phased out within a decade unless carbon emissions are fully sequestered. The communities in which coal is mined, burned, and disposed have made enormous sacrifices to give America power, and yet remain among the poorest and unhealthiest communities in the United States. The coal industry must be strictly regulated to end the abuse. The Obama administration can right these wrongs by requiring that:
 - a. The coal industry is regulated to ensure that its mines and production facilities comply with the Surface Mine Reclamation Act, National Environmental Policy Act, Clean Water Act, Clean Air Act and Endangered Species Act.
 - b. Expansion of coal mines should be prohibited until fully effective carbon sequestration is demonstrated and deployed in every coal fired power plant allowed to continue operations.



2. Oil & Gas: We recommend that the Obama administration utilize existing Bureau of Land Management planning and management authority to quantify and reduce greenhouse gas emissions from federally-authorized onshore oil and gas production. Such action will not only mitigate global warming, but also prevent waste, in particular from natural gas production (as methane is a greenhouse gas and important commercial product), thereby providing more energy for consumers. Specifically, BLM should use existing statutory authorities to:
 - a. Coordinate with state governments, in particular the states of New Mexico and Colorado, to reduce greenhouse gas pollution from oil and gas exploration and production;
 - b. Quantify and monitor the life cycle of greenhouse gas pollution from BLM-authorized oil and gas exploration and production;
 - c. Mandate reductions in greenhouse gas pollution and waste (e.g., reducing methane pollution, a potent greenhouse gas, keeps the methane "in the pipeline" for consumers) from BLM-authorized oil and gas development by requiring the deployment of cost-effective greenhouse gas pollution reduction measures, such as identified by EPA's Natural Gas STAR program; and
 - d. Directly address global warming impacts to the environment by restoring and protecting ecological resiliency on federal lands through landscape-scale planning and management.

Protect Americans' right to clean, healthy water. To ensure clean and healthy water for all Americans, we encourage the Obama administration to:

1. Pass the Clean Water Restoration Act and immediately reverse the post-SWANCC/Rapanos EPA and Corps of Engineers guidance on determination of jurisdictional waters. The EPA/Corps guidance has resulted in the removal of federal Clean Water Act protections from intermittent streams, closed basin lakes, wetlands, and, playa lakes, to name a few categories. These actions further deplete the already scarce quantity of water and compound the water quality problems as well.
2. Reverse regulations that exempt the discharge of pollutants into our nation's waters without Clean Water Act permitting protections, such as: "Application of Pesticides to Waters of the United States in Compliance With FIFRA, Final Rule." 71 Fed. Reg. 68483-68492 (Nov. 27, 2006), and the ballast water rule that was intended to regulate invasive species.

Thank you for considering our recommendations. Members of our staff work on each of the issues outlined above. We would welcome the opportunity to work proactively with the Obama administration to help address these important issues. If we can provide more information, or if you would like to meet with us at any point, please contact me at 541-485-2471 or costello@westernlaw.org.

Sincerely,

Greg Costello, Executive Director