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Congress becoming serious about record stimulus bill

House and Senate committees next week will begin to mark up details of an unprecedented $800 billion economic stimulus bill that will include huge amounts of money for public lands programs. The measure could end up being the largest single bill Congress has ever done.

The measure will at once authorize thousands of projects as well as
appropriate billions of dollars. Spending for most public lands programs will be wrapped in a section developed by the appropriations subcommittees on Interior and related agencies. The section may only run about 10 pages long.

“\"It will be simple appropriations language that will direct agencies to do things they are already doing that will help an economic recovery,\" one Congressional staff member told PLN.

Until last week President-elect Barack Obama had been calling on Congress to complete stimulus legislation so he could sign it as soon as he took office January 20. But the combination of Republican concerns and the difficulty of putting together such complex legislation may delay things until next month. Speaker of the House Nancy Pelosi (D-Calif.) said she is now shooting for completion of a bill by mid-February.

House and Senate committees will prepare recommendations for Obama, Pelosi and Senate Majority Leader Harry Reid (D-Nev.) House Majority Leader Steny Hoyer (D-Md.) predicted a House floor vote before the end of January.

The measure is not only unprecedented because of its size and scope but also because Congressional authorizing committees are not providing detailed previews of projects. The Senate Energy Committee held one hearing last month to listen to a handful of recommendations, but will hold no mark-ups.

Instead in the Senate, said an energy committee staff member, the Democratic leadership will simply assemble a bill and present it on the Senate floor. “The status is our recommendations will be dealt with on the floor. There will be no further committee action,” said the staff member.

Appropriators may be more specific than authorizing committees by allocating money to specific line items. “It will look like any appropriations bill,” said one Congressional staff member.

At first Reid and Pelosi had intended to assemble a brief stimulus bill of some 15 pages. But now Congressional staff members tell us the measure will run to many hundreds of pages. Still, the authorizing portions of the measure may simply give broad instructions to agencies to spend the $800 billion-plus.

Reid and Pelosi are using recommendations from Obama to shape the legislation that will focus on six areas: health care, energy saving projects, public works, school construction, assistance for the jobless and tax reductions.

On January 6 Reid and other leading Senate Democrats introduced two bare-boned bills (S 1 and S 2) that they intend to use as a vehicle to implement the stimulus legislation. S 1 has only six lines such as “modernize the nation’s infrastructure” and “provide tax relief.”

The Forest Service, for one, is ready to go. Chief Abigail Kimbell told us last week that the agency has identified for Congress a load of stimulus projects that have cleared all paperwork.

“\"Never in our wildest dreams do we expect to get everything we have asked for," said Kimbell, "but we’re posed to put projects in place right off. We have identified $330 million in engineering projects that are ready to go that would also benefit the land. We have identified 1.5 million acres in fuel reduction projects that are ready to go. All we need is the funding.\"

Kimbell said the Forest Service has identified projects in such categories as infrastructure, hazardous fuels reduction, watershed restoration, conversion of wood
to energy, Job Corps work and reforestation of land hit by insects and fire.

At a Senate Energy Committee hearing last month Cassandra Moseley, a professor in the Ecosystem Workforce Program at the University of Oregon, said that with $8.5 billion the Forest Service and the Bureau of Land Management could create 127,000 direct jobs over the next three years.

Republican unease: House and Senate Republican leaders said last week they are concerned about spending so much unvetted money. After all, annual appropriations bills are subjected to a year of scrutiny and they also identify the vast majority of specific projects to receive allocations. Under the Democrats’ plan agencies could have nearly carte blanche to spend on projects of their own choosing.

At the same time Republican leaders are complaining about unreviewed projects they are also worrying about too many designated projects, i.e. earmarks. Said House Republican Leader John Boehner (R-Ohio), “(I) would ask the Democratic Leadership to guarantee that such a bill will not be brought to the floor of the House unless there have been public hearings in the appropriate committees, the entire text has been available online for the American people to review for at least one week, and it includes no special-interest earmarks.”

Said Senate Minority Leader Mitch McConnell in a recent statement, “We hope that Democrats in Congress don’t attempt to shut the American taxpayer out of this process by trying to pass a bill that hasn’t been the subject of bipartisan review and that hasn’t been available for public inspection.”

Among natural resources programs a $2 billion National Park Service (NPS) Centennial Challenge proposal may have a leg up. NPS has already identified hundreds of millions of dollars in matching projects designed to upgrade the national parks for the system’s 2016 centennial. The program would match $100 million per year in appropriations with $100 million per year in matching contributions.

Sen. Reid has promised Secretary of Interior Dirk Kempthorne that the Centennial Challenge program will be part of a Senate stimulus bill. Whether the House will accept it or not is another question. A more modest Senate stimulus bill that failed late last year (S 3688) included the Centennial Challenge.

But 31 conservation and sportsmen groups are also pitching for money for broader conservation programs. The groups, representing five million sportsmen and conservationists, last month submitted broad stimulus recommendations affecting Interior Department agencies, the Forest Service, the Department of Commerce, EPA, the Army Corps of Engineers and the Department of Transportation.

Said the 31 groups in a December 18 letter to Hill leaders, “The attached recommendations represent a unique consensus among a wide range of organizations specifically aimed at habitat-oriented projects that benefit fish and wildlife while stimulating local economies, particularly through job creation.”

Senate approves 161-bill omnibus lands bill, with ease

The Senate gave final approval January 15 to a huge, 161-bill omnibus lands bill by a 73-to-21 vote. Senate action was made possible January 11 by a crucial vote to defeat a filibuster of 66-to-12.

Bill critic Sen. Tom Coburn (R-Okla.) led a fierce Republican attack on the bill, beginning with a cloture procedure that forced Senate Majority Leader Harry Reid (D-Nev.) to come up with 60 votes to defeat a filibuster.
But Coburn’s goose was cooked when three western Republican senators not only took to the Senate floor to endorse the bill, but also took issue with the substance of the Oklahoman’s arguments.

For instance Coburn said the bill would bar future oil and gas development of 300 million barrels of oil. He was apparently referring to a provision that would forbid future leasing in the Wyoming Range of the Bridger-Teton National Forest. (See related article page 9.)

But Sen. Lisa Murkowski (R-Alaska), a bill supporter, said, “None of the wilderness in this bill will affect oil and gas development. One bill does restrict oil and gas development but that is supported by the Wyoming senators and that would affect five million barrels of oil, not 300 million.”

Republican Sens. Mike Crapo (Idaho) and Bob Bennett (Utah) also took to the Senate floor to endorse S 22 and to counter Coburn.

The bill, newly numbered to S 22 and sponsored by Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), contains 161 individual measures. It now goes to the House where there is considerable support. Twenty-four Democratic House members wrote Speaker of the House Nancy Pelosi (D-Calif.) and asked her to schedule a vote on the bill, if the Senate acted on it.

S 22 would designate 2.2 million acres of wilderness, designate three new national parks, designate several national trails, designate more than 1,000 miles of wild and scenic rivers, and designate 10 national heritage areas, to name a few items.

Coburn blasted the measure: “The decision by Senate leaders to kick off the new Congress with an earmark-laden omnibus lands bill makes a mockery of voters' hopes for change. This package represents some of the worst aspects of Congressional incompetence and parochialism.”

He complained that S 22 would cost $10 billion at a time when the nation was headed toward a $1.8 trillion annual deficit, would tie up energy resources and would trample on private property rights.

As to the private property charge Coburn said, “The eminent domain impacts whether it would be from wilderness areas, national wild and scenic rivers, or national trails will have a major impact on anybody living close or somewhat in proximity to any of these designations because they are in fact impacted.”

Among others Sen. Ken Salazar (D-Colo.), the Obama administration’s choice for Secretary of Interior, wants Congress to approve the omnibus lands bill before he leaves the Senate.

“While there is great anticipation for the new beginning on January 20 (when President-elect Barack Obama is sworn in), there is still work that must be done for the State of Colorado in the coming days in the U.S. Senate,” said Salazar. He then listed among his top priorities nine Colorado-centric bills that are in the 161-bill measure, such as designation of most of Rocky Mountain National Park as wilderness.

The omnibus bill is opposed by a wide range of interests, beginning with western House Republicans and including the U.S. Chamber of Commerce, private property rights advocates, powered recreation advocates, and conservative think tanks.

Marc W. Smith, executive director of the Independent Petroleum Association of Mountain States (IPAMS), said, “Clearly there has been no deliberative process or
thoughtful consideration of the consequences of this bill. Congress should have taken more time to analyze the impact of this broad-sweeping legislation on domestic energy production before it acted. The Intermountain West is a critical energy supplier to the country, contributing 27% of the nation’s natural gas.

The most controversial single item in the bill would give Congressional certification to the 26 million-acre National Landscape Conservation System (NLCS) managed by the Bureau of Land Management.

Indeed, Bennett said on the Senate floor January 11 he supports S 22 but if the NLCS provision came up for a vote separately he would oppose it. “I would prefer to have it separated out so we could have a separate vote,” he said.

Richard Moe, president of the National Trust for Historic Preservation, praised the Senate. “The national monuments, wilderness areas, scenic rivers, trails, and historic sites that make up the National Landscape Conservation System have correctly been called BLM’s ‘crown jewels,’” he said. “These are some of the last places where people can experience the history and wild beauty of the American West. We greatly appreciate the efforts of the Senate, particularly the bipartisan nature of the vote by those Senators who recognize the importance of permanently protecting these treasures for all Americans.”

The Senate Energy Committee developed the omnibus lands package based on committee-passed bills. Not all committee-passed bills made the cut because both Democratic and Republican committee leaders enjoyed a veto. The idea was to produce a bill that provides something for everyone on both sides of the aisle. Bingaman said Republicans and Democrats sponsored almost equal numbers of bills in the package.

In addition to the NLCS measure, S 22, as amended by chairman Bingaman and other members from committee passed bills, would:

* WYOMING RANGE: The omnibus includes a bill (S 2229) from Sen. John Barrasso (R-Wyo.) that would authorize non-federal interests to buy out oil and gas leases on 1.2 million acres of the Wyoming Range of the Bridger-Teton National Forest. BLM and the U.S. Geological Survey (USGS) have offered different estimates of the amount of oil and gas the range contains. BLM said on Feb. 27, 2008, that the area may contain 331 million barrels of oil. But on June 19 the USGS estimated only 5 million barrels of oil. Similarly, BLM estimated the area may contain 8.8 trillion cubic feet of natural gas and USGS estimated 1.5 trillion cubic feet.

* OWYHEE LANDS (IDAHO): The omnibus includes this bill (S 2833) from Crapo that would designate 517,000 acres of BLM-managed wilderness. An alliance of retired BLM employees, the Public Lands Foundation, objected recently to the bill and said that before designating wilderness sponsors should work with BLM to identify precise boundaries. The retirees also objected to a grazing permit buy-out provision. The administration supports.

* WILDERNESS (NINE OTHER BILLS): The omnibus includes several individual wilderness bills that would protect up to 2 million acres, including: Wild Monongahela Wilderness (West Va.), Virginia Ridge and Valley Wilderness (Va.), Mt. Hood Wilderness (Ore.), Copper Salmon Wilderness (Ore.), Cascade-Siskiyou National Monument (Ore.), Owyhee (Idaho), Sabinoso Wilderness (N.M.), Pictured Rocks National Lakeshore Wilderness (Mich.), Oregon Badlands Wilderness (Ore.), Spring Basin Wilderness (Ore.), Eastern Sierra and Northern San Gabriel Wilderness (Calif.), Riverside County Wilderness (Calif.), Sequoia and Kings Canyon National Parks Wilderness (Calif.), and Rocky Mountain National Park Wilderness (Colo.)

* OTHER MEASURES: In addition, the omnibus includes individual bills that
would designate three new National Park System units, authorize additions to nine existing National Park System units; authorize by our count a dozen land exchanges and conveyances; designate four national trails; authorize studies of additions to four National Historic Trails (all in the West: Oregon National Historic Trail, Pony Express National Historic Trail, California National Historic Trail, and The Mormon Pioneer National Historic Trail); add three wild and scenic rivers including the Snake River Headwaters in Wyoming; and designate a Snowy River Cave National Conservation Area of about 3.5 miles of cave passages in Lincoln County, N.M.

Will Reid and Salazar slow drive to big mining royalty?

The large new Democratic majority in the House and Senate suggests the 111th Congress may be amenable to passage of a significant hard rock mining law revision, with a gross royalty. But it will be no sure thing.

For one very important thing President-elect Barack Obama and his nominee for Secretary of Interior, Sen. Ken Salazar (D-Colo.), have advocated a moderate approach to reform legislation in the past. That is, they have not supported a tough, House-passed bill.

In fact just after the House last approved a mine law revision bill (HR 2262) on Nov. 1, 2007, Obama said, “What’s clear to me is that the legislation that has been proposed places a significant burden on the mining industry and could have a significant impact on jobs. We are going to have to keep on working to find the kind of legislation that is going to provide fair compensation for these federal lands and also enhances environmental protection (and) cleans up abandoned mines.”

And the hard rock mining industry, based on conversations with Salazar, believes he supports legislation less aggressive than the House bill. ”We found that Sen. Salazar was very reasonable on his approach to the Mining Law,” said Laura Skaer, executive director of the Northwest Mining Association. “We found that we could reach common ground on the royalty, on tenure and on an abandoned mine land fund.”

Mining law reform almost certainly will be on the table this year. Sen. Dianne Feinstein (D-Calif.) has already introduced legislation (S 140) that would impose an eight percent gross royalty on new mines and four percent on existing mines. The money would be used to pay for an abandoned mine reclamation fund. However, Feinstein’s bill does not address the broad sweep of reform that the House bill did in the last Congress, such as environmental standards and elimination of patent.

Introduction of a comprehensive House reform bill this year from House Natural Resources Committee Chairman Nick Joe Rahall (D-W.Va.) is a mortal lock. His office said last week, “Chairman Rahall has indicated that reforming 1872 Mining Law will continue to be one of his priorities in the 111th Congress.” Although his office did not estimate when Rahall would act, a bill is believed likely late this month or early next month.

With a strengthened Democratic majority the House will likely move a bill quickly and pass it by even more than the 244-to-166 margin of 2007. That will then put the onus on the Senate Energy Committee.

And that panel has lost, or is about to lose, important critics of the House bill, including Salazar, former ranking Republican Pete Domenici (R-N.M.), Sen. Larry Craig (R-Idaho) and, to a lesser extent Sen. Gordon Smith (R-Ore.) Said industry’s Skaer, “We’re losing senators from the committee who understand mining law issues. Who replaces them will have a lot to say about what kind of bill comes out of the Senate Energy Committee.”
And, while Obama criticized the House bill in the last Congress he is not expected to go as far as the Bush administration and promise a veto of any bill that looks like the House-passed measure.

Finally in assessing the politics of the situation, the hard rock mining industry always holds a most important hole card in the person of Senate Majority Leader Harry Reid (D-Nev.) He has personally stopped several major attempts to rewrite the 1872 Mining Law in the last few years.

That does not mean Reid, Salazar and Obama won’t accept major revisions to the mining law. All have said the time may be right to rewrite the law and gain some compensation for the American people. But Reid particularly is not going to accept legislation that would impose a royalty that would hurt the mining-based economy in Nevada.

While the mining industry says the private Sen. Salazar is a moderate on reform, the senator’s public statements could be taken to support the House bill. He said at a January 24 Senate Energy Committee hearing it was time to write legislation to revise the 1872 Mining Law. And he said a royalty was needed, although he didn’t say what kind.

“I believe there is consensus that the hard-rock mining industry – like the oil, gas, and coal industries – must pay some kind of royalty or rent for the right to extract mineral resources from our public lands,” he said. “The lack of a federal revenue stream from mining operations on federal lands has particularly hindered efforts to address the critical issue of the environmental, health, and safety risks posed by abandoned mines.”

But he also said, “There are of course many questions regarding the structure and implementation of a federal royalty system, . . .”

Feinstein on introducing her bill said, “Companies that mine for gold and silver on Federal lands are not currently required to pay any royalties to the Federal Government – even though we are experiencing near record high gold prices. These companies should be required to pay their fair share.”

In addition to royalties Feinstein would increase an annual maintenance fee from $125 now to $300.

Feinstein does not sit on the Senate Energy Committee but she may actually be in a more influential post as chairman of the Senate subcommittee on Interior appropriations. There she may be in position to attach S 160 to an annual Interior Department appropriations bill.

BLM oil shale withdrawal action poses problem for Salazar

BLM revoked large land withdrawal orders January 7 that could eventually open the way for oil shale leasing on more than 7.5 million acres of public lands in Wyoming and Utah.

However, the orders do not go into effect until February 9, giving the Obama administration, and perhaps Secretary of Interior designate Ken Salazar (D-Colo.), an opportunity to revoke the revocations and leave the withdrawals in place.

The State of Colorado, Salazar’s home and the site of the largest public land oil shale deposits, is not affected by the January 7 proposals because old withdrawals there were revoked in 2002. All the withdrawals were issued in 1930 to prevent backers of an untested technology from locking up large swaths of public lands.
In a separate development BLM January 15 asked for a new round of nominations for research and development (R&D) leases. This is the second round of nomination requests. This time around, though, BLM is offering 640-acre leases instead of 160 acres. But once again the action leaves room for Salazar to slow development because the nomination deadline is March 2, well into the Obama administration.

Meanwhile, environmentalists gave the Obama administration and Salazar a third opportunity to slow oil shale development January 6 when they demanded that the department revise endangered species documentation of oil shale development plans and regulations. The nine environmental groups notified the Interior Department they would file a lawsuit within 60 days, if the plans and regs were not redone.

The Endangered Species Act (ESA) is not the only law that environmentalists may cite in litigation, said Melissa Thrailkill, staff attorney for the Center for Biological Diversity, but the ESA mandates action now. "We’re still deciding on litigation possibilities," she said. "Under the Endangered Species Act we can’t bring a lawsuit until we have provided 60-day notice. The other claims can come later."

Other laws that the environmentalists have mentioned in past complaints about oil shale plans and regulations are the usual suspects - the Federal Land Policy and Management Act, the National Environmental Policy Act, and the Clean Water Act.

BLM issued the final commercial development oil shale regulations November 18 in time for the rules to go into effect January 17 before President-elect Barack Obama takes over on January 20. If the regs are in effect when Obama becomes President, his administration would be hard-pressed to reverse them.

The environmentalists share the concerns of Sen. Salazar that BLM doesn’t know what the environmental impacts of commercial shale development will be. They say BLM should review the results of ongoing R&D projects before writing regulations.

The lead oil shale development company in the three-state oil shale country (Colorado, Utah and Wyoming), Shell Exploration & Production Co. - Unconventional Oil, has told us the company wants BLM to complete commercial development regs as soon as possible to provide formal guidance.

In January 2007 BLM issued five, 160-acre R&D leases in Colorado (Shell holds three) and in May 2007 issued one R&D lease in Utah. The R&D leases constitute the first step in what could be a major new energy industry in Colorado, Utah and Wyoming. The Green River Formation of Colorado alone could produce an estimated 800 billion barrels of oil, or 100 years worth of the nation’s annual consumption of 8 billion barrels.

In the regulations BLM chose a sliding scale for royalties that would begin at 5 percent during the first five years of production, and then increase 1 percent each year after that until reaching 12.5 percent. The standard oil and gas royalty is 12.5 percent.

Salazar said the BLM royalty formula could cost taxpayers billions of dollars. "I will study these regulations closely, but I am immediately concerned about the royalty rates that it has established. A royalty rate of 5 percent, of which Colorado would receive half, is a pittance," he said when BLM issued the regulations. "The Administration is setting up Colorado to be sold short."

In the separate withdrawal situation the Roosevelt administration in 1930 withdrew 6 million acres in Wyoming from oil shale development to prevent lessees from locking up the lands on an untested technology. The Roosevelt administration at the same time withdrew from oil shale entry 1.65 million acres in Utah.
Salazar confirmation seen likely; Murkowski praises

The Senate Energy Committee has put on the fast track the confirmation of one of its own members as secretary of Interior, Sen. Ken Salazar (D-Colo.) The committee held a hearing on Salazar’s nomination January 15 and a committee vote is expected shortly.

“It should be smooth sailing,” said a committee spokesman. “I haven’t heard anyone raise any concerns. Chairman Bingaman is a big supporter of Sen. Salazar. He has a strong reputation as a bipartisan centrist. It should be very cordial.” Bingaman is Sen. Jeff Bingaman (D-N.M.)

It helps Salazar that ranking committee Republican, Sen. Lisa Murkowski (R-Alaska), who served with Salazar for the last four years on the panel, said she was “pleased” by his nomination. “We’ve always got along well,” Murkowski said of her relationship with Salazar. “We’ve always been able to talk about the issues and he is thoughtful and reasonable in his approach to so many different issues, whether it be over public lands, energy or native issues.”

Thus far, some environmental groups that are normally allies of Salazar have offered a bit of criticism, while industry groups that Salazar has often criticized have praised him.

For instance, the environmental group Public Employees for Environmental Responsibility (PEER) complained that commodity industries issued a “huge sigh of relief” when Salazar was nominated. PEER said in a release that Salazar’s statement on receiving the nomination “made only passing reference to protecting natural resources . . .”

To keep Salazar on the straight-and-narrow PEER recommended these Interior Department nominees: Martha Hahn, former BLM Idaho State Office director, as director of BLM; John Donahue, superintendent of Big Cypress National Preserve, as director of the National Park Service; Phil Doe, former Bureau of Reclamation employee, as director of the bureau; and Robert McCarthy, former field solicitor for the Department of Interior, as Solicitor.

Separately, the Center for Biological Diversity, Western Watershed Project and WildEarth Guardians objected to Salazar’s Endangered Species Act record. They have compared him unfavorably to Bush administration secretaries of Interior Gale Norton and Dirk Kempthorne.

But more typical was the reaction of William H. Meadows, president of The Wilderness Society. “Because he has been a leader in negotiations on several Colorado wilderness bills that are poised to be passed by Congress, including Dominguez Canyon and Rocky Mountain National Park, we are confident that, in his new role, he will continue his work to protect the West’s most beautiful and ecologically significant landscapes,” said Meadows.

On the industry side both the Independent Petroleum Association of America and the Northwest Mining Association have said Salazar was acceptable to them.

Coburn, Barrasso disagree on Wyoming Range withdrawal

Two conservative Republicans senators squared off January 9 in a debate over legislation that would withdraw from oil and gas leasing more than 1 million acres of the Wyoming Range of the Bridger-Teton National Forest.

Sen. Thomas Coburn (R-Okla.) charged that the legislation would prevent the development of 300 millions barrels of oil and 8.8 trillion cubic feet of gas. The
legislation is part of an omnibus lands bill S 22 that the Senate approved January 15. But Sen. John Barrasso (R-Wyo.) said that Coburn’s facts and numbers were all wrong.

Coburn said the withdrawal provision “sets it up so those people who have a lease will have a lawsuit filed against them. It will never be developed. It will never be developed because the cost of fighting the lawsuits will be greater than the benefit of developing the natural gas.”

But Barrasso countered that the bill doesn’t affect the 70,000 acres of leased land and 45,000 acres of sold but not leased land in the range. “I repeat: This legislation today does not cancel any of these currently contested leases. Everyone should keep in mind that the acres currently leased or currently leased but under protest represent the area where the most promising reserves exist,” he said. “This bill does not touch that.”

Coburn has for the last year been the principal Senate opponent of the omnibus lands bill that includes 161 individual bills, including the Wyoming Range measure that Barrasso introduced in the last Congress. The Senate approved the bill January 15 and sent it on to the House. Whether the House follows adopts the bill is open to question. (See separate article on the omnibus bill on page 3.)

Barrasso introduced the bill to protect the Wyoming Range of the Bridger-Teton National Forest. He followed up on the initiative that was started by his predecessor, Sen. Craig Thomas (R-Wyo.), who died of cancer in 2007.

On the Senate floor January 9 Coburn leveled his charge that the bill would bar the development of leases containing huge reserves of oil and gas. “(If) we can extract natural gas and oil and do it in a totally clean, environmentally-friendly way and we know we have 300 million barrels of oil and 8.8 trillion cubic feet, probably closer to 15 trillion cubic feet of proven reserves now, why would we take that away?” he asked. “Why would we do that?”

Barrasso jumped on Coburn’s numbers and, using data from the U.S. Geological Survey dated June 19, 2008, said, “Under the revised estimates, the best minds, the best geological thinking, they believe there is some natural gas potential in this area of 1.5 trillion cubic feet, not 8.8, and an oil potential of 5 million barrels, not 300 million barrels.”

The bill is straightforward, up to a point. It withdraws from future leasing all unleased land in the 1.2 million-acre Wyoming Range of the Bridger-Teton National Forest.

For the 70,000 acres of leased land and 45,000 acres of sold but not leased land the bill prohibits any interference by the Interior Department, such as cancellation. The bill does authorize the Interior Department to accept the donation of a valid lease from “from any non-Federal entity or person that acquires that right.”

Dem majority may switch ANWR momentum to wilderness side

Opponents of oil and gas development in the coastal plain of the Arctic National Wildlife Refuge (ANWR) will be on the offensive this year, after a year of playing defense against pro-development legislation.

But opponents of legislation to put the coastal plain off limits to development by designating it wilderness will have plenty of hurdles. As always, the Senate with its filibuster will probably require a super-60 vote majority, unless the measure is tucked into some other must-pass bill. And the House is no
guarantee, having sided with leasing legislation many times over the years.


“Sen. Lieberman’s ANWR legislation is another misguided attempt at locking up ANWR to appease environmentalists across the country,” Begich said.

But Lieberman countered on introducing his bill (S 231), “The Arctic National Wildlife Refuge is a pristine natural treasure that must be preserved for future generations,” said Lieberman.

Congress has been fighting over energy development in the 1.5 million-acre coastal plain since the enactment of the Alaskan National Interest Lands Conservation Act in 1980. The House has approved development bills 12 times since 1995 and the Senate once (in 1995), but the bill has not been enacted. In 1995 President Clinton vetoed the bill.

Last year House and Senate Republicans added ANWR leasing authority to omnibus energy bills. With gasoline prices approaching $4 per barrel the chances the Republicans would succeed soared, only to die in the Senate.

But this year House and Senate Democrats have forged a significantly larger majority, and they will have an ally in the White House in President-elect Barack Obama. In the House Rep. Edward Markey (D-Mass.) introduced his version of a wilderness bill (HR 39) January 6. Markey introduced the same bill in the last Congress but it went nowhere.

In opposition to Markey Rep. Don Young (D-Alaska) introduced a development bill (HR 49) the same day that would not only authorize development but also allocate some royalties to nonrenewal energy development. However, Young has lost a lot of influence in the House, having been ousted by Congressional Democrats from his former post as ranking Republican on the Senate Energy Committee.

Still, on introducing his bill, Young said, “This is one of the most comprehensive energy bills out there, and if our Speaker will let me bring it to the floor, I know I have the votes to pass it. Last Congress, there was a lot of politicking on the House floor but we were never allowed to vote on a clear solution. This bill is that solution, and the Members of Congress deserve a chance to vote for a real energy bill.”

The U.S. Geological Survey estimates that the coastal plain contains 10.4 billion barrels of recoverable oil.

2009 approps bill taking back seat to stimulus, for now

Until Congress completes a mammoth economic stimulus bill it probably won’t get around to addressing fiscal year 2009 appropriations bills, according to Congressional staff members.

But once the stimulus is out of the way, Congress is expected to turn its attention to the fiscal 2009 bills. There is no precise schedule for action on the appropriations. The only likely thing is the House and Senate will wrap the nine remaining appropriations bill into one omnibus bill.

The schedule is unclear because Congressional leaders now say the stimulus bill probably won’t be ready for President-elect Obama until mid-February. And the fiscal 2010 administration budget request is scheduled for release February 2.
As PLN reported in the last issue, House and Senate appropriators have just about reached final agreement on fiscal year 2009 appropriations bills, including an Interior and related agencies measure that would govern the public lands.

The Democrats hope to have the bills ready for President-elect Barack Obama to sign sometime this month. That would clear the deck for the new administration to concentrate on fiscal 2010 appropriations. Obama’s team is reportedly involved in the fiscal 2009 appropriations discussions.

Despite the apparent progress in writing fiscal 2009 money bills some staffers believe that Congress may end up simply extending a fiscal 2008 money bill through fiscal 2009.

This last Congress (the 110th) put off consideration of fiscal 2009 money bills in late September by approving an extension of fiscal 2008 bills until March 6 (PL 110-329 of September 30.) Now appropriators hope to wrap up the fiscal 2009 bills first thing in the 111th Congress.

In addition to interim spending for fiscal 2009, PL 110-329 includes a separate section that provides emergency supplemental appropriations for fiscal 2008. That includes $910 million for fire fighting. Of that, $500 million is going to the Forest Service to repay line programs that had been forced to cough up money for fire fighting.

Assuming a straight extension of fiscal 2008 spending, and that’s what HR 2638 appears to do, here’s how some individual programs would make out in fiscal 2009, compared to Bush administration recommendations and House Appropriations subcommittee recommendations:

* NATIONAL FOREST SYSTEM: Fiscal 2008, $1.506 billion; the administration, $1.349 billion, and the House subcommittee on Interior appropriations, $1.508 billion.
* BLM MANAGEMENT: Fiscal 2008, $1.008 billion; administration, $987 million; and the House subcommittee, $1.023 billion.
* FWS REFUGE MANAGEMENT: Fiscal 2008, $434 million; administration, $434 million; House subcommittee, $469 million.
* FEDERAL LAND ACQUISITION: Fiscal 2008, $207 million; administration, $54 million; House subcommittee, $225 million.

Montana CBM EIS leads oil and gas field developments

Catching up, BLM in the last month has taken several different steps to set the stage for oil and gas development in the West over the next decade.

The Montana BLM late last month published a final record of decision (ROD) that carries out a court order to evaluate phased development of coal bed methane (CBM) in the state.

Separately, the BLM Rawlins Field Office in Wyoming on January 8 published a ROD that will govern energy development on 11.2 million acres in four Wyoming counties.

In another action the BLM Pinedale Field Office in Wyoming January 8 gave formal notice in the Federal Register of an ROD that will govern energy development in the energy rich Pinedale area of Wyoming. BLM signed the ROD December 17.

Meanwhile, in a new development in a national controversy over a large Utah oil and gas lease sale of December 19, former bureau director Patrick Shea will represent a rogue environmentalist bidder in the sale.
Bidder Tim DeChristopher, a student at the University of Utah, “won” 13 leases covering 22,000 acres in the sale in southeastern Utah with bids of $1.8 million. But DeChristopher said he has no intention of paying the $1.8 million. Shea, who headed BLM briefly during the Clinton administration, is now a self-employed Salt Lake City lawyer.

The Utah sale became a national controversy when BLM in November said it would offer 241 parcels for lease totaling 359,000 acres, many of them near Arches National Park, Dinosaur National Monument, Canyonlands National Park, Nine Mile Canyon and Desolate Canyon. BLM manages the latter two areas.

In the face of protests from an array of interests BLM pulled more than 110 tracts and offered 131 parcels extending over 163,714 acres. BLM sold 89 percent of the 131 parcels covering 148,598 acres and received $7,473,768.50 in bids, rental and administrative fees.

The Utah sale and the three new RODs reflect a long-standing Bush administration policy to expand energy development from public lands. Although environmentalists, states and sportsmen have contested the administration initiatives, BLM has succeeded in issuing tens of thousands of oil and gas leases, particularly in the Rocky Mountains.

In what is likely to be a major test for the incoming Obama administration, the BLM State Office in Wyoming has scheduled a major oil and gas lease sale on February 3. The BLM state office right now intends to offer 173,000 acres for sale in 145 parcels. While the Mineral Leasing Act requires BLM to hold quarterly sales BLM still has some leeway in deciding whether to offer tracts or not.

The Wyoming sale won’t be the first, but it may be the most important because of Wyoming’s huge natural gas reserves. BLM’s 2009 schedule calls for an initial sale of 72,261 acres in New Mexico for January 21, one day after Obama is inaugurated. The next sale after that is scheduled for Montana on January 27.

Montana CBM decision: The Montana ROD catches up with two federal court decisions in early 2005 that held a 2003 BLM decision governing energy development in the Powder River and Billings areas of the state failed to consider phased development. The new ROD does consider phased leasing. It will open the way for the drilling of as many as 18,000 natural gas wells over the next two decades. The ROD will govern CBM development on 1.1 million acre of federal land and 4.1 million acres of mineral estate in the Powder River area and 425,336 acres of federal land and 906,084 acres of mineral estate in the Billings area.

Rawlins decision: The Rawlins ROD provides direction for the implementation of a resource management plan (RMP) covering 11.2 million acres in Albany, Carbon, Laramie and eastern Sweetwater counties in Wyoming.

Pinedale decision: The December 17 Pinedale ROD will guide the implementation of an RMP in Sublette and Lincoln Counties in Wyoming. The plan anticipates BLM will make available for oil and gas development 476,080 acres of 1.2 million acre of federal mineral estate in the area. BLM also manages 923,000 acres of surface public land in the area.

Pinedale is a hot bed for oil and gas development. More than 600 natural gas wells have already been drilled in the area. Hunters and fishermen also prize the area. Groups such as the Theodore Roosevelt Conservation Partnership has protested the impact of the plan on sage-grouse habitat as well as big game habitat. A lawsuit is possible. BLM said in the ROD that no surface occupancy would be allowed in 227,980 acres of big game range, 32,170 acres of migration routes and 35,360 acres of parturition areas.
Interest groups disagree on IBLA inholding decision

Competing interest groups hold different interpretations of a recent Interior Board of Land Appeals (IBLA) decision that denied a right-of-way (ROW) across BLM land to an inholding within Death Valley National Park.

Area environmental groups jumped on the IBLA decision, calling it a major defeat for off-highway vehicle (OHV) users. The Center for Biological Diversity said the applicants for the ROW were attempting to gain access to the park via the BLM-managed Surprise Valley Road.

“Death Valley is a national park – not a playground for off-road vehicles. The Board’s decision once again supports that fact,” said Chris Kassar, associate public lands director with the Center for Biological Diversity.

The applicant for the ROW, Bryan Lollich, and 27 co-owners of a former mining site in the park have been trying to obtain a ROW to their inholding since 2003. The inholders have argued that their desired ROW, Surprise Canyon Road, constitutes an RS 2477 ROW that grandfathered access to the local community.

Lollich says the ROW has nothing to do with OHVs and everything to do with a right to use private property, i.e. the inholding in Death Valley. He argues that local citizens and governments have used the Surprise Canyon Road to access private property for 135 years.

In an E-mail to PLN, applicant Lollich said of the BLM decision not to grant a ROW, “The denial really means nothing. All it really does is complicate the issue more by having a denied ROW application for the BLM portion of the road, and a pending ROW application for the Park Service portion of the road. Further it shows the complete unwillingness of the BLM and the NPS to cooperate with landowners.”

The lower part of Surprise Canyon Road managed by BLM is neither a part of the national park nor is it included in an adjacent Surprise Canyon Wilderness. The upper portion of the road is managed by the Park Service and is closed to OHV use. The instant case requests a ROW just for the BLM-managed lower portion of the road.

BLM, with the assistance of NPS, has consistently denied the applicants’ access to Surprise Canyon Road. The agencies have claimed that the applicants have failed to provide information they have requested. The IBLA decision does not say what kind of information the agencies requested, other than to refer to maps and deeds.

In the IBLA decision, Administrative Judge James F. Roberts affirmed a March 25, 2008, decision of the Ridgefield Field Office of BLM (Calif.) which denied the application from Lollich and friends. BLM told IBLA, “During that four year period of time, instead of providing the information requested by the agencies, Appellant Lollich questioned the agencies’ request, filed litigation against the BLM seeking to hold it in contempt for failure to comply with a previously entered consent decree, filed separate litigation seeking ‘unfettered access’ to his property pursuant to an RS 2477 claimed right-of-way, and, in response to the last notification of incomplete information, did nothing.”

Indeed, the appellant lost lawsuits filed in federal court and State of California court. The U.S. District Court for the District of Columbia threw out a claim from Lollich and others that the ROW constituted an RS 2477 ROW that granted them access to the old road. The federal court said simply the appellants didn’t have a right to assert the RS 2477 ROW claim under the Quiet Title Act.
Environmentalists have been busy with their own litigation. They sued BLM in 2000, charging the bureau with a failure to evaluate the harmful effects of OHV use on the road. Subsequently, BLM closed the lower portion of the road it controlled and NPS closed the upper portion it controlled.

Lollich told us he will continue to work with BLM on obtaining access to his inholding.

The IBLA decision is titled, Bryan Lollich, 176 IBLA 239. It is dated Dec. 17, 2008.

**IBLA decisions**

We now post current Interior Board of Land Appeals decisions at our website, http://www.plnfpr.com/ibla.htm. We provide the most recent three months of decisions in PDF format. We update the listing every two weeks. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300-QC, Arlington, VA 22203. Phone (703) 235-3799.

**Subject:** Coal lease royalty

**DoI decision:** MMS will not allow a lessee to use an assigned affiliate’s contract to set royalty price.

**Appellant:** The assignment of the purchase contract from one lessee to the other makes sales arm’s length.

**IBLA decision:** Affirmed MMS decision.

**Case identification:** Decker Coal Company, 176 IBLA 277, January 5, 2009. Eight pages. Appeal from a decision by the associate director, Minerals Management Service (MMS), who affirmed and modified an Order to Report and Pay Additional Royalties. MMS-03-0106-COAL.

**IBLA argument:** IBLA Administrative Judge James K. Jackson affirmed an MMS decision that held the appellant coal lessee could not assume a contract from an affiliated company to gain a lower royalty rate. The lessee, Decker Coal Company, acquired a contract to sell coal from Black Butte Coal Company and used the Black Butte sale price to establish the royalty price for its coal. Decker and Black Butte are affiliated because the parent company Kiewit Mining Group owns a 50 percent interest in each. The MMS order supported by IBLA requires Decker to pay an additional royalty of $7,529,456. Said Judge Jackson, “The Coal Purchase Contract simply does not reflect the value of coal here at issue.” The Black Butte contract price for royalty purposes was $7 per ton and the Decker price was $25 per ton. The coal came from a Decker lease.

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**Subject:** Dependent resurvey.

**DoI decision:** BLM will locate lost corners after accepting the results of a resurvey.

**Appellants:** BLM should use the original survey corners discovered after completion of the resurvey.

**IBLA decision:** Reversed and remanded, BLM should use the original corners.

**Case identification:** James R. & Charlene K. Hasenyager, 176 IBLA 252, December 18, 2008. Fourteen pages. Appeal from a decision of the director of the Utah State Office of BLM, who upheld a dependent resurvey, and finally dismissed a protest of the resurvey. Group No. 603, Utah.

**IBLA argument:** IBLA Administrative Judge Christina S. Kalavritinos reversed a BLM decision that used a dependent resurvey to locate lost corners. She agreed with the appellants that BLM should use the actual corners discovered after the resurvey was completed. “BLM’s decision upholding a dependent resurvey relocating lost corners by proportionate measurement will be reversed and remanded, when BLM, after accepting the resurvey, recovers the original corner positions and their original survey monuments in place, where adherence to the proportioned corners would impair the bona fide rights long established by reference to the original corners, . . .” held Kalavritinos.

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(IBLA orders: The following is an order, not a decision.)

**Subject:** Oil and gas development project.

**BLM decision:** BLM will issue a decision authorizing development of a natural gas development project.

**Appellants:** IBLA did not say what environmental group appellant objected to in decision.

**IBLA order:** IBLA Administrative Judge Sara Greenberg dismissed this appeal because the appellant Southern Utah Wilderness Alliance failed to request state director review before appealing to IBLA. Greenberg said the board’s rules are clear: Appellants in this kind of situation may not appeal records of decision directly to IBLA but first must seek state director review. So she dismissed the appeal.

**Case identification:** Southern Utah Wilderness Alliance, IBLA 2008-2176. December 24, 2008. Four pages.

**Notes**

**Kashdan new number two at FS.** The Forest Service January 7 said that the man who led recent drives to reorganize the Forest Service, Hank Kashdan, has been chosen for the number two position in the agency, associate chief. Kashdan has been serving as the associate chief for business operations since 2005. Prior to that he headed up the agency’s budget office. He replaces Sally Collins, who has moved to the office of the Secretary of Agriculture to head up a new Office of Ecosystem Services. Kashdan will be replaced as deputy chief for business operations by Charles “Chuck” Myers, currently associate deputy chief for the National Forest Service.
Rep. Simpson takes key approps position. Rep. Mike Simpson (R-Idaho) will serve as the ranking Republican on the House subcommittee on Interior Appropriations in the coming Congress. Rep. Todd Tiahrt (R-Kansas) served as ranking subcommittee Republican in the last Congress. Simpson will serve as the lead House Republican on public lands appropriations. Rep. Norman Dicks (D-Wash.) will continue as subcommittee chairman.

FWS says no to ESA petitions for 270 species. The Fish and Wildlife Service (FWS) January 6 rejected petitions for the listing of 270 species in the southwestern United States requested by the environmental group WildEarth Guardians. FWS said it would respond later to petitions for action on an additional 200 species that WildEarth also wants listed as threatened or endangered under the Endangered Species Act ESA. WildEarth was not pleased by the FWS decision, labeling it "midnight giveaways." FWS said the remaining 200 species will be addressed in future findings.

NLCS gets new boss. BLM Director James Caswell named Carl Rountree, a bureau veteran, to head up the National Landscape Conservation System (NLCS) managed by the bureau. Rountree, most recently BLM’s budget director, will oversee the 26 million-acre system that includes National Monuments, National Conservations Areas, Wilderness Areas, Wilderness Study Areas, Wild and Scenic Rivers, and National Scenic and Historic Trails. Congress is now considering legislation to give its imprimatur to the NLCS system (see related article page 3.)

Conference calendar

JANUARY

FEBRUARY


MARCH
