

Endangered earth

SPECIAL ISSUE

Climate Law Institute Launched

Over the past few years the Center for Biological Diversity has marked our share of milestones in the fight to stem the rising tide of species extinctions by curbing climate change. The very first species to gain Endangered Species Act protection because of vulnerability to global warming—the elkhorn and staghorn corals, backbone of Caribbean reefs—did so through our efforts. More famously, the Center led the campaign that protected polar bears under the Act—and forced the Bush administration, on the world stage, to acknowledge the reality of global warming and its impacts on the planet as it never had before.

We've been called innovative for our work using established laws as a means of regulating the greenhouse gas emissions that cause global warming, and already that award-winning work has forced landmark changes in regional planning and national energy policy.

Given the gravity of the crisis that is global climate change, however—the greatest threat in human history to the natural systems that sustain life on

Earth—we're as likely as anyone to say that our list of landmark victories, to date, is simply not enough. The fight to arrest global warming carries such urgency that we can't afford to rest on milestones. That's why we're making global warming a cornerstone of all our work to save species from extinction, with the launch of the Climate Law Institute.

We announced the San Francisco-based Climate Law Institute Feb. 12, along with the dedication of \$17 million over the next five years to fight global warming.

"Global warming is the greatest challenge humanity has ever faced. It is the defining issue of our time," said Kierán Suckling, executive director of the Center. To meet the challenge, the Climate Law Institute aims to extend the reach of existing laws to encompass global warming, spearhead new climate legislation, and reinvent the nation's approach to protecting our endangered species and public lands.

The institute will be directed by Kassie Siegel, current director of the Center's Climate, Air, and Energy program. That program will be replaced by the multidisciplinary institute, which will expand and direct climate change work across the Center's biodiversity, oceans, public lands, urban wildlands, and international programs.

A graduate of the University of California-Berkeley Boalt Hall School of Law, Kassie authored the scientific petition, and argued the legal case, that won Endangered Species Act protection for the polar bear due to global warming in 2008. She shared the California Lawyer of the Year award in 2007 for successfully arguing a case that overturned inadequate federal fuel-economy standards. In 2006, Siegel brought a successful case under the Global Change Research Act, forcing the Bush administration to release suppressed studies documenting the ecological, economic, and human health impacts of global warming.



Photo © Adam Lavery

From Milestone to Cornerstone: Thanks to Center efforts, the elkhorn coral was the first species (along with staghorn coral) to gain Endangered Species Act protection expressly due to threats from global warming. Now, with the launch of our Climate Law institute, the Center is making fighting global warming integral to all our work to save life on Earth.

Climate Law Institute *continued on inside flap*

THE DEFINING ISSUE OF OUR TIME

It's establishing such legal precedent, testifying to the power of existing environmental laws to regulate greenhouse gases, that the Center hopes will prove the linchpin of the institute's ability to achieve significant emissions cuts. Not surprisingly, the courts seem primed to recognize that laws such as the Endangered Species Act, Clean Water Act, and National Environmental Policy Act already have jurisdiction over human-caused global warming—while Bush-era policy-makers pressed hard in the administration's final months to except global warming from those laws.

For example, in the same breath in which the administration announced the polar bear's "threatened" listing under the Endangered Species Act due to warming-caused melting of its Arctic sea-ice habitat, it also vowed to block any implementation of the Act that would curb the greenhouse gas emissions causing warming in the first place. The administration made good on its promise by finalizing a new rule, just a month before leaving office, that exempts federal activities causing greenhouse gas emissions from the the Act's jurisdiction. (For more on midnight rulemaking in the final days of the Bush administration, see D.C. Update inside.)

And in November 2008, when the National Marine Fisheries Service designated almost 3,000 square miles of reef area as protected critical habitat for the elkhorn and staghorn corals—again, species that were listed as "threatened" expressly due to global warming—the Service excluded global warming and ocean acidification threats from its critical habitat rule.

The Center is fighting both rules in the courts, and in a related victory this January, persuaded the Environmental Protection Agency to review what should be done to address ocean acidification under the Clean Water Act.

In addition to enforcing existing laws, the Climate Law Institute will work

Institute *continued on back*



CLIMATE MILESTONES of the Center for Biological Diversity

We won the first Endangered Species Act listing for global warming-threatened species, the elkhorn and staghorn corals (2006), and we've petitioned to list the American pika, Pacific walrus, 12 penguin species, and four Arctic seals.

As a plaintiff in the *Massachusetts v. EPA* Supreme Court case, we won a ruling striking down the Environmental Protection Agency's refusal to regulate CO₂ as a pollutant under the Clean Air Act. (2007)

The Center led a coalition of 11 states, two cities, and four environmental groups in a successful lawsuit that raised the bar for considering global warming in setting automobile fuel-efficiency standards. The *New York Times* termed the ruling a "major setback for both the auto industry and the White House at a time of growing public concern over the rising price of gasoline and the issue of climate change." (2007)

With the state's attorney general, we're revolutionizing use of the California Environmental Quality Act to require developers to account for the carbon footprint of their planned projects. The attorney general's office called the Center "the leader among environmental groups" for our award-winning efforts. (2007)

Using the largely ignored Global Change Research Act, we won a landmark case challenging federal suppression of climate science and requiring the Bush administration to prepare overdue reports revealing the economic, environmental, and public-health consequences of global warming. (2007)

The Center filed a groundbreaking petition under the Administrative Procedure Act with seven cabinet secretaries to establish global warming and endangered species regulations for more than a dozen federal agencies (and we've recently filed suit to force the government to respond). (2007)

We won a Ninth Circuit Court of Appeals temporary stay against Shell Oil's plans to explore for oil in the Beaufort Sea because it failed to assess the cumulative impacts of its actions in the context of global warming. (2008)

The Center authored the petition and led the legal effort that secured a "threatened" listing for polar bears due to global warming (2008)—forcing the Bush administration to clearly connect global warming to species endangerment on the world stage.

We recently secured an agreement from the Environmental Protection Agency to review how ocean acidification should be addressed under the Clean Water Act. (2009) •

THE BRAVE NEW WORLD

D.C. UPDATE

As the dust settles on one administration's wild ride over our nation's environmental protections, our leadership-elect must take difficult, decisive, and swift action to stop climate change in its tracks, shelter public lands, and restore safeguards to endangered species. And so must we.

Six days before President Obama's swearing-in, the Center for Biological Diversity fired one last round of lawsuits against the Bush administration under a campaign we've termed "Watchfrogging Corruption." Over the past 18 months, that campaign has taken aim at the Bush Interior Department's political interference in decisions affecting dozens of endangered species—a scandal the Center helped break that since has come under fire by the department's own inspector general, the Government Accounting Office, and the House Natural Resources Committee.

That trail of tainted endangered species decisions, unfortunately, is just one piece of the fallout from the Bush administration's eight-year war on science and the environment.

From its own inauguration forward, it aggressively sought rollbacks in protections for our nation's forests, clean air and water, and wildlife. In two terms, it added just 61 new species, all due to litigation pressure, to the list of those protected under the federal Endangered Species Act—a dismal record compared even to that of Bush, Sr., who added 231 species in one term.

And in this Bush presidency's final days, even the Interior Department's outright scandals (which included revelations that one of its agencies, the Mineral Management Service, accepted extravagant gifts from and was literally in bed with the oil-industry executives it was supposed to be regulating) were all but buried by the flying dust as the administration rammed through a number of "midnight regulations" intended to pave the way for Big Oil and other industries to wreak more havoc with our natural heritage.

Among the worst impacts of the midnight rules: relaxing standards for mountaintop removal for coal mining, removing gray wolves in the Northern Rockies from the federal endangered species list, opening almost 2 million acres of public lands in the Rocky Mountain west to controversial oil shale development, and pushing through leases for offshore oil and gas drilling affecting 300 million acres on the outer continental shelf.

And, as Center supporters are no doubt already aware, the administration also played beat-the-clock to finalize last-minute rules crippling the Endangered Species Act.

The new rules do away with scientific oversight for logging, road building, oil drilling, development, and other projects that may harm imperiled species on public lands, allowing the very



Photo by Terry Spivey, USFS/hugwood.org

Stay of Extinction: President Obama's freeze on all pending Bush administration regulations means, for now, that Northern Rockies gray wolves will keep their protections under the Endangered Species Act.

agencies that permit such projects to escape consultation with federal wildlife agencies and instead police themselves—an approach that has failed abysmally when experimentally tried in the past. They also limit recovery of endangered species to areas where they are currently found, forever foreclosing the return of those plants and animals across their historic range.

Finally, they exempt global warming-causing activities from regulation under the Endangered Species Act in spite of the clear threats they pose to a growing number of already vulnerable plants and animals—including polar bears, a

LD USHERED IN JANUARY 20 IN OUR STEWARDSHIP

species that, paradoxically, the administration reluctantly listed as “threatened” under the Act last year largely due to the effects of global warming on their Arctic sea-ice habitat (but then did nothing to protect).

But what about now, in the dawn of the new Obama administration and the historic opportunity for change it represents? Which of Bush’s last-ditch attacks on environmental protections will stand, and which will fall? The jury is out on the cast of characters newly appointed by President Obama to watch over our wildlife and wild lands—including key player Ken Salazar, the Colorado senator-turned-Interior Secretary whose record of siding with those lands and wildlife versus siding with the ranching, mining, and oil industries is anything but clear-cut. One early litmus test might be how Salazar responds to the Center’s petition, and subsequent lawsuit, demanding new global warming rules from seven federal agencies, including Interior, that regulate activities potentially affecting endangered species.

One thing is clear: While the new administration has already stopped some of its predecessor’s midnight rules in their tracks, many of those parting blows will take time, as well as administrative, legislative, or legal wrangling to undo. And increasingly, time is not on our side in the fight for our planet. To save it, we’ll need to do more than swiftly reverse the damaging policies of one administration. We’ll need to just as swiftly see to it that the brave new world we ushered in January 20 marks a substantial shift in stewardship of our public lands and wildlife, as the effects of a warming climate undeniably take hold.

Global warming has so dramatically upped the ante in the race to save life on Earth—including our own—that the Center is restructuring our efforts to ensure that fighting climate change integrates with and connects all our conservation programs. Learn more about the launch of our Climate Law Institute in the cover story of this issue.

As for the Bush administration’s eleventh-hour assaults—which thousands of you, our supporters, worked with us to hold back these many months—read on for signs of progress from Washington, D.C., and vital tasks we still face:

- The outgoing Bush administration timed most of its rule changes to take effect before President Obama took office, ensuring that the process to overturn them would be far more laborious than a pen stroke. However, within hours of Obama’s swearing-in, his administration froze all Bush regulations that had yet to take effect, pending further review. Among the results of that freeze: a temporary stay of extinction for wolves in the Great Lakes and Northern Rockies, from which the Bush administration had just announced its final attempt to remove Endangered Species Act protections.

- In early February, new Interior Secretary Ken Salazar cancelled 77 oil and gas leases on public lands in Utah’s famed red rock country—leases rushed through by the Bush administration in December. A week later, Salazar also temporarily blocked the administration’s attempt, just days before it left office, to fast-track offshore oil and gas lease sales on 300 miles of the outer continental shelf off U.S. coasts in the Atlantic and Pacific, as well as the Gulf of Mexico and Alaska.

- His first week in office, President Obama directed federal regulators to write new, more rigorous fuel-economy standards rules for the automobile industry nationwide, and—in a reversal of Bush administration policy—to consider granting California and 13 other states the right to set their own, even more stringent standards.

- Two days after Inauguration Day, Rep. Raúl Grijalva, D-Ariz., reintroduced legislation to place 1 million acres near the Grand Canyon off limits from new uranium mining. Grijalva is joined by the Center and other conservation groups in calling upon Interior Secretary Salazar to also enact temporary, emergency measures to halt mineral exploration on the lands in question pending passage of the new bill. Such a measure was passed late last year by the House Resources Committee chaired by Grijalva—but was subsequently invalidated by a last-minute Bush administration rule.



Photo © Dan C. Holland

Watchfrogging Corruption: The Center’s string of legal challenges to the Bush Interior Department’s political interference in endangered species decisions has given numerous species, including the California red-legged frog, a new lease on life.

20 MUST MARK A SHIFT SHIP OF THE PLANET.

- On its last business day in office, the Bush administration opened nearly 2 million acres of public lands across the Rocky Mountain West to landscape-scarring, highly polluting oil-shale development. Published in the Federal Register, the rule cannot be easily reversed by the Obama administration—but earlier the same week, the Center and other conservation groups joined forces to challenge it in court, filing suit against the outgoing administration's Bureau of Land Management for failing to adequately analyze the environmental impacts of a commercial oil-shale program on this scale. The suits charge that the administration also violated environmental laws by denying the public a chance to administratively appeal the proposed development, and by failing to ensure that taxpayers receive a fair return from lease royalties.

- Speaking of landscape-scarring, highly polluting activities, in December the Bush administration also repealed a rule protecting buffer-zones around streams where wastes from mountaintop removal could not be dumped. With that rule repealed, coal companies now have a green light to dump tons of mining waste directly into Appalachian streams without violating the Clean Water Act, threatening human health in the region and killing rare mussels, crayfish, and other wildlife that live there. More than 18,000 Center supporters responded to our action alert asking the Environmental Protection Agency not to rubber-stamp the rule's revocation, but the administration prevailed.

- Also in effect before Obama took the reins: the aforementioned eleventh-hour Bush administration attacks on the Endangered Species Act exempting thousands of federal activities, including those that contribute to global warming, from scientific review. As soon as those final rules were announced, the Center and our allies filed suit to overturn them, and separate suits have since been filed by states including California. House Democrats also have pledged legislation to overturn the new rules.

- The Center's "Watchfrogging Corruption" campaign continues to play out in the courts, including the most recent round of seven lawsuits in January on behalf of 19 species wronged by political interference in decisions determining their protection under the Endangered Species Act—including the San Bernardino kangaroo rat, Riverside fairy shrimp, Colorado cutthroat trout, Arkansas River shiner, 12 Texas invertebrates, and three California plants. All in all, the campaign has challenged unsound decisions for nearly 50 species, and settlements have resulted in reconsideration of Endangered Species

Act protection for the Mexican garter snake, as well as agreements to redo "critical habitat" designations for 15 species, including the California red-legged frog, arroyo toad, vermilion darter, Mississippi gopher frog, four New Mexico invertebrates, and seven plants from California, Oregon, and North Carolina.

It's no "crying wolf" to say that these efforts by the Center and our allies are of unprecedented importance for the welfare of our generation and of future generations. At no other time in human history have plant and animal species, including our own, been so threatened with natural calamities wrought by human greed and a short-sighted understanding of the reach of our actions. It's clear that in order to fulfill its promise as a beacon of hope, and not become an insignificant footnote in geologic time, the new administration must do more than sweep up after its predecessors. It must take swift steps that are nothing short of courageous and visionary, to set sound new policies on which the fate of our warming planet and the life it supports will hinge. •

Endangered earth

Endangered Earth is the quarterly newsletter of the Center for Biological Diversity, a 501(c)3 nonprofit organization that works through science, law, and creative media to secure a future for all species, great or small, hovering on the brink of extinction. Contributions are tax-deductible.

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Institute *continued from inside flap*

establish new state and federal laws and policies to rein in global warming. Perhaps more importantly, it will work to ensure that all new laws and policies are measured against the standard of whether they will lead to a reduction in atmospheric CO₂ from current levels of 385 parts per million to below 350 parts per million, the benchmark set by prominent climate scientists in order to reverse global warming and stave off catastrophic extinction.

The Center has been one of the few national groups to unambiguously advocate for that standard, as well as to call for a ban on Arctic oil and gas drilling, new coal-fired power plants, and oil shale and tar sand development, and a rapid phase-out of existing coal-fired power plants. All are stated goals of the Climate Law Institute, along with reversing ocean acidification and the loss of Arctic ice cover—trends that themselves are likely to compound the effects of global warming.

To ensure the institute's work integrates the highest level of science, law, and policy, its launch was accompanied by creation of an advisory board populated by notable representatives from each arena. Among the eight members of the advisory board are Rep. Raúl M. Grijalva, Congressman for Arizona's 7th District, and Deborah Sivas, law professor and director for the Stanford Environmental Law Clinic, who shared 2007 California Lawyer of the Year honors with Climate Law Institute Director Kassie Siegel, for the same case. •

The Center thanks all the individuals and foundations who have so far generously contributed \$6.3 million for the Climate Law Institute, including the California Community Foundation, The Sandler Foundation, The Richard and Rhoda Goldman Fund, and others.

It's Here: Our 20th Year

We've come a long way since we founded the group, in 1989, that would protect the Mexican spotted owl, shut down old-growth logging in the American Southwest, and become the Center for Biological Diversity. Hundreds of protected plants and animals, and tens of millions of acres of protected habitat later, we're nowhere near slowing down. We've kicked off our 20th year, in fact, with the launch of our most ambitious—and, we believe—our most singularly important effort ever: our Climate Law Institute, covered in this special issue.

We're also seizing the chance to celebrate, of course. We've kept the winter issue of *Endangered Earth* short again this year because we're hard at work on a very special edition for spring, showcasing some of our most influential work from the past 20 years and looking forward to the next 20. Look for that edition—which will be spruced up in its spring finest—in May.

This winter, we're also welcoming the hope sprung by a history-making inauguration. Inside this issue, find out what we're doing to see the promise of new leadership translated into critically needed change for our planet. •