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February 23, 1983

The proposed "Commission on the Management and Administration of the Superfund Act" (hereinafter the Commission) will be an advisory committee subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. § 3(2)(c). Pursuant to 5 U.S.C. App. § 9(a)(2), establishment of such an advisory committee within EPA must be:

determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

Accordingly, if it is determined to go ahead with the Commission, Mrs. Burford should: (1) "consult" with Director Stockman, (2) formally determine that establishment of the Commission is in the public interest in connection with EPA's duties, and (3) file a notice of this determination in the Federal Register.

The advisory committee may not meet until a charter is filed with Mrs. Burford, Director Stockman, and the pertinent Senate and House Committees satisfying the requirements of 5 U.S.C. App. § 9(c). Apart from any consideration of substance, the draft charter contains all of the required elements. Turning to the substance, I think it highly inadvisable to include as one of the functions of the Commission the investigation of allegations of past wrongdoing (item 2a). The FBI is already investigating any possible wrongdoing; adding another body will only confuse the matter. The Commission should be limited to offering advice on how best to manage the Division, what organizational changes are necessary -- essentially items 2b and 2c. A new advisory committee does not have the experience or wherewithal to competently conduct an investigation, nor would its results be as acceptable as the results of an FBI inquiry. Burford will appoint the Commission members, so it will not in any event be perceived as an impartial watchdog or investigator. The Charter should, in my view, preclude the Commission from investigating charges that have been turned over to the FBI; if it comes across any new allegations, it should promptly turn those over to the Bureau. Allegations of possible

criminal wrongdoing do not belong under the jurisdiction of ad hoc advisory committees.

Item 8 of the Charter is consistent with 5 U.S.C. App. § 10(e), (f). Item 12 should be revised to indicate that full-time employees of the Federal Government serving on the Commission are not entitled to additional compensation by virtue of their service on the Commissions. Item 14 strikes me as provocative (a "gag order" on the Commission members?) and useless. If the members can agree to use one spokesman, the provision is unnecessary, if they cannot, it will not be effective in facing them to do so.

Since the Commission will be subject to FACA, its meetings will presumptively be open to the public, 5 U.S.C. App. § 10(a)(1), noticed in advance, id., § 10(a)(2), and must provide for public participation, id., § 10(a)(3). Meetings may be closed, but only in accordance with 5 U.S.C. App. § 10(d). Anything shown to the Commission that is not exempt under FOIA must be made available to the public. Id., § 10(c).

The budget for the Commission must be an authorized expenditure of funds. I have no information on where EPA intends to find the money for the Commission. (It should obviously not come from Superfund monies.)

The members of the Commission will probably be Special Government Employees (SGE), since they will likely serve less than 130 days during the 6-month existence of the Commission. The provisions of 18 U.S.C. § 208 apply to SGE's, and a rigorously conflicts review of prospective members should be undertaken in light of the sensitivity of this mission. In connection with the selection of Commission members, it should be kept in mind that FACA requires advisory committees "to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." 5 U.S.C. App. § 5(b)(2).

Charter
Commission on the Management
and Administration of the Superfund Act

1. The official designation of the Commission is the Commission on the Management and Administration of the Superfund Act.
2. The purpose of the Commission is to advise the Administrator of the Environmental Protection Agency concerning the implementation of the Superfund Act by the Solid Waste and Emergency Response Division of the Environmental Protection Agency.
 - a. Examine the allegations;
 - b. Evaluate and recommend improvements to the Environmental Protection Agency's toxic and hazardous waste site evaluation and designation process.
 - c. Recommend improvements in the internal controls ~~related~~ related to the negotiated settlements related to the Superfund.
3. The Commission will be in existence not to exceed six months from appointment of the last Commissioner.
4. The Commission will deliver its final report to the Administrator of the Environmental Protection Agency, and will function independently of, but in cooperation with, established organizations of the Agency.
5. Staff support for the Commission is to be provided by the Office of the Administrator.
6. The duties of the Commission are advisory in nature in accordance with this document.
7. The estimated operating cost of the Commission is _____, including approximately 1.5 staff-years of support.

NOT
SUPERFUND
MONEY

8. The Commission will meet approximately 12 times at the call of the Chairman. All meetings of the Commission and all agenda must have prior approval of the Federal Representative. The Federal Representative will be a member of the Environmental Protection Agency's Office of _____.
9. The Commission shall submit a final report to the Administrator of the Environmental Protection Agency within six months after appointment of the last Commission or no later than August 15, 1983, whichever comes earlier, and shall terminate on that date unless extended by the Administrator of the Environmental Protection Agency.
- balanced* 10. The Commission is composed of 5 members, who shall be appointed by the Administrator of the Environmental Protection Agency, one of whom shall be designated as Chairman.
- ?* 11. Creation of this Commission is by the authority of _____.
It is in the public interest in conjunction with the responsibilities of the Environmental Protection Agency.
- not fed. employee* 12. Members of the Commission may receive compensation, travel and per diem expenses for each day such member is engaged in the work of the Commission. Travel and per diem reimbursement shall be up to a daily rate in accordance with the Federal Travel Regulations.
13. In carrying out its responsibilities, the Commission is authorized to:
 - a. Use the support services within the Environmental Protection Agency as appropriate in carrying out its function;
 - b. Select an Executive Director and other required personnel in accordance with an established budget;
 - c. Conduct hearings (swearing in witnesses as appropriate), interviews, and reviews at regional centers and field offices, or wherever deemed necessary to fulfill its duties; and
 - d. Confer with contractors, lessees, and other parties dealing with the Agency on matters pertaining to the Commission's mission.

14. The Chairman of a Commissioner specifically designated by the Chairman shall be the spokesperson for the Commission for contact with the Congress, public, media, and others.
15. All Commission meetings and activities will operate in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix I, Section).

/s/

Administrator, EPA

Date filed

Date signed

*file -
GORSUCH
case*

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

March 9, 1983

STATEMENT BY THE PRESIDENT

As I have previously stated, I asserted executive privilege with respect to a limited number of EPA documents that were considered to be enforcement-sensitive because I have a Constitutional obligation to the people -- and to those who have held this office in the past and will hold it in the future -- to insure that the integrity of sensitive law enforcement documents be preserved.

I have recognized also, of course, that the Legislative Branch has legitimate oversight responsibilities as well. Accordingly, in February, pursuant to the suggestion of the U.S. District Court and consistent with the mandates of history, we sought to work out an agreement to accommodate the legitimate interests of both the Executive and legislative branches. This was accomplished by the agreement reached with Chairman Levitas on February 18, 1983, which provided a means for Congress to have complete access to the documents sought.

Although this was accepted as a reasonable compromise by Chairman Levitas and Speaker O'Neill, and we have been proceeding to provide such complete access, other Committees have demanded that the documents be physically turned over to them before they would accept the information. The debate on this issue, for our part, has been essentially legal. But it is now clear that prolonging this legal debate can only result in a slowing down of the release of information to the Congress -- thereby fostering suspicion in the public's mind that somehow the important doctrine of executive privilege is being used to shield possible wrongdoing. It is not in the public interest that any such suspicion be fostered.

While we continue to assert executive privilege, our concern is that the Congress have this information as soon as possible, with assurances that the enforcement-sensitive materials will be provided the necessary protection in order that their premature public release will not jeopardize our responsibility to enforce the law. We trust that pursuant to the additional agreement reached today with Chairman Dingell, the documents will be provided that protection. This agreement will be available to any other Committee that seeks these EPA documents and is willing to abide by its terms.

#

MEMORANDUM OF UNDERSTANDING

1. The Environmental Protection Agency (EPA) will deliver all documents that are within the subpoena dated February 10, 1983, issued by the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, on or before 10:00 a.m. of Thursday, March 10, 1983.
2. The EPA shall identify at the time of delivery any document or portion thereof that is "enforcement sensitive." The designation of "enforcement sensitive" shall be used to identify any document or portion thereof the public disclosure of which could jeopardize the ability of the Executive Branch to pursue any enforcement action.
3. The Subcommittee agrees that delivery of the documents described in paragraph 1 of this memorandum shall be in full and complete satisfaction of the subpoenas dated October 14, 1982, and February 10, 1983.
4. The Subcommittee agrees to afford any document or portion thereof designated as "enforcement sensitive" the confidential treatment of executive session materials. If the Subcommittee votes to release or use in public session any document or portion thereof designated as "enforcement sensitive", reasonable advance notice with opportunity for consultation shall be given to the EPA. Every effort should be made to reach agreement as to whether or not the document should be released or used in public session. If agreement cannot be reached, such documents shall not be released or used in public session without the concurrence of the Chairman or Ranking Minority Member of the Subcommittee. In the event such concurrence cannot be reached, such documents shall be released or used in public session only upon a further vote of the members of the Subcommittee. The documents shall be kept in a locked safe with sign-in procedures for those obtaining access. Staff access shall be limited to those individuals designated jointly by the Chairman and Ranking Minority Member.
5. Nothing in this memorandum shall constitute a waiver of Executive Privilege with regard to any document. The Subcommittee does not acknowledge the applicability of Executive Privilege to any document subpoenaed.

6. Title to "enforcement sensitive" documents shall remain in the EPA and shall not transfer to the Subcommittee. Upon notice by the Subcommittee to the EPA that the documents are no longer needed, the EPA may retrieve them.

Dated: March 9, 1983

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

James T. Broyhill
Ranking Minority Member
Subcommittee on
Oversight and Investigations

Fred F. Fielding
Counsel to the President

2/24
THE WHITE HOUSE
WASHINGTON

TO: *John Roberts*

FROM: *Richard A. Hauser*
Deputy Counsel to the President

FYI: ☒

COMMENT: ☒

ACTION: ☐

PETER W. RODINO, JR. (D-J) CHAIRMAN

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U.S. House of Representatives
Committee on the Judiciary
 Washington, D.C. 20515
 Telephone: 202-225-3951

GORSUCH CASE
 GENERAL COUNSEL
 ALAN A. PARKER
 STAFF DIRECTOR
 GARNER J. CLINE
 ASSOCIATE COUNSEL
 FRANKLIN G. POLK

February 24, 1983 **RECEIVED**

FEB 25 1983

O. L. A.

1:20 P

Honorable William French Smith
 Attorney General
 Department of Justice
 Washington, D.C. 20530

Dear Mr. Attorney General:

In the course of the various Congressional investigations into the ongoing controversy at the Environmental Protection Agency, serious questions have been raised by the several committees involved about the actions of the Department of Justice. Some of these questions have related to apparent conflicts of interest in the numerous roles the Department has played, and continues to play, in the controversy; other concerns have focused on the Department's unwillingness to enforce the Federal statute (2 U.S.C. Secs. 192-194) that provides criminal penalties for contempt of Congress. Additionally, questions persist about the role of the Department in the Executive Branch's withholding of information from Congress.

The Chairmen of the Committees whose panels are investigating the Environmental Protection Agency have urged the House Committee on the Judiciary to address these concerns. To meet this request and to properly discharge our legislative and oversight responsibilities, I ask that you respond to the following questions and requests as soon as possible, but not later than March 10, 1983.

1(a). Please supply a narrative description of the activities of each division, office or other unit of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA. Please list all Department personnel involved in these events.

(b). Please supply all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA.

2. Media accounts suggest that Department personnel may have counseled EPA Administrator Burford on withholding documents, advised the President and his staff, and negotiated with various Congressional committees on behalf of the Administration; in addition, Department personnel represented the Administration in its unsuccessful attempt

Honorable William French Smith
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to seek declaratory relief against the House of Representatives. At the same time, the Department was responsible for prosecuting the criminal charges arising from the House's contempt citation and for investigating and prosecuting possible violations of the criminal law by Executive Branch personnel.

(a) How does the Department reconcile the appearance of a conflict of interest in simultaneously carrying out these various functions? Has the Department prepared any analysis of these conflicting functions or any guidelines as to how to deal with them? If so, please provide copies of any relevant documents.

(b) In the EPA case, what steps, if any, were taken to avoid any conflict of interest or the appearance of such a conflict? Do you have any proposals to guide the Department's actions in similar cases which may arise in the future?

(c) In this case, did the Department at any time consider either: (1) appointing a special counsel to present the contempt citation to a grand jury; or (2) authorizing the retention of outside counsel by Mrs. Burford to defend her in the criminal action? Why were these options not pursued?

3. After the House approved the contempt resolution regarding EPA Administrator Burford, the Department of Justice filed a civil complaint, subsequently dismissed by the U.S. District Court for the District of Columbia, against the House of Representatives. Although the Speaker of the House certified the facts of the case to the United States Attorney, the matter was not presented to a grand jury, as the language of 2 U.S.C. Sec. 194 would seem to require.

(a) Does the Department consider the duty of the United States Attorney under Sec. 194 to be mandatory or discretionary? Please provide the legal justification for your response. If the statute is mandatory, must the U.S. Attorney present the matter to a grand jury within a certain period of time? If so, how is the time period determined?

(b) If the Department considers the U.S. Attorney's duty to be discretionary, what steps could Congress take to assure that contumacious conduct by Executive Branch officials is promptly and vigorously prosecuted? For example, if you believe the statute is not mandatory, could it be made so?

(c) Is it the Department's position that Secs. 192-194 apply to contumacious conduct by Executive Branch officials?

(d) In this case, was the U.S. Attorney counseled or directed by officials of the Justice Department or the White House not to present the case to the grand jury? If so, please list and describe any relevant contacts.

Honorable William French Smith
Page Three
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(e) Please supply all documents in the Department's possession in any way relating to the enforcement of the Congressional contempt statute in this or any other case.

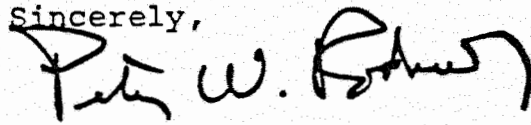
4(a). Under what circumstances, employing what criteria, and through what process, does the Department of Justice believe it appropriate for the Executive Branch to decline to comply with Congressional requests for documents, comments, interviews, or information?

(b) Please forward the Committee a copy of all Department regulations and policies that relate to Congressional requests for information documents, interviews, or comments.

Thank you for your cooperation on this matter. The Committee looks forward to your response.

With best regards,

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter W. Rodino, Jr.", written in a cursive style.

PETER W. RODINO, JR.
Chairman

PWR:apw

The New York Times

Dingell Charges Justice Dept. Misrepresented Mrs. Burford's Views

By PHILIP SHABECOFF

Special to The New York Times

WASHINGTON, Sept. 28 — The chairman of a House investigative subcommittee charged today that the Justice Department misrepresented the views of Anne McGill Burford, former head of the Environmental Protection Agency, when it told President Reagan she supported withholding information from Congress.

Representative John D. Dingell, Democrat of Michigan, made the charge after Mrs. Burford told the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee that she had strongly objected to the President's effort to withhold documents from Congressional committees investigating the management of the environmental agency's hazardous waste programs.

In the hearing, at which she appeared to fight back tears several times, Mrs. Burford denied charges that financial aid to clean up a hazardous waste site in California was delayed for political purposes.

Stringfellow Pits Issue

However, several members of the panel said the evidence gathered by the subcommittee established that she had deliberately held back funds to clean up the Stringfellow Pits waste dump near Los Angeles in order to avoid helping the senatorial campaign of then Gov. Edmund G. Brown Jr., a Democrat.

Mrs. Burford reiterated that she had done nothing wrong in her tenure at the agency, which she left under fire last March.

In response to a question, Mrs. Burford said she thought the President "was not well served" by the advice that he assert the executive's privilege to withhold documents to protect the efficient operation of the Government. Congressional committees had sought material on the agency's \$1.6 billion

program to clean up hazardous waste sites.

The subcommittee then produced a memorandum to the President last Oct. 25 by Theodore B. Olson, Assistant Attorney General for Legal Counsel, which recommended that he sign a memorandum to the administrator of the environmental agency ordering her to assert executive privilege on behalf of the President. The memorandum concluded, "The Administrator concurs in this recommendation."

Mrs. Burford said she had tried hard to argue against an effort to withhold the documents from Congress. "I was

told the department wanted to do it," she said. "I think it was a poor decision. When I lost, I tried hard to be a member of this Administration and be a team player. I was overruled and went along with the decision."

When asked by Representative Albert Gore Jr., Democrat of Tennessee, whether she had ever concurred in the decision, she replied: "I didn't think it was a good idea. I don't think it's a good idea now."

When pressed on whether she had concurred or not, she said, "I kind of gave up, Mr. Gore."

Asked again whether she had concurred as the memorandum stated, she said: "I did not write it. I argued against it."

Mr. Dingell said his subcommittee might pursue the matter in further investigations.

A spokesman for the Justice Department, Judy Pond, said Mrs. Burford had "never said that the statement was untrue."

"There isn't any disagreement with what Mrs. Burford said at the hearing," Miss Pond said. "What she said was correct. She never denied in the hearing that she concurred with the agreement."

EPA
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Burford Tells Hill Unit She May Have Joked About Delaying Grant

By Mary Thornton
and Howard Kurtz
Washington Post Staff Writers

Former Environmental Protection Agency administrator Anne M. Burford testified yesterday that she may have made a "flip remark" last year about holding up a toxic-waste cleanup grant to California to avoid helping then-governor Edmund G. (Jerry) Brown Jr., but insisted that her decision was based on policy considerations rather than politics.

Her voice breaking occasionally as she brushed away tears, Burford also told the House Energy and Commerce subcommittee on oversight and investigations that she decided to be "a team player" after losing her argument that subpoenaed EPA documents should be turned over to Congress last winter.

She said the Justice Department and White House aides instead persuaded President Reagan to invoke executive privilege, touching off a confrontation that led to a contempt citation against Burford and ultimately to her resignation last March.

"I gave up," Burford said.

Much of yesterday's hearing focused on Burford's decision in July, 1982, to withhold a planned \$6 million cleanup grant for the Stringfellow Acid Pits in southern California until after the November congressional elections.

A Justice Department report said an administration official later recalled Burford saying at a luncheon: "I'll be damned if I am going to let Brown take credit for that."

Under sharp questioning by Rep. James C. Slattery (D-Kan.), Burford said, "I may well have made the flip remark about Gov. Brown at that time. But there is no indication that my decision to hold back the money was anything but a good policy decision."

Brown was then a Democratic candidate for the U.S. Senate. Burford conceded yesterday that the grant "would have been a gift to whomever was governor." But, she said, "I think it would have been irresponsible for me to have made that grant at that time."

After reviewing briefing materials on her flight to California to announce the grant, Burford said, she decided to cancel a

news conference on the announcement. She said that EPA officials had not approved the "Superfund" grant and that she had several unresolved questions, mainly about how much California would have to pay for the cleanup.

But Slattery said Burford's briefing packet contained indications that Superfund official William N. Hedeman Jr. had approved the grant five days before Burford's trip.

"Apparently, you unilaterally decided you were going to ignore all the agency officials who had signed off on this agreement," Slattery said.

Fifteen EPA officials, in separate closed-door interviews with the subcommittee chaired by Rep. John D. Dingell (D-Mich.), said they believed that Burford delayed the grant for political reasons.

"We were all convinced it was a political deal," said EPA's California regional counsel, Robert Thompson. "My impression was Mrs. [Burford] had held up because she didn't want to give Jerry Brown assistance."

His assistant, Harlan Agnew, said it was "real clear to me that there would be no . . . agreement until November or after [Republican Gov. George] Deukmejian was inaugurated in January."

Several EPA officials also told the panel that the dispute about California's share of the cost was resolved before Burford stopped the grant. Other EPA grants in Iowa and Florida were approved at the time despite similar questions, the panel said.

Burford also conceded yesterday that she had taken no action on conflict-of-interest allegations uncovered by her inspector general against a top aide, former EPA consultant James W. Sanderson, other than to send the information to the Justice Department.

Burford said she was "very angry" when Justice suddenly refused to continue defending her in the executive privilege case. She said some Justice officials had been "unethical."

"When we first got into this, there were repeated assurances . . . They consistently said they would take this case all the way to the Supreme Court," she said. "Obviously, that's not what happened."

Burford denies politics had role in stopping Calif. cleanup funds

From Wire Services

Washington — Anne Burford, the former administrator of the Environmental Protection Agency, flatly denied yesterday that she halted cleanup funds to the Stringfellow toxic waste site in California to damage the senatorial candidacy of then-Governor Edmund G. Brown, Jr.

She admitted, however, during four hours of testimony before a congressional subcommittee, that she may have made a "flip" remark at a yacht party in August, 1982, to the effect that "I'll be damned if I'm going to let Brown take credit for that [the Stringfellow cleanup]." The yacht party was held just a week after she canceled a press conference that had been scheduled to announce the award of the \$6.1 million grant.

"I may well have made a flip statement, but it had absolutely nothing to do with my decision not to make the Stringfellow grant in July of last year," Ms. Burford testified before the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee.

She decided to halt the grant, she said, for several reasons, primarily because the EPA had not yet developed an agency-wide policy on whether the state government would have to pay 10 percent or 50 percent of cleanup costs at state-owned sites such as Stringfellow. She said other issues that had contributed to her decision included a lack of effort to enforce dumping strictures at the site, a question of whether the government should reimburse the state for money already spent and the absence of any imminent threat to public health.

"There's a lot of Monday morning quarterbacking going on, but my decision on Stringfellow was made for good, sound policy reasons," she insisted. She said action on other sites in similar circumstances also was delayed until policy questions were resolved.

Some congressmen said they remained unpersuaded. Representative James C. Slaterry (D, Kan.) said other sites in similar situations had received federal grants.

The committee released a sheaf of transcripts of testimony taken in secret from other EPA officials over the past months. Several officials described an atmosphere at the EPA of blatant political decision-making in disbursing funds for toxic-waste

cleanup, and implied that the so-called "50-10" issue was concocted as a cover for those decisions.

Ms. Burford, known as the "ice lady" for her combative posture before Congress during her tenure at the EPA, appeared drawn and subdued yesterday. Her voice often trembled as she sparred with the congressmen. Her attorney, Douglas Bennett, accompanied her.

The former EPA director said that last fall and winter she had repeatedly urged officials at the Department of Justice and the White House to release to Congress documents subpoenaed for its investigation into the alleged political manipulation of Superfund, the program established to clean up toxic waste sites. But the Justice Department and the White House counsel ignored her wishes, she said, precipitating the constitutional confrontation with Congress that paralyzed the agency and led to her resignation in March.

Representative Albert Gore (D, Tenn.) showed Ms. Burford a memo sent by Assistant Attorney General Theodore B. Olson to President Reagan explaining the decision to withhold the documents on the grounds of "executive privilege" and saying that "the administrator concurs in this recommendation."

Mr. Gore asked her if Mr. Olson had been "untruthful" in describing her position to the president. Ms. Burford replied, "I argued very strongly with the Department of Justice and the White House counsel and said I really don't want to do this." But she would not say that Mr. Olson had misrepresented her position. She said that by the time the memo was written, "I kind of gave up" and went along as "a member of this administration and a team player."

The chairman of the subcommittee, Representative John Dingell (D, Mich.), said after the hearing that he may call Mr. Olson before the subcommittee to clarify the role of the Justice Department. Mr. Dingell said that he may also investigate why the Justice Department and the FBI found no evidence of political manipulation in Superfund in light of his subcommittee's findings.

Throughout, Ms. Burford repeated how "proud" she was to serve under the Reagan administration and defended her record of enforcing environmental regulations as one that sought to "achieve better environmental results at a lower cost."

Burford accused during hearing of delaying cleanup over politics

By Ed Rogers
WASHINGTON TIMES STAFF

Former Environmental Protection Agency chief Anne M. Burford was accused to her face at a House hearing yesterday of delaying a cleanup of a California waste dump to avoid helping Democratic Gov. Edmund G. Brown's Senate race.

"I resent that," Burford said during the tense hearing before the House Energy and Commerce investigations subcommittee.

The exchange came over an 11th-hour delay last year of a grant to clean up the Stringfellow Acid Pits near Los Angeles.

Rep. Gerry Sikorski, D-Minn., told Burford he concluded she ordered the delay for political reasons and afterward delayed a grant for a needed cleanup at the Reilly Tar & Chemical Co. in his state as a "cover."

"Beyond a reasonable doubt, the decision about Stringfellow was not based on attention to merit but primarily for political reasons, and Reilly Tar became an alibi for Stringfellow," Sikorski said.

"It affected 100,000 Minnesotans a thousand miles away from Stringfellow, and I resent that."

In her opening remarks, Burford testified she had sound policy reasons for her delay of the \$6 million Stringfellow grant and said it was her only decision as EPA administrator that had caused her personal integrity to be questioned.

It was Burford's first congressional appearance since she resigned last March at the height of a controversy over EPA policies. She underwent nearly four hours of cross-examination about possible inconsistencies in her defense.

At times her voice became husky with seeming emotion. Once she wiped a tear from her eyes.

Burford testified she realized while flying to California to announce the Stringfellow award in late July 1982 that more preparation was needed, including a basic decision on sharing costs with states.

If this was true, asked Rep. Jim Slattery, D-Kan., why had witnesses quoted her as saying aboard the presidential yacht Sequoia the following Aug. 4: "I'll be damned if I'm going to let Brown take the credit for the cleanup."

"I may well have made the flip remark about Gov. Brown at that lunch (aboard the Sequoia) but it had absolutely nothing to do with my decision not to make the Stringfellow grant in August last year," Burford said.

"I had very good policy reasons," she said. "I was afraid to make an ad hoc decision that could be precedent-making." She added, "I don't recall making that statement. The FBI found no evidence of it."

But while the Stringfellow grant was on "hold," Sikorski said, grants were made at other sites that also involved sharing costs with states. Burford said all the cases were different.

Subcommittee members gave Burford credit for having argued in favor of furnishing all EPA files to House committees seeking them under subpoena, and for having concluded that President Reagan got bad advice to declare "executive privilege."

Then why, asked Rep. Albert Gore, D-Tenn., had Assistant Attorney General Theodore B. Olson said in a memo last Oct. 25 to Reagan that Burford concurred in a decision to withhold 35 "enforcement-sensitive" documents from Congress?

"I kind of gave up, Mr. Gore," she said. "I argued very strongly to the Justice Department and to the counsel to the president. I argued with them after the date of that memo."

The House voted last December to cite Burford for contempt of Congress although she acted under the president's order, but she was never prosecuted.

"If the president had known his administrator advised against it and thought it was a bad idea, the whole controversy . . . might have been avoided altogether," Gore said.

Judge Blocks Watt From Selling Rights To Mine U.S. Coal

By DAVID SHRIBMAN

Special to The New York Times

WASHINGTON, Sept. 28 — A Federal district judge today blocked Interior Secretary James G. Watt from selling 140 million tons of Federal coal reserves in North Dakota for mining by private interests, saying the issue raised a constitutional question.

Judge Louis Oberdorfer issued an emergency order here in a suit brought by environmental groups that argued that a Congressional committee had ordered a postponement. The Government argued that a Supreme Court ruling had taken away Congress's power to prevent the leasing.

The judge, while not ruling on the merits, said in blocking the immediate sale that the plaintiffs were likely to prevail because of a constitutional provision giving Congress the power to dispose of Federal property.

No Quick Appeal Planned

A Justice Department spokesman indicated tonight that the Reagan Administration would eventually appeal the ruling but would not do so immediately. A separate Congressional moratorium on the sale of coal leases is to go into effect Saturday. Secretary Watt had planned to issue the leases Friday.

The House Interior Committee, reacting to the sale of Federal coal leases at low prices and arguing that the coal lands should be protected for

environmental reasons, voted this summer to prevent Mr. Watt from holding further auctions this year. The Interior Department, defying the resolution, proceeded with an auction two weeks ago but drew bids on only a fifth of the coal tonnage available.

This case involved leases in five tracts of Federal coal deposits in the Fort Union region of North Dakota. The Reagan Administration viewed it as the first application of this year's Supreme Court ruling that held unconstitutional the Congressional practice of extending authority to the executive branch but reserving the right for one or both houses, or in some cases a single committee, to veto executive decisions made under that authority.

"We still maintain that the Secretary of the Interior has a right to go ahead with the sale," a Justice Department spokesman said. "One-house veto doesn't stand, as far as we're concerned."

In his order today, Judge Oberdorfer said the committee's resolution "may well be authorized" by Article IV, Section 3, of the Constitution, which says Congress "shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

The ruling came in a suit brought by the National Wildlife Federation and the Wilderness Society and was applauded by environmental groups, who contend that the mining would affect air quality in a nearby national park.

Long a Matter of Dispute

"We're extremely pleased that, for the time being, Secretary Watt has been stopped in another effort to unlawfully give away valuable national resources without adequate environmental protection," said Norman L. Dean of the Wildlife Federation.

Brad Marman, a spokesman for the Justice Department, said: "We believe the decision is wrong, but we will not pursue an expedited appeal. However, we will pursue the litigation in its normal course and expect to file our additional papers next month."

A House Appropriations Committee investigation found that Mr. Watt, in his sale of leases in the Powder River Basin of Montana, North Dakota and Wyoming, had disposed of Federal coal at "fire sale prices."

In this month's auction two companies, the North American Coal Company and the Baukol Noonan Company and their subsidiaries, bid a total of \$911.8 million for the mining rights. Four of the bids were \$110 an acre, just \$10 more than the minimum acceptable.

Panel to Study Program

"The Fort Union sale confirmed everything we have been saying about the anti-competitiveness and below-market leasing policies of the Reagan Administration," said L. Geoffrey Webb, a Washington representative of the Friends of the Earth. "They didn't even manage to recover the administrative costs of holding the sale."

The furor over the first coal lease auction led to the creation of the Commission on Fair Market Value Policy for Federal Coal Leasing, which is to report Jan. 1 on the leasing program. It was this commission that Mr. Watt said was balanced because it included "a black, a woman, two Jews and a cripple."

Both Houses of Congress have passed moratoriums on appropriations for the sale of coal leases until that committee reports, effective with the beginning of the new fiscal year Saturday.

Judge Oberdorfer still must issue his final decision in the case. "We've won the first part of this," said Mr. Dean of the Wildlife Federation, "but there's definitely more to follow."

*cool leaning
file*

Judge Rules Watt Exceeded Authority in Selling Coal Leases

By Al Kamen and Dale Russakoff

Washington Post Staff Writers

Interior Secretary James G. Watt exceeded his constitutional authority when he sold five coal leases in North Dakota in defiance of a House Interior Committee directive to postpone the sale, a federal judge ruled here yesterday.

U.S. District Judge Louis Oberdorfer ordered Watt not to issue the leases in a ruling that set the stage for a new constitutional confrontation between the legislative and executive branches of the federal government. The issue might be resolved with the Supreme Court further defining the scope of its landmark June 23 decision

striking down the power of Congress to veto actions by the executive branch.

A Justice Department spokesman said late yesterday that the department has decided not to ask the U.S. Court of Appeals for an emergency stay of the ruling.

Oberdorfer's decision was a major setback for Watt, whose coal-leasing program has been under fire from congressional critics who contend that it amounts to a giveaway of public resources.

The decision came a week after the Republican-controlled Senate voted by a two-thirds majority to bar Watt from leasing coal for six months, starting Saturday, the first day of fiscal 1984. The House has

passed a stiffer ban. And the two measures were in a conference committee yesterday.

This apparently will invalidate the North Dakota leases until at least next spring. The lease sale sparked controversy because more than three-fourths of the tracts offered by Interior drew no bids. And the other five tracts drew one bid a piece, each at or near the legal minimum.

Watt had no comment on yesterday's ruling, but Interior issued a statement saying, "The issue in this case is a constitutional one rather than a challenge to the coal-leasing program. Its resolution through the courts could benefit all parties."

Watt argues that the Supreme Court

decision striking down the legislative veto voided a provision of a federal lands law under which the House Interior Committee could temporarily "withdraw" certain lands from activities that damage them.

Justice Department attorney Robert B. Daniel said that "it is impossible to reconcile the judge's decision" with the Supreme Court's ruling. "We are disturbed because we think the decision is plainly wrong—because the statute and the regulation are plainly unconstitutional after [*INS v. Chadha*]."

Oberdorfer, in issuing his injunction, said that the *Chadha* decision focused on Congress' legislative powers outlined in Article

I of the Constitution, not on Congress' power over federal lands, which is outlined in Article IV.

"It is not at all clear" that the provision of the federal lands law is void, Oberdorfer said. "Indeed, [it] may well be authorized by Article IV . . .," he added.

Oberdorfer also cited a 1947 Supreme Court decision, written by former Supreme Court justice Hugo L. Black when Oberdorfer was Black's law clerk, that said that Congress' power over public lands was "without limitation" and that "neither the courts nor the executive agencies could proceed contrary to an act of Congress in this congressional area of national power."

12/28 P. McG, R.M., PFF, JR

G. threatened individual for G+C purpose

R+G looking out for G. generally → Only conflict
in waiver in crim suit.

[no possibility: all defenses available in crim suit]

What off: redemptive to show bona fides.

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