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Grand Canyon Chapter

## **2002 Environmental Report Card** *Arizona Legislature and Governor*

**Issued June 5, 2002**

**Environmental Report Card  
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*"Nature does nothing in vain."*

Aristotle, The Politics

## **2002 Environmental Report Card Session Overview**

### **SESSION OVERVIEW -- HIGHLIGHTS AND LOWLIGHTS**

While nature does nothing in vain, the same cannot be said for the Arizona Legislature. Despite the fact that legislators filed over 1100 bills, the good news is there was not a lot of bad news. There have been much worse sessions for Arizona's environment than the 45th Legislature's Second Regular Session -- and all those special sessions along the way. This year environmental advocates helped head off most of the environmentally damaging legislation, plus we were able to get a few key amendments added to improve bills. There was not much in the way of environmental progress, however, and that is disappointing. Legislators continue to defer key environmental issues (and many other issues as well) to the courts, the federal government, and to the initiative and referendum process.

The budget issues took up a lot of the legislators' time this session. Amazingly enough, despite Governor Hull's efforts, the Heritage Fund survived the budget mess. After another tough session, the Heritage Fund has now withstood 26 attempts to weaken, divert, raid or otherwise pervert it. This is due largely to the strong public support for the fund and the programs it supports -- primarily nongame wildlife management and parks. Another positive for this session was that our initiative and referendum rights stayed intact. There were six bills that received hearings that would have in some way eroded these important rights, including **Representative Marian McClure's** bills to penalize the campaign committees for invalid signatures, and to require a certain percentage of signatures from three different counties. **Senator Harry Mitchell** also had a bill that aimed to make local referenda more difficult. Luckily, all of these measures were rejected in one committee or another.

The main bill intended to weaken and undercut Pima County's efforts to develop the Sonoran Desert Conservation Plan (and any other real conservation planning) was amended and eventually became a property rights task force as passed in HB2380. The original bill, **HB2638 local planning; grazing protection** (McClure, Brimhall, Clark, et al) had almost nothing to do with protecting grazing and everything to do with picking our pocketbooks and limiting our ability to protect our quality of life. The bill said that if any county adopts a conservation regulation that causes a reduction in use or value of property of ten percent or more, then that is considered a taking and the property owner is entitled to compensation. The bill focused on the establishment of conservation lands systems or science based biological reserves or permits relative to the Endangered Species Act. The bottom line is it was squarely targeted at conservation.

Three measures passed that can assist with planning efforts in the counties. They include: a measure to allow counties to promote infill incentives, a measure that allows counties to purchase development rights, and a measure that improves the requirements relative to lot-split affidavits. There were a couple of positive air quality bills -- one that allows the state to move forward with developing a regional haze state implementation plan and one that continues the emissions in lieu fee to provide funding for clean air programs. **Representative Landrum Taylor's** electronic chemical reporting bills passed this time around and the Governor signed them. These bills help to facilitate getting information to emergency response personnel.

The worst legislation of the session came from one of the state agencies -- the State Land Department. The State Land Commissioner made it clear that he is really not interested in upholding his trust responsibility to Arizona's school children, but instead is more interested in protecting sacred cows -- ranchers and developers. The Department pushed through a bill that hurts conservation interests' ability to obtain grazing leases and also one that accommodates more urban sprawl and leapfrog development on state trust lands.

While the Heritage Fund was protected, the State Parks Department was not so lucky. This agency budget was hit really hard; it is likely that the State Parks Board will face closing parks this year. On the chopping block are parks like Lyman Lake, McFarland, and Homolovi. We hope the agency does not shut down a park like Homolovi which protects important cultural resources.

All too often with the Arizona Legislature, there are many disappointments. The big disappointments for this session include:

- The Legislature's unwillingness to require cleaner burning diesel fuel such as CARB diesel.
- The Legislature's unwillingness to address environmental injustice in the state and require that agencies evaluate the disparate impacts of certain types of facilities on minority neighborhoods.
- The Legislature's unwillingness to reinstate citizen suit provisions in the environmental laws. These are critical to promote enforcement by recalcitrant agencies.
- The disregard for basic public safety as was evidenced by legislators' refusal to eliminate so-called "confidentiality agreements" which protect corporations like Firestone and hurt consumers affected by dangerous defects in the products they buy or environmental harm in their neighborhoods.
- And the biggest disappointment was the Legislature's unwillingness to address water issues and to provide even a smidgen of protection for our state's riparian areas.

### **HOW THE REPORT CARD WORKS**

Each year since 1995 the Sierra Club's Grand Canyon Chapter has graded Arizona legislators on their performance on environmentally related legislation. Legislators are graded only on bills where the Sierra Club had expressed an opinion to legislators, most often through a written memo. On key bills we provide written communication, meet with legislators, testify in committee hearings, and telephone legislators. The bills are

weighted according to their environmental impact. In order to provide a level playing field for legislators, the Sierra Club does not count committee votes and very seldom includes procedural votes. All legislators are graded on a curve.

### **SESSION ALL STARS**

**Representatives Avelar, Brotherton, Burton Cahill, Cardamone, and Camarot** plus **Senators Hartley, Richardson, Rios, and Yrun**, all received perfect scores and A pluses on the environmental report card.

### **MOST VALUABLE PLAYERS**

**Representative O'Halleran's** efforts to hold the State Land Department accountable and promote better land use and water supply, plus give the counties a greater ability to address lot split issues earn him the MVP recognition. With the assistance of the Democratic caucus in the Senate, **Senator Solomon** did a yeowoman's job of protecting the Heritage Fund in the budget fights. The House sent over a budget that hit the Game and Fish Heritage Fund for \$2.5 million, but Senator Solomon's Appropriations Committee amendment eliminated that provision. We very much appreciate that.

### **ROOKIES OF THE YEAR**

**Representative Gabrielle Giffords** gets recognition for her work to protect the Heritage Fund and to improve other environmental measures, plus speak out against the state land department's bills. **Representative Deb Gullett** shares this honor for working to make the House Environment Committee more about environmental protection and less about weakening environmental protection. She worked behind the scenes to improve several measures, plus helped push through an air quality bill. **Senator Virginia Yrun** gets recognition for her efforts to speak out against the state land department bills and to defeat the bill that eliminated the requirements for schools to phase out diesel buses.

### **POOR SPORTS**

**Representative Marian McClure** receives the "*Poor Sport*" recognition for her efforts to undercut one of the best planning efforts in the state -- Pima County's Sonoran Desert Conservation Plan. To make matters worse, she sponsored some of the worst legislation relative to initiatives and referenda. **Senator Scott Bundgaard** also gets "*Poor Sport*" recognition for his total lack of concern for environmental protection matters, his inability to stand up to big business interests on the Firestone bill (he pulled it before it even got a hearing), and his propensity for "misleading" people about his position on particular bills.

### **BACK TO THE MINORS**

The send them "*Back to the Minors*" recognition goes to **Senators Cirillo, Gnant, Hellon, Hamilton, Jackson, Martin, Petersen, Brown, Bundgaard, Bennett, Smith and Bee**, and **Representatives Binder, Blendu, Brimhall, Carpenter, Cooley, Farnsworth, Flake, Gleason, Graf, Gray, Hanson, Huppenthal, Johnson, Knaperek, Maiorana, McClure, Nelson, Pearce, Pierce, Robson, Somers, Voss, and Weiers**. All of the above received failing grades on the environmental report card. It really is not difficult to support clean air, clean water, good planning, and protection of our state's resources, but these folks just don't get it.

## HALL OF FAME

**Senator Mary Hartley** gets "*Hall of Fame*" recognition for her nearly perfect record in the Senate relative to environmental issues -- most years she had perfect report card and never slipped below an A on the report card. **Representative Carmine Cardamone** also gets "*Hall of Fame*" recognition for his strong support of environmental protection and all of his work behind the scenes to try and improve and or defeat anti-environmental legislation in the House. He is off to the Senate where we hope he will continue his great environmental work.

## HALL OF SHAME

**Speaker of the House, Jim Weiers** has done almost nothing to help improve Arizona's environment during his tenure in the House and in fact worked to divert Heritage Fund dollars during that time. He has supported nearly all of the anti-environmental legislation that has moved through the process and has never received above a failing grade on the report card.

Joining Speaker Weiers in the Hall of Shame is **Governor Jane Dee Hull**, who once again did not make the grade this session -- she signed the sprawl promoting state trust land bill, as well as the bill that hinders conservation grazing leases. She also led efforts to sweep the Heritage Fund and did nothing to assist a beleaguered State Parks Department. Overall, the Governor's tenure has been a huge disappointment to environmental advocates. She appointed anti-wildlife Game and Fish Commissioners, undercut efforts to promote real growth management, and undermined efforts to promote state trust land reform. She did almost nothing to move forward the recommendations from her Brown Cloud Task Force or her Water Commission. The one environmental accomplishment in the Hull years is the preservation of Spur Cross Ranch -- that is a pretty short list. While this year she got a D on the report card, overall Governor Hull most certainly gets a failing grade when it comes to protecting Arizona's environment.

## DISABLED LIST

**Representative Carolyn Allen's** efforts to promote state trust land preservation and clean air programs were missed this session. We wish her all the best with her recovery and look forward to working with her in the Arizona Senate next session. We also hope **Senator Marilyn Jarrett** has a speedy recovery and that she returns to the Senate with a new and improved perspective on environmental protection.

**2002 ENVIRONMENTAL REPORT CARD SENATE GRADES**

<p><b>Hartley Richardson Rios Yrun</b></p>	<p align="center"><b>A+</b></p>
<p><b>Mitchell Valadez</b></p>	<p align="center"><b>A</b></p>
<p><b>Cummiskey</b></p>	<p align="center"><b>B</b></p>
<p><b>Blanchard Burns Daniels Gerard Lopez Solomon</b></p>	<p align="center"><b>C</b></p>
<p><b>Aguirre Arzberger Guenther</b></p>	<p align="center"><b>D</b></p>
<p><b>Bee Bennett Brown Bundgaard Cirillo Gnant</b></p>	<p><b>Hamilton Hellon Jackson Martin Petersen Smith</b></p> <p align="center"><b>F</b></p>

**2002 ENVIRONMENTAL REPORT CARD HOUSE GRADES**

<p><b>Avelar Brotherton Burton Cahill Camarot Cardamone</b></p>	<p align="center"><b>A+</b></p>
<p><b>Cheuvront                      Soltero Foster                              Weason Giffords Landrum Taylor Lopez Loredo Poelstra</b></p>	<p align="center"><b>A</b></p>
<p><b>Gullett                              Tom Kraft Miranda Norris O'Halleran Sedillo</b></p>	<p align="center"><b>B</b></p>
<p><b>Hershberger Leff May Pickens</b></p>	<p align="center"><b>C</b></p>
<p><b>Andersen                      Huffman Cannell                          Laughter Carruthers                      Lugo Chase                              Marsh Clark                                Tully Hatch-Miller</b></p>	<p align="center"><b>D</b></p>
<p><b>Binder                      Graf                      Nelson Blendu                      Gray                      Pearce Brimhall                      Hanson                      Pierce Carpenter                      Huppenthal                      Robson Cooley                      Knaperek                      Somers Farnsworth                      Johnson                      Voss Flake                      Maiorana                      Weiers Gleason                      McClure</b></p>	<p align="center"><b>F</b></p>

## 2002 Environmental Report Card Bill Summaries

### **BILL SUMMARIES**

**HB2048 game and fish commission; continuation** (O'Halleran, Burton Cahill, Clark, et al) continues the game and fish commission and director until 2012. Despite the fact the current Game and Fish Commission is hostile to protecting Arizona's wildlife, we do support keeping this commission around. We are hopeful that the next governor will appoint some members that actually understand their trust responsibility to all of Arizona's wildlife.

House Third Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

It passed the House 57-2-1, the Senate 29-0-1, and was signed by the Governor.

**HB2104 county acquisition of development rights** (Huffman, Hershberger, O'Halleran, et al) make it clear that a county can purchase or lease development rights and expands the purposes for which a county may acquire development rights including to establish buffer zones around urban areas, to preserve habitat or archaeological or historic properties, to sustain the culture and heritage of agriculture and ranching activities, and to comply with the requirements of the Endangered Species Act. Acquisition of development rights is a tool Pima County would like for use in implementing the Sonoran Desert Conservation Plan.

House Third Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

It passed the House 38-13-9, the Senate 26-2-2, and was signed by the Governor.

**HB2105 county infill incentives** (Huffman, Hershberger, Valadez, et al) allows counties to establish infill areas where they can provide for infill incentives. This can help limit sprawl and encourage development in areas where the infrastructure already exists.

House Final Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

It passed the House 51-5-4, the Senate 30-0-0 and was signed by the Governor.

**HB2127 Hazardous chemical; right to know** (Landrum Taylor, Lopez L, Chase, et al) provides for electronic filing of emergency and hazardous chemical inventory forms. This helps insure that the emergency response personnel have more accurate and up-to-date information when they respond to emergencies involving these facilities.

House Third Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

It passed the House 51-4-5, the Senate 28-0-2, and was signed by the Governor.

**HB2162 state land; planning and administration** (Flake, Gleason, Guenther, et al) is the State Land Department's "just say yes to sprawl bill." The bill accommodates and encourages sprawl and leapfrog development on state trust lands. The "notwithstanding" language in 37-132 Section (B) 8 effectively negates the anti-sprawl language in Section 37-132 (A) 4 which states the commissioner shall **"Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent any urban sprawl or leapfrog development on state lands."**

House Final Read - Yes vote -4, No vote +4  
Senate Third Read - Yes vote -4, No vote +4

This passed the House 31-27-2, the Senate 16-9-5, and was signed by the Governor.

**HB2381 initiative and referendum; pamphlet; signatures** (McClure, Anderson, Binder, et al) makes the committee working on an initiative or referendum liable for all the costs of signature review if the rate of invalid signatures is 1/3 or more. The bill also requires the Legislative Council to review the initiative or referendum and comment before the election occurred. This bill creates additional obstacles and expenses to an already difficult and arduous process and may actually be an unconstitutional limit on the exercise of initiative and referendum rights.

House Third Read - Yes vote -2, No vote +2

This passed the House 31-22-7. It was used for a strike everything amendment in the Senate Government Committee and therefore died in the process.

**HB2560 air quality fund; control measures** (Gullett, Huffman, Lored, et al) was amended on the Senate Floor to include a provision regarding the phase out of diesel buses in the schools. We were not thrilled with this provision as it allows schools to meet the clean burning fuel requirements by using low sulfur diesel, instead of something much cleaner like natural gas, but it was better than the original provision in Senator Smith's bill (see SB1117). Because the bill continues the new vehicle emissions in lieu fee and funds clean air programs, we continued to support the bill however. The Clean Air funds can be used for improving or maintaining attainment status and specifically reducing emissions of particulate matter, carbon monoxide, oxides of nitrogen, volatile organic compounds, and hazardous air pollutants. The measures that are included in the bill include a voluntary lawn and garden equipment emissions reduction program, a voluntary vehicle repair and retrofit program, the diesel vehicle low emission incentive grant program, and other measures that have been evaluated by the Arizona Department of Environmental Quality (ADEQ).

House Final Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

This passed the House 42-15-3, the Senate 22-5-3, and was signed by the Governor.

**HB2585 air quality; regional haze program** (Huffman, Allen, Gullett, et al) allows the Arizona Department of Environmental Quality (ADEQ) to begin a regional haze program designed to identify and reduce pollution around Class I areas including places like the Grand Canyon National Park. The program will include monitoring, reduction of stationary and mobile emission sources, etc. It was amended to say that the ADEQ could only proceed under the 309 provisions of the federal regulations if it is determined that mobile source emissions from areas within the state do not contribute significantly to visibility impairment in any of the Grand Canyon Visibility Transport Commission Class I Areas. The amendment was certainly unnecessary and reflected a bias against doing more to clean up emissions from automobiles and especially diesel trucks.

House Final Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

It passed the House 52-5-3, the Senate 27-0-3, and was signed by the Governor.

**HB2622 NOW: hazardous materials; planning; filing** (Landrum Taylor, Giffords, Burton Cahill, et al) allows facilities that are subject to the emergency response regulations in cities with 75,000 or more persons to file an electronic format hazardous material inventory statement and hazardous material management plans. This is another measure that helps to ensure that the most accurate information is readily available to emergency response personnel.

House Final Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

It passed the House 49-8-3, the Senate 27-0-3, and was signed by the Governor.

**HB2644 lot splits; disclosure affidavits** (O'Halleran, Allen, Pearce, et al) expands the requirements for approving applications for lot splits to include requiring that the applicant reserve the necessary utility easements to serve each lot. It also makes some limited changes to the disclosure affidavit associated with lot splits. It is a positive step in the right direction. To really address the lot split issue, we believe the subdivision definition in counties should be changed to match that in the cities.

House Third Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

It passed the House 46-3-11, the Senate 28-0-2, and was signed by the Governor.

**HB2693 NOW: renewable resource study committee** (Graf, Chase, Flake, et al) establishes a renewable energy study committee to evaluate state and federal policies that hinder or encourage the use of renewable energy resources.

House Final Read - Yes vote +1, No vote -1  
Senate Third Read - Yes vote +1, No vote -1

This passed the House 39-17-4, the Senate 20-8-2, and was signed by the Governor.

**HCR2012 state lottery; continuation** (Allen, O'Halleran, Huffman et al) refers to the ballot a continuation of the Arizona State Lottery and the Commission that oversees it. The Sierra Club supports the lottery because of the important programs it funds; all of the state's Heritage Fund dollars come from the Lottery. Normally, continuation of this would not have to go to the ballot, but due to the shenanigans of former Speaker of the House Jeff Groskost several years ago, it must now be re-referred. He tried to kill the lottery and placing it on the ballot was the only way to keep it. Now, because of that, it must be re-referred to continue it.

House Final Read - Yes vote +2, No vote -2  
Senate Third Read - Yes vote +2, No vote -2

This passed out of the House 37-17-6, the Senate 18-11-1, and will be on the ballot this fall.

**HCR2018 initiative and referendum; filing requirements** (McClure, Huppenthal, Andersen, et al) refers to the ballot a measure that requires that a certain percentage of the signatures for an initiative or referendum come from three different counties -- 5% if it is a referendum, 10% if it is an initiative, and 15% if it is a constitutional amendment. As is evidenced by the number of initiatives and referenda that are filed but never completed, it is already quite difficult to gather the required signatures and place a measure on the ballot, especially within the ninety-day window allowed for referenda. Currently, these petitions must meet many requirements that are not mandatory for candidate petitions -- notarized affidavit on the back, indication of paid or volunteer circulator, and other format requirements. This bill further limits citizen participation in the initiative and referendum process.

House Third Read - Yes vote -2, No vote +2

This passed out of the House 34-25-1 and was defeated in the Senate Government Committee on a 1-4-1 vote.

**SB1117 school buses; alternative fuels** (Smith, Bennett) exempts schools from meeting alternative fuel goals for school buses. While the schools asked for this due to financial constraints, continuing to run the buses on diesel fuel contributes to our air quality problems and it is especially unhealthy for the kids who ride in these buses. There are numerous studies that indicate humans have a significantly higher risk to developing cancer from exposure to exhaust from diesel fuel. According to the California Air Resources Board scientific review panel, diesel exhaust contains over 40 substances that are listed by the Environmental Protection Agency as hazardous air pollutants, fifteen of which are proven or probable carcinogens. These include arsenic, benzene and formaldehyde, among others. As children stand in line waiting to get on the bus and as they ride in the bus itself, this is what they are inhaling. There are 1510 excess cancers in the Phoenix area alone due to diesel exhaust (Pollution Report Card - Grading America's School Bus Fleets, Patricia Monahan, Union of Concerned Scientists, February 2002). Not only are the carcinogens in diesel exhaust a threat to children's health, particulates are also a harmful byproduct of diesel exhaust. The exhaust from diesel engines contains up to 100 times more soot than ordinary gasoline engines. These small pieces of soot and dust are inhaled deep into the lungs where

they cause permanent damage to the respiratory system. Children, whose lungs are not yet fully developed, are at a higher risk to particulates and ozone. There are more than 6600 school buses in Arizona, each year they produce 329 tons of nonmethane hydrocarbons, 1145 tons of nitrogen dioxide, 1473 tons of smog-forming pollution, 4699 tons of carbon monoxide, 49 tons of particulate matter (soot), and 159,409 tons of greenhouse gases (Pollution Report Card - Grading America's School Bus Fleets.) These emissions can and should be reduced by converting the school bus fleets to cleaner burning fuels.

Senate Third Read - Yes vote -2, No vote +2

This passed out of the Senate 18-9-3, was amended in the House and then never brought up for a Third Read. A less damaging form of the bill was tacked on to HB2560 (see HB2560 for more details).

**SB1274 state land; leases and improvements** (Martin, Brown, Arzberger, Guenther) imposes additional roadblocks on those who would bid on grazing leases for conservation purposes. At a minimum, the bill is premature -- the State Land Department has not even considered one grazing lease from a conservation interest, yet the bill already makes significant changes to how these leases are administered. The bill virtually assures additional litigation over these leases.

The Sierra Club opposed SB1274 for the following reasons:

- The State Land Department has dug its feet and refused to recognize that it is in the best interest of the trust to consider other applications for grazing leases -- even those that offered much more money. This bill erects additional roadblocks before the Department has even considered one conservation grazing lease. Only recently has the Department received the order to consider these leases.
- The bill discourages leases that are intended for restoration purposes and it is inconsistent with the Court ruling. According to the Forest Guardians decision which came out of the Supreme Court last year, "...restoration and preservation are already and must continue to be considered legitimate uses for land that, according to the Commissioner's classification, has no higher and better use than grazing. Otherwise, grazing lessees could continue to graze stock until the land is damaged and its value destroyed." The court went on to say, "The Department, in other words, cannot use the classification system in such a manner as to discourage or automatically reject those who seek to lease grazing lands for restorative purposes."
- It is not in the best interest of the State Trust Land Beneficiaries -- primarily the public schools -- to discourage competition. Competition for these leases will result in more dollars to the Trust and the Trust beneficiaries. Grazing leases currently generate very little for the Trust. In FY2000, there were 8.4 million acres of state trust land with grazing leases; these lands generated only \$2.1 million for the trust beneficiaries or about 25 cents per acre. In an April 1997 Performance Audit of the State Land Department conducted by the Auditor General's office, there was a finding that "... promoting competition for available leases could result in additional revenue for trust beneficiaries."

- As if all this were not bad enough, the bill says that the new lessee -- who has paid for the improvements (fences, barns, etc.) and now owns them -- cannot change, eliminate, etc. If a lessee owns the improvements, shouldn't that lessee be able to remove or change them as needed?
- The bill also says the State Land Department can now consider who has the best right "and equity" to a lease. Equity is not defined but if the Land Department uses its current interpretation, then it is a clear attempt to shut out competition for these leases and give the existing lessee even more of an advantage.

House Third Read - Yes vote -3, No vote +3  
Senate Third Read - Yes vote -3, No vote +3

This passed the House 38-19-3, the Senate 19-11, and was signed by the Governor.

**SB1329 referendum; required signatures** (Mitchell, Arzberger, Brown et al) authorizes the use of an alternative basis for computing the number of necessary signatures required to file a referendum petition in a municipal election. It would effectively allow cities and towns to change the basis for calculating the number of signatures from 10% of the people who voted at the last election to 10% of **ALL** registered voters in the city or town. These numbers would be overwhelming. It could take away one more tool that citizens have to stop measures at the local level.

House Third Read - Yes vote -2, No vote 2

It passed the Senate 18-9-3 and was triple assigned to committees in the House. It was not heard in two of them and therefore died.