Nightmare in the Gulf

The BP blowout in the Gulf of Mexico has created arguably the largest environmental disaster in American history; still, the debacle has yet to produce meaningful reforms.

While BP caused the spill, it is clear that government negligence enabled it to occur. Two examples PEER highlighted before Deepwater Horizon involved Interior Secretary Ken Salazar and the now-dismantled Minerals Management Service (MMS):

- In his March 31st proposal to expand offshore drilling in the Arctic and Atlantic Oceans as well as the eastern Gulf, Salazar ignored warnings from experts including the National Oceanic & Atmospheric Administration (NOAA), the nation’s top marine agency, that oil spill prevention and response capacity needed to be significantly improved prior to new drilling. Even President Obama rashly declared new drilling to be “absolutely safe”;

- Just days before the blowout, the Government Accountability Office issued a report prompted by our disclosures (see PEEReview Spring ‘08) that MMS managers were suppressing information from its scientists about unacceptable risks of spills and other eco-consequences in Arctic waters. Interior had a draft of this report for months before the BP blowout but took no action.

New PEER Board member Rick Steiner (see page 3 story) first discovered that the BP spill response plan listed walruses and seals as critical Gulf wildlife and gave a link to a Japanese home shopping website for its “primary equipment providers for… rapid deployment of spill response resources on a 24 hour, 7 days a week basis.”

PEER is working with inside reformers highlighting needed changes. Steps must not only be taken to prevent future disasters, but we will require a new paradigm for marine protection, including meaningful environmental restoration for the Gulf. Our agenda in the coming months is growing like the spill and includes:

- Protecting scientists, engineers, and other specialists inside the eco-agencies from political interference and retaliation. Unless we can stop the suppression and dilution of technical information, fiascos will recur;

- Putting muscle behind environmental and safety enforcement, including a dimension of real transparency to ensure inspections, citations, and other actions can be tracked. This must start with vigorous civil and criminal prosecution of BP and its contractors;

- Holding responsible managers accountable. PEER has been “naming names” of individuals who made the fateful decisions. We are working to create concrete career consequences, especially when agency actions are overturned in court for failing to meet legal minimums for ecological and safety integrity;

- Developing realistic spill prevention and

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Muddling MMS

In a hurried post-Gulf spill reform move, Interior Secretary Ken Salazar has broken the Minerals Management Service (MMS) into three parts to address what he has called “conflicts.” Unfortunately, this reorganization ignores the real conflicts and addresses false ones. Under the new configuration:

• Environmental scientists reviewing offshore oil leases still answer to non-scientists lease managers who are rewarded for keeping lease packages on schedule. This results in ecological and safety issues being censored from the review process in order to move approvals along without further study, as documented in a recent GAO report based on PEER disclosures (see cover story);

• The oil industry is still able to prevent independent review of its submissions by classifying them as proprietary trade secrets. As a result, the new agencies remain dependent on industry for all information and lack any means to verify any of it; and

• Sec. Salazar repeatedly states that his top priority is “energy independence,” a goal presumably shared by his appointees. This means that eco-and safety reviewers answer to people who place energy production ahead of resource protection.

The false conflict Salazar did address was separating royalty collection from leasing decisions. However, it takes years from granting a lease to bring product to market on which royalties are collected. Thus, as a practical matter, lease personnel have no contact with royalty agents. They were already functionally as well as physically separated.

Perhaps even more troubling is that Salazar refuses to bring in seasoned reformers and former whistleblowers who know what the problems are and where the bureaucratic bodies are buried. Instead, Salazar keeps appointing fish-out-of-water lawyers with little relevant experience, tasking them to remake an agency that they do not understand.

More fundamentally, the Interior Department and its leadership, starting with Ken Salazar, represent a principal barrier to reform. It makes far more sense to transfer environmental and safety functions to the National Oceanic & Atmospheric Administration and the U.S. Coast Guard, respectively, than to reshuffle the deck chairs inside a listing Interior Department.

The BP spill has yet to produce any meaningful reform, an outcome that we are making our business to change.

— Jeff Ruch

Mission Statement

PEER protects public employees who protect our environment. We are a service organization for local, state, federal and tribal law enforcement officers, scientists, land managers and other professionals dedicated to upholding environmental laws and values. Through PEER, public servants can choose to work as “anonymous activists” so that public agencies must confront the message, rather than the messenger.
Cape Wind Storm Brews

PEER is leading a coalition that has filed suit against federal agencies responsible for approving the proposed Cape Wind offshore turbine farm on the grounds that the project will exact a terrible toll on federally protected migratory birds and other wildlife. Not only were required scientific studies not performed, but vital protective measures to minimize carnage were discarded.

The lawsuit details violations of the Endangered Species Act, Migratory Bird Treaty Act, and National Environmental Policy Act in green-lighting the offshore wind farm in Massachusetts’ Nantucket Sound. Among the issues raised by the suit are the –

- Rejection of recommended steps to save the endangered Roseate Tern and the threatened Piping Plover, such as shutting turbines down during peak migrations;
- Refusal to even collect or submit acoustic, radar, infrared or observational data on bird migration; and
- Failure to prepare a supplemental environmental impact statement when new information came to light that a large aggregation of the highly imperiled North Atlantic Right Whale was present in the project area.

As a result of these failures, there is no firm information on precisely how many birds will perish in the huge turbine blades despite requirements that the best scientific information must be used. In addition, there are questions about whether the project will harm, harass, or kill critically endangered Right Whales.

“We are in this lawsuit because science was manipulated and suppressed for political reasons to which the Obama administration turned a blind eye,” stated PEER New England Director Kyla Bennett, a biologist and lawyer formerly with the U.S. Environmental Protection Agency, noting the role of the (now former) Minerals Management Service and Interior Secretary Ken Salazar. “Condemning rare birds to extinction is not required for offshore wind development.”

A January 2010 Interior Inspector General report found that the agencies reviewing the project’s environmental impact study were unnecessarily rushed in their reviews because of the applicant’s desire to complete the environmental review prior to the exodus of the Bush Administration. U.S. Fish & Wildlife Service (USFWS) biologists protested that the lack of data made it impossible to adequately assess the project’s impacts on birds. The agency then reassigned the lead biologist. Even one of MMS’ own avian biologists complained in an email that:

“The USFWS informed the applicant and the Corps as early as May 2002 of the need for 3 years of monitoring bird use of Nantucket Sound and the Horseshoe Shoals area to provide the information required to adequately inform the NEPA process. That was SIX (6) years ago, and the data were never collected.”

Cape Wind is a prime example of where a needed alternative energy project threatens to become an environmental liability due to poor government planning, weak agency leadership and political intervention to predetermine outcomes and suppress issues. In 2009, President Obama commissioned a 13-agency Oceans Task Force to, in essence, zone the Outer Continental Shelf so that zones for wind and other offshore energy development could be designated as a result of scientific review rather than locations picked by developers, as at Cape Wind.

WELCOME ABOARD!

We are pleased to announce that Rick Steiner, a prominent marine conservationist, has joined our Board of Directors. Rick has worked both nationally and internationally on effects of oil development in marine environments since before the Exxon Valdez spill.

At the same time, we are sad to say that Gene Hocutt, the self-described “old duck farmer” is hanging up the reins of our Refuge Keeper operation. His work will shift to Washington, DC.
A confusing and crippled plan to regulate coal combustion wastes is finally ready for public scrutiny. The official proposal is the response of the U.S. Environmental Protection Agency to the disastrous December 2008 coal ash impoundment spill in Tennessee but has been watered down after intense industry lobbying in the White House and still suffers from a swarm of regulatory uncertainties.

EPA's original proposal was to classify coal ash in wet storage (sludge ponds) as a hazardous waste but the Obama White House forced it to add industry-sponsored alternatives, thus presenting a menu of choices rather than one plan. Reflecting this odd smorgasbord arrangement, EPA claims that it is “opening a national dialogue” on what is appropriate regulation rather than seeking public input on what the scientific evidence supports as the most prudent public health measure.

The overriding issue is the multi-billion dollar market for coal ash in consumer, agricultural and commercial products, a practice that EPA promotes despite huge unexplored public health and environmental risks [see PEER Review Winter ‘10]. At odds with its regulatory role, EPA is in a formal partnership with industry to promote re-use of coal ash, the combustion byproduct that pollution controls prevent from billowing out smokestacks – extremely nasty waste. This partnership, called the Coal Combustion Product Partnership (or C2P2) has been temporarily suspended during the public comment period because it “was deemed appropriate to foster dialogue on the proposal evenhandedly with all interested parties through the public comment process...We have suspended active participation in the Partnership; we are bullish on beneficial use [the industry’s preferred term],” exclaimed one agency e-mail.

The stakes for the coal industry are huge, as coal combustion creates the country’s biggest waste stream second only to coal mining. Reuse of coal ash is critical to keeping coal power cheap. One indication of the criticality of keeping coal ash in commerce is that EPA’s official estimates of potential benefits from strict regulation range from a positive $87 billion to a negative $230 billion; the latter figure is based on industry assertions that a hazardous waste status would create a “stigma” against so-called “beneficial use” of coal ash.

“EPA Administrator Lisa Jackson pledged that she would make her decisions based on science but this proposal makes a mockery of that promise,” stated PEER’s Jeff Ruch, noting that Jackson allowed the White House to completely rewrite what EPA had recommended. “This was the Obama administration’s first really tough environmental play call and it punted.”

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**Recipe for Growing “Superbugs”**

The U.S. Environmental Protection Agency (EPA) approval process for thousands of antimicrobial products is woefully inadequate, according to regulatory comments filed by PEER. Despite a growing body of scientific evidence about side-effects of these products, EPA rubberstamps registrations without even considering an array of potential public health and environmental impacts.

- Antimicrobials are now a billion-dollar business with more than 5,000 such products currently registered with EPA. Initially designed for hospitals and clinics, antimicrobial pesticides are today found in products ranging from household cleaners, to mattresses and bedding, cosmetics, toys, toothpaste, and even chopsticks. Antibacterial products are being marketed to the health conscious without firm evidence of real benefits and amid growing concern about downstream consequences.

- EPA’s exceedingly narrow regulatory approach overlooks serious public health and environmental concerns within the agency’s purview, such as –

  - The most prevalent antibacterials used in consumer products are endocrine disrupters that may interfere with one’s thyroid. Studies also point to a correlation between product overuse and increased rates of allergies, asthma, and eczema;
  - Continued overuse of antimicrobials will create strains of bacteria, known as “superbugs” immune to the effects of therapeutic antibiotics, consequently denying doctors tools to treat the sick, elderly and other vulnerable people; and
  - Antimicrobial chemicals are often washed down the drain and end up in our rivers, lakes, and streams, proving toxic to fish and other aquatic life.

In 2008, EPA itself conceded that antimicrobial pesticides in wide use are not adequately tested for their effects on the environment and human health, proposing a series of new data requirements from manufacturers, but then never finalizing these rules.

“EPA now only asks whether these products ‘kill germs’ but myopically ignores what happens later,” stated New England PEER Director Kyla Bennett, a biologist and attorney formerly with EPA. “Incredibly, EPA does not even require manufacturers to submit definitive data about the environmental fate and health effects of their own products.” PEER is urging EPA to limit the use of currently registered antimicrobial pesticides to clinical settings and to decline approvals for any pending or future registrations for general consumer use unless and until data that demonstrate appreciable health benefits to consumers is submitted.
School Asbestos Abatement Crisis

Emergency federal intervention is needed to abate asbestos hazards in hundreds of Bay State schools, according to a legal petition filed by PEER. Agency records show widespread noncompliance by schools with federal asbestos requirements.

Occupants of buildings with asbestos-containing materials are at risk for asbestosis, pleural disease, lung cancer, and malignant mesothelioma. Massachusetts Cancer Registry data indicate teachers and school custodians are reporting cases of malignant mesothelioma, a cancerous tumor in the lining of the lung linked to asbestos exposure for the period of 1982 to 2003. Risks for students, however, have yet to be studied.

The federal Asbestos Hazard Emergency Response Act (AHERA) requires all public and private non-profit primary and secondary schools to implement plans for asbestos containment, removal and periodic inspections. The U.S. Environmental Protection Agency (EPA) is responsible for enforcing AHERA but in 1998, EPA authorized the Commonwealth of Massachusetts to administer the statute but retains oversight over Massachusetts’ performance – a responsibility PEER is invoking through its petition.

Don’t Sit In This Corner. On average, 90 percent of Massachusetts schools chosen at random for audits were not in compliance with the federal Asbestos Hazard Emergency Response Act.

1 in 5 States Toughen Whistleblower Laws

During the past year, ten states have measurably improved legal protections for state employees who blow the whistle, according to a new PEER analysis. Many states now afford their employees stronger statutory shields than those covering federal workers, as a continuing Congressional stalemate has stalled federal whistleblower reform legislation for more than a decade.

The most dramatic changes came in two states, New Mexico and Vermont, which previously had the two weakest laws in the country. As a result of comprehensive legislation enacted in recent months, New Mexico now has the 4th strongest law and Vermont has the 6th strongest, according to a rating scale devised by PEER. The other eight states that have substantively expanded whistleblower coverage include Alabama, Alaska, Illinois, Iowa, Massachusetts, Pennsylvania, South Dakota and Utah (these latter two states, however, still have among the weakest laws overall).

Since 2006, when PEER first rated state disclosure laws, more than 30 states have significantly broadened their whistleblower laws and not one has weakened protections. “Even fiscally challenged states see whistleblowers as means to save scarce taxpayer dollars from being wasted or misused,” stated PEER Staff Counsel Christine Erickson, who compiled the state legislation updates.

The PEER website features a detailed analysis of every state’s laws, ranking each on 32 factors affecting the scope of coverage, usefulness and strength of remedies. By these measures, California, the District of Columbia and Tennessee have the strongest whistleblower laws while Virginia, South Dakota and Georgia have the weakest.
Delaware Dune Wars

This May, a Delaware state agency sent its bulldozers to scrape sand dunes inside a federal national wildlife refuge without required permits in violation of both state and federal laws, according to complaints filed by PEER. The U.S. Army Corps of Engineers is investigating potential criminal violations of wetland provisions of the Clean Water Act by the Delaware Department of Natural Resources and Environmental Control (DNREC) committed on Prime Hook National Wildlife Refuge.

“We are dumbfounded that the state agency which is supposed to protect natural resources is behind the bulldozers,” exclaimed PEER Executive Director Jeff Ruch, noting that besides the harmful effects on wildlife the project hurts beach and wetland habitats which are dependent on storm surge breach and overwash sand to adjust to climate change and sea-level rise. “DNREC cannot hold back the sands of change transforming Delaware’s beaches and dunes.”

The stated reason for the work was to repair “breaches” created by recent storms. Ironically in January 2010, DNREC denied a permit to Prime Hook homeowners for sand scraping to rebuild dunes – work similar to what DNREC was doing without a permit. In denying that permit, DNREC then stated: “merely shifting sand from one location to another on the same beach does little to provide long-term protection from erosion.”

Coincidentally or not, this is the same area where one year ago, the state Department of Transportation engaged in illegal ditching, draining and building culverts near property owned by State Representative V. George Carey, former chair of the Natural Resources Committee{see PEEReview Summer ’09}. With the brouhaha created by the PEER complaints, DNREC is deciding whether to abandon the project – and the Prime Hook National Wildlife Refuge is trying to explain why state bulldozers were on its beaches.

A highly touted federal campaign to eradicate Eurasian tamarisk plants along western rivers has been quietly canceled. Effective June 15, the U.S. Department of Agriculture has barred further releases of saltcedar leaf beetles, the vanguard of a multi-agency biological war against the tamarisk plant. Tamarisk was imported to the U.S. in the 1800s. USDA promoted planting them as drought and erosion control into the late 1930s. By 1940, however, government hydrologists believed tamarisks to be “water hogs,” thus beginning decades of hapless action against the resilient, well-established plants.

The official reason for the 13-state cancellation is “potential effects on the critical habitat of the federally-listed, endangered southwestern willow flycatcher.” In some areas the flycatcher, considered an indicator species like the northern spotted owl, has adopted the thriving tamarisks as nesting habitat. Indeed, studies identify nearly 50 American bird species that use tamarisks out of necessity, in lieu of the native trees and shrubs decimated by overgrazing and damming and diversion of Western rivers.

There are several ironies in USDA’s abrupt about-face on leaf beetle releases:

- USDA approved releases in 2005 without a full environmental review under a “finding of no significant impact” (FONSI) after promising to keep the beetles away from the birds;
- According to the notice, the new ban on beetle releases will be enforced by civil and criminal penalties under the Endangered Species Act as well as the Plant Protection Act – an unusual twist given that tamarisk is one of the top federal targets for eradication; and
- The decision, which PEER was the first to broadly announce, had not filtered down to all USDA “cooperators” with state and local agencies still announcing new leaf beetle releases.

The reason USDA was being so secretive is that it is now in the awkward position of threatening prosecution of its partners for doing what it had until just weeks ago been pushing. In the meantime, the entire program is in limbo until “endangered species issues are resolved,” according to the USDA memo – a date that may never arrive.

“A hundred years ago, few imagined that tamarisk could spread across the West. Five years ago, USDA unleashed the leaf beetle under the illusion that nothing could go wrong,” remarked PEER’s Jeff Ruch, noting the parallel to the children’s story about the old lady who swallowed a fly. “This episode underlines the hubris of efforts to engineer nature. Perhaps the best hope for the endangered southwestern willow flycatcher is for it to develop a taste for leaf beetles.”
Rising Ranger Danger

Attacks and threats against U.S. Forest Service employees and National Park Service rangers reached an all-time record in 2009, according to agency incident reports compiled by PEER. Incidents ranged from murders and sexual assaults to break-ins of government buildings. These figures do not reflect the effects of liberalized firearm rules in national parks and refuges that went into effect earlier this year. Agency incident reports show:

- The National Park Service recorded 158 attacks or threats on its law enforcement rangers, more than triple what it reported for 2008 and nearly 50% above its previous record year of 2004. These numbers are understated, however, as NPS admits that its records are inconsistent and incomplete; for example, it only records assaults against law enforcement staff and not against others. The numbers also do not include assaults on the U.S. Park Police; and
- The Forest Service logged 427 violent incidents in 2009, a 33% jump from the year before and the greatest number ever recorded. This is also the fourth straight annual increase.

“They say ‘it’s not easy being green’ but deteriorating public treatment of federal land management staff make that statement truer today than ever before,” said PEER Staff Counsel Christine Erickson, who obtained and compiled the incident reports.

PEER has maintained a database of incidents against federal resource employees since the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. The U.S. Justice Department stopped tracking assaults on federal employees back in 2002, after it persuaded Congress to repeal a reporting requirement for such attacks.

ARIZONA WARNED ON PARK CLOSURES

The National Park Service has served notice on the State of Arizona that its plan to close more parks purchased with federal dollars could cost the state dearly in future federal aid, according to a letter released by PEER. The letter to Governor Jan Brewer notes that the state “has received $58 million in Federal Financial assistance to aid in the acquisition and development of ...11 Arizona state parks which we understand are proposed for closure…”

“If Gov. Brewer closes parks, NPS must quickly move to take over parks created or supported with federal funding. The people of Arizona want parks open and would applaud,” stated Southwest PEER Director Daniel Patterson, who is also an Arizona State Representative working with State Parks employees and advocates to try to keep parks open. In addition to loss of funds, park closures will bring a host of liability and public safety problems resulting from the state’s inability to secure park lands from spreading wildfires, drug cultivation, violent crimes and injuries. Last year, PEER helped stop California park closings by airing an extraordinary legal analysis by state lawyers detailing a litany of legal headaches from shuttering parks.

BIG CHAMBERS WIN

The legal saga of former U.S. Park Police Chief Teresa Chambers took yet another turn, as the U.S. Court of Appeals for the Federal Circuit declared her to be a protected whistleblower and threw out the main charge used to justify her 2004 removal. This is the second time this appellate court has ruled in her favor and her case is now remanded back to see if any of the lesser remaining charges justify disciplinary action against her.

In late 2003, Chief Chambers gave an interview to the Washington Post in which she confirmed dangerously low staffing levels. Three days after it was published, she was ordered to surrender her gun and badge, placed on administrative leave and ordered not to make any further statements. After keeping her on leave for 7 months, the Interior Department acted to terminate her the day after she filed a formal legal appeal, citing her interview as disclosing “law enforcement sensitive” information.

This new ruling confirmed that disclosures of security and staffing shortfalls are protected under the federal Whistleblower Protection Act. The ruling has implications for scores of other security-related whistleblowers in agencies such as Homeland Security and the Defense Department. “The Interior Department threw a kitchen sink of bogus charges against Chief Chambers and one by one they are falling away,” stated PEER Senior Counsel Paula Dinerstein, who argued Chambers’ winning appeal. “This ruling will help keep us safer as a nation by creating a legal shield enabling other Paul Reveres to alert the public to hidden dangers.”

So far, the Obama administration argues the same positions put forward by Bush officials who went after Chief Chambers. Even though some prominent Obama officials cited this case as the epitome of abuse during the Bush years, there has not yet been change in posture or policy either specifically or on the broad question of how security concerns can be ventilated.

Hail to the Chief. Teresa Chambers had been the police chief in Durham, NC, and was selected by the Bush administration following a nationwide search in 2002 as the first female leader of the oldest uniformed police force in federal service.
Chemical Warfare

A five-year effort to update limits on more than 30 contaminants commonly found in New Jersey’s drinking water appears to be doomed by the anti-regulatory stance of the Christie administration, according to documents posted by PEER. As a result, New Jersey residents will continue to be exposed to chemicals ranging from benzene to formaldehyde in amounts that the state’s own expert Drinking Water Quality Institute (DWQI) has found unsafe.

Established in 1985, the 15-member DWQI determines the scientific basis of maximum contamination levels for chemicals in drinking water and then makes recommendations to the state Department of Environmental Protection (DEP) to promulgate regulations for enforcing drinking water standards. In March 2009, DWQI issued a report recommending new or tighter standards for 13 chemicals. One of its most worrisome findings was about the urgent need to set extremely strict limits on highly toxic contaminants, such as 1,2,3-trichloropropane, about which the DWQI stated:

“1,2,3-TCP is DNA-reactive, clearly genotoxic and mutagenic, caused tumors in a number of tissues in both the rat and the mouse, and metastatic forestomach tumors were found in variety of locations.”

In February 2010, the longtime Chair of the DWQI, Dr. Mark Robson of Rutgers University, resigned when it became clear that outgoing Gov. Corzine would not act on the DWQI’s March 2009 recommendations. The Christie administration has just finished a comprehensive regulatory review, called the “Red Tape Review” which did not mention anything about the need to tighten contaminant standards for drinking water. In fact, the Christie review targeted a number of current water pollution and other eco-rules for repeal or relaxation.

“Clean drinking water will be a major challenge for the Christie administration, which wants to put business promotion on a par with public health,” stated New Jersey PEER Director Bill Wolfe, pointing to DEP’s new economic development emphasis. “Political appointees now say they want to depend on ‘sound science’ but here the science is already in and it is just flat being ignored.”

As a prime example of the Christie administration’s difficulties with drinking water protection, PEER points to perchlorate, a component of rocket fuel found in many state waters. A proposed tight new limit, which came from an earlier DWQI study, was allowed to die this March. Facing public and legislative criticism, DEP Commissioner Bob Martin testified that the U.S. EPA was poised to act imminent on perchlorate chemical but that the DWQI science was “shoddy” and there was “no data” supporting adverse health impacts. He was forced to reverse himself after PEER revealed that, contrary to Martin’s public assertion, that federal regulation is still years away. On April 29, 2010, his spokesman said “The commissioner does plan to institute a perchlorate regulation as quickly as possible.” It is not clear, however, when these new limits will be in place or how they will be set.

“The anti-regulatory rhetoric of the Christie administration will continue to trip them up, just as it did with perchlorate,” added Wolfe. “There is no way around the fact that protecting our drinking water from growing chemical contamination necessitates government action.”
What Happens in Tonopah Doesn’t Stay There

The U.S. Bureau of Land Management has rebuffed a PEER complaint about illegal damage to cultural and natural resources in its Tonopah office. The PEER complaint was prompted by Stacey Antilla, a BLM Outdoor Recreation Planner, who resigned in frustration, after working in vain to properly plan and mitigate the damage resulting from the thousand-mile “Vegas-to-Reno” off-road vehicle race across endangered Desert Tortoise habitat in the Mojave and Great Basin Deserts. BLM Tonopah manager Tom Seley refused to address documented problems from past races and ignored violations of agency policy, permit stipulations and resource law, including:

- Routing the race through sensitive desert areas rather than keeping the course on already established roads;
- Allowing heavy equipment into a desert river that is habitat to endangered species; and
- Refusing to survey and correct post-race damage.

“Stacey Antilla did the right thing as a BLM planner by trying to reduce the impact of the off-road race and protect cultural resources. She should have been rewarded, not run out of the agency,” said Southwest PEER Director Daniel Patterson, who formerly worked with BLM. “BLM needs to be able to attract and retain conscientious workers. What happened in Tonopah should not be tolerated in a public resource protection agency.” added Patterson. PEER is asking BLM Director Robert Abbey to look into and correct this situation. In 2008, Abbey, then in retirement from BLM, joined PEER’s Rangers for Responsible Recreation, a retiree group speaking up about the ravages of off-road abuse on public lands.

RE-CROSSING THE RUBICON

The U.S. Forest Service must clean up pollution of Sierra lakes and streams from ORV traffic on the infamous Rubicon Trail, under a California decision won by PEER and the Center for Biological Diversity. The Central Valley Regional Water Quality Control Board issued a Cleanup and Abatement order to Eldorado County and Eldorado National Forest after neither entity acted to stem the damage caused by extreme ORV use on the historic trail and water pollution caused by human waste.

Users of the area next to Desolation Wilderness are appalled by the damage to the fragile high alpine lands and lakes. The County had spent $400,000 provided by State Park grants on a management plan, but dropped the plan when some in the off-road community complained. The State of California has said it will not ask for the county to return the money despite its own budget woes. Meanwhile, the Forest Service had unsuccessfully asserted that the Regional Water Board did not have jurisdiction to hold it accountable for compliance with the State Water Code.

“This moves us a little further toward getting the Forest Service to take responsibility for the damage,” stated California PEER Director Karen Schambach. “The Forest Service should be ashamed of itself for resisting this clean-up order.”

MOJAVE CROSSED OUT

In past issues, we chronicled the legal challenge by PEER Board member Frank Buono to remove an 8-foot cross from a promontory in the middle of the Mojave National Preserve. This spring, the Supreme Court handed down a muddled, fractured opinion remanding the case back for further proceedings to determine the legality of a congressional rider that would facilitate a 1-acre land exchange so that the cross would technically be located on private land (PEER filed an amicus brief asserting that the exchange was invalid).

Well, shortly after the ruling came down, someone stole the cross. The Park Service has refused to allow a replacement, however, as the legal precedent established in the Buono case prohibits the erection of a Latin cross on federal land. So, unless the original cross is found, this separation of church and state legal saga may have come to an unusual end.

Thank You!

Special thanks this quarter to the Cornell Douglas Foundation as well as Ms. Linda & Charles Frick, Ms. Barbara Meislin “The Purple Lady” and Mr. & Mrs. Thomas W. Brown for especially generous support.

In addition, we want to acknowledge the behest from the estate of Jan Garton, who will be missed.
PEER Perspective

Hot Taps, Top Kills and Junk Shots

Tulane University President Scott Cowen

The Louisiana Chemical Association has declared war on the Tulane Environmental Law Clinic, sponsoring legislation to cut off state funds if the clinic sues corporations for damages or brings citizen suits to enforce pollution laws. Tulane President Cowen lobbied passionately against the bill, saying “We are dealing with one of the most catastrophic environmental issues we’ve ever had in the history of the United States, and yet we’re here arguing about cutting off access to people, to those who can’t get it without the clinic.” adding that it would throw “every indigent person in this state under the bus” by cutting off free legal aid. The bill was shelved, but the Chemical Association rages on, urging its members to stop recruiting Tulane graduates. Looking on the bright side, perhaps these young people can now devote their talents to something other than making Louisiana’s Cancer Alley an even more toxic place to live.

West Virginia Environmental Protection Secretary Randy Hoffman

Sec. Hoffman is feeling especially aggrieved by EPA’s attempts to limit damage from mountaintop removal coal mining: “None of the other five [Appalachian] states are feeling this pain. No one is being scrutinized like we are. If what EPA is doing is illegal, they will pay the price.” While he later retracted the “pay the price” remark, he made clear that if West Virginia isn’t the first state to sue EPA, it will certainly be the second, saying that EPA has “taken it to such an extreme that it makes it an impossible standard for industry to meet” – a curious environmental focus that explains a lot about the Mountaineer State.

Al Armendariz, EPA Regional Administrator

As the top EPA official in a five-state region that includes Texas, Armendariz has taken the Lone Star State to task for its “flexible permitting” system which allows the biggest air polluters to evade meaningful monitoring. “These permits are unenforceable,” he has explained. And he has been undeterred by the predictable protests from Texas Gov. Perry and industry, declaring that “the time for delay and for partnership and for compromise is very quickly coming to an end and we have to get the Clean Air Act implemented in the State of Texas.” Wow. Too bad this guy can’t be cloned.

U.S. Attorney Dennis Burke, Arizona District

Burke’s office has brought federal charges against the biological technician, Janay Brun, who blew the whistle on the circumstances leading to the death of Macho B., the last known jaguar in the U.S. Brun exposed the fact that the cat was lured into a snare for capture, contrary to Arizona Game & Fish claims that the death was accidental. “That jaguar meant a lot to me, and the fact that I mindlessly participated in this – it’s a regret I’ll have for the rest of my life,” she said. Her supervisor has already pled guilty. In a hardball move, the U.S. Attorney has filed a felony conspiracy charge on top of the underlying Endangered Species Act charge to force Brun to enter a plea deal. Many area conservationists, including Southwest PEER Director Daniel Patterson, feel that Brun deserves a medal, not a rap sheet.

U.S. Coast Guard Captain Hung Nguyen

Captain Nguyen led the joint Coast Guard-Minerals Management Service inquiry into the BP blowout, and exposed just how lame and industry-dependent MMS regulation is. After Capt. Nguyen spent several days making MMS officials walk over hot coals in public session, his co-chair from MMS – hoping to demonstrate that standards exist – pointed out that rig workers must pass the International Association of Drilling Contractors training course. In response, Capt. Nguyen asked, “That’s an industry group, right?” No one had to answer.

U.S. Representative Rob Bishop (R-UT)

Bishop is leading a group of GOP lawmakers pushing to lift environmental protections on the Canadian border so that Border Patrol convoys can rumble freely, as they do on our Mexican border. “Restrictive policies created and enforced by the Interior Department and federal land managers are preventing the U.S. Border Patrol from providing the maximum level of security…Unless these policies are reversed, the safety and security of this country remain in jeopardy,” he fumed. His narrow, militarized view of security does not consider the possibility that the protected grizzlies currently prowling the border wilds may actually be our best line of defense.
Over the past decade, Congress has charged the U.S. Occupational Safety and Health Administration (OSHA) with enforcing far-reaching new whistleblower laws, including this year’s health care law, consumer product safety rules, and corporate malfeasance safeguards, but has not provided funding or staff to protect millions of workers from retaliation for reporting violations, according to a new PEER analysis. As a result, OSHA’s whistleblower program is hopelessly overwhelmed, lacking in programmatic leadership and adrift.

Since 1970 when it was created, OSHA was mandated to protect workers who report health and safety violations and dangers from employer reprisals. Over the next 40 years, Congress expanded OSHA’s jurisdiction by enacting 17 other whistleblower provisions as part of complex pollution, energy production, and transportation laws. Recent examples include:

- The Patient Protection and Affordable Care Act of 2010, covering 12 million health workers;
- The Consumer Protection Safety Improvement Act of 2008, including 20 million workers involved in manufacture, labeling, distributing, and retailing products; and
- The Sarbanes-Oxley Act of 2002 to control corporate fraud, adding 42 million financial workers.

Altogether, OSHA’s whistleblower jurisdiction has grown by a staggering 75 million workers in just the past decade, or more than 1 million workers for each investigator. These numbers exclude the estimated 115 million workers already covered by the whistleblower provisions of the Occupational Safety & Health Act of 1970 – OSHA’s main responsibility.

Unfortunately, the whistleblower protection program does not appear to be on the radar of OSHA leadership. A 2010 strategic plan for OSHA makes no mention of whistleblower protection, even in the summary of the agency’s mission statement. In a recent report, the GAO noted that the whistleblower program does not even have its own budget but, rather, is subject to the whims of regional administrators who divvy up a miniscule enforcement budget among an array of labor violations.

“Whistleblower protection at OSHA is not just on the back burner, it has fallen off the stove,” stated PEER Executive Director Jeff Ruch, who is asking Labor Secretary Hilda Solis to move the collection of programs out of an overmatched OSHA and create a new whistleblower agency inside DOL that has a dedicated mission as well as the leadership and resources to do the job.

Protecting Gulf Wildlife

The BP oil spill is wreaking incalculable havoc on the web of life in the Gulf of Mexico ecosystems. Marine birds, mammals and fish are directly affected. Wetland-dependent creatures will also be harmed in a major way, as the oil will be absorbed in the marshes, bayous and estuaries that serve as cradles of wildlife.

PEER attorneys are working with internal reformers to make sure that federal agencies integrate the effects of a massive oil spill in their conservation plans. One key prong of this effort is litigation to throw a lifeline to the most vulnerable species:

- The endangered manatee depends upon Florida’s warm water springs, many of which are right in the path of the BP spill. We are working to secure safe, clean warm water habitat for the manatee before the cold of fall and winter descends; and
- Less than 100 Florida Panthers survive in the wild – clinging to less than five percent of their historic range. We are in court now to finally win critical habitat for this big cat before it is too late.

Obama’s next pick to head the U.S. Fish & Wildlife Service will indicate whether we will continue fighting these battles uphill or whether PEER and the FWS scientists we represent will finally have a real partner.
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BP Deepwater Horizon Spill

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response plans for both drilling and transport. Someone (i.e., PEER) needs to go through the current plans page-by-page and force the response agencies to update and renovate them;

• Demanding collection of independent monitoring data which reliably tracks drilling operations and effects while allowing consideration of cumulative effects. Currently, monitoring environmental effects is left to industry as the federal agencies make no effort to collect or even spot-check industry data. Moreover, the agencies do not act when the industry refuses to monitor or submit data;

• Imposing new, stricter limitations on industry air, water and waste discharges. Despite industry claims, offshore drilling is an inherently dirty business. Besides the risks of catastrophic spills both from drilling and, more likely, from crude transport (the source of one-third of all spills), oil and gas activities pollute surrounding waters with a witch’s brew of contaminated cuttings; and

• Assuring compensation for environmental damage as well as economic losses in the Gulf.

One overarching gap is that the U.S. still lacks an integrated oceans policy; rather it has been making resource decisions (e.g., the March offshore drilling expansion) on an ad hoc basis. In 2009, President Obama commissioned a 13-agency task force to “zone” our Outer Continental Shelf. That preliminary report will not be available until 2011. At the same time, NOAA, like MMS, is an agency that lacks its own statutory charter and is appended to a larger, largely unrelated agency (the Commerce Department). We clearly need a separate, independent oceans agency dedicated solely to protection of marine resources.

And, by the way, it would be nice if our national energy strategy was not rooted in coal, petroleum and nuclear power (but that is the subject for a future newsletter).

The only silver lining of the BP disaster is that it sets the table for these and other needed reforms. But the momentum for reform will start to ebb as soon as public attention shifts elsewhere.

Ironic message from an actual 1999 BP ad.