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1. PUBLIC LANDS: In wake of Grand Canyon dispute, BLM proposes rule to eliminate emergency withdrawals (10/10/2008)

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The Bureau of Land Management proposed a rule today that would eliminate a regulation that allows for emergency withdrawals of public land from energy production and mineral extraction to protect natural resources.

At issue is a 1976 Federal Land Policy and Management Act provision that permits the Interior secretary, the House Natural Resources Committee or the Senate Energy and Natural Resources Committees to authorize emergency withdrawals.

There was a battle over the provision in June when the House Natural Resources panel voted to have Interior Secretary Dirk Kempthorne withdraw the last pockets of BLM and Forest Service land near the Grand Canyon from new uranium mining claims. Interior rejected the panel's request, saying the committee did not have a quorum for the vote, which was taken after Republicans walked out of the meeting.

BLM is now moving in a *Federal Register* **notice** to strike the emergency-withdrawal rule. The proposal would retain conventional withdrawal provisions for BLM-managed lands, which the agency says are more than adequate to protect resources.

"The BLM recognizes that unique circumstances may arise requiring the withdrawal of land from particular activities in order to preserve resources and values that need immediate protection," BLM Director Jim Caswell said in a statement. "We remain committed to working closely with states, local governments, and other stakeholders in the timely withdrawal of land under such critical circumstances."

A Natural Resources Committee Democrat blasted BLM for starting a 15-day comment period on the proposal at the beginning of the Columbus Day weekend, while Congress is not in session.

"This last-minute move by this 'see if we can get it under the clock' administration is cowardly," House Parks Subcommittee Chairman Raúl Grijalva (D-Ariz.) said. "Their whole reaction to our resolution has been to either ignore, resist or forget it happened, and now with the litigation, they're changing the rules."

Advocates of keeping mining out of the Grand Canyon lands disagree with BLM's handling of the land withdrawals.

Three environmental groups, including the Center for Biological Diversity, filed a lawsuit against Interior last week to force Kempthorne to withdraw the Grand Canyon lands.

Environmentalists say the committee's emergency withdrawal was the only way to protect the canyon and the surrounding region from the potentially devastating environmental impacts of uranium mining. More than 1,100 uranium mining claims have been filed for sites within 5 miles of Grand Canyon National Park. Because BLM controls mineral rights under Forest Service land, the proposed rule would apply to both agencies' mineral deposits around Grand Canyon.

Taylor McKinnon, public lands program director for the Center for Biological Diversity, said he doubted the proposed rule would affect his group's lawsuit or the committee's vote on the Grand Canyon lands. "This regulation has been on the books for decades," he said, "and changes to it can't be applied retroactively."

BLM maintains that the emergency provision is redundant, given the agency's existing land-withdrawal procedures. Under conventional withdrawal procedures, BLM said it considers ownership and other legally recognized interests by allowing public participation in decisionmaking and coordination with other federal agencies.

"The BLM's experience indicates that the procedures for issuing an emergency withdrawal order do not result in the protection of public lands more rapidly than the completion of a more conventional withdrawal process," the agency's

proposal says.

Conventional land-withdrawal procedures require the agency to immediately "segregate" lands in question upon publication of the proposed withdrawal in the *Federal Register*. That must happen within 30 days of a withdrawal petition being received and immediately after the petition is approved.

Because it rarely takes 30 days to make a withdrawal decision, the difference between the emergency process and the conventional process "is only a matter of days," BLM spokeswoman Jill Moran said. "They essentially have the same effect."

Segregations can last up to two years, with withdrawals lasting up to 20 years. By contrast, an emergency withdrawal cannot exceed three years.

Moran emphasized that the proposed rule does not change the law itself, nor does it affect congressional authority over the agency.

"Removing the BLM regulation does not change the emergency withdrawal provision of the statute," she said.

Rarely used provision

Prior to the committee's action this summer, the emergency-withdrawal provision was used by the House committee four other times since 1976 -- all were under former Chairman Morris Udall (D-Ariz.), with mixed success.

In 1978, Udall asked Interior Secretary Cecil Andrus to withdraw approximately 110 million acres in Alaska from the public domain, a move that laid the groundwork for establishing the state's protective land and wildlife units. The committee issued another emergency order in 1979 for Andrus to withdraw lands in Ojai and Ventura, Calif., from exploratory uranium drilling.

In 1981, the committee ordered President Reagan's Interior secretary, James Watt, to remove 1.5 million acres of national forest lands in Montana's Bob Marshall, Scapegoat and Great Bear wilderness areas from mineral leasing. While questioning whether the action was constitutional, Watt carried out the order "in the interest of maintaining harmony between Congress and the executive."

The legal validity of the emergency power was questioned again in 1983, when the committee again directed Watt to temporarily withdraw tracts in the Fort Union region of Montana and North Dakota from coal leasing. Watt resisted, citing earlier legal precedent that suggested the emergency declaration could conflict with the bicameralism and presentment clauses of the Constitution, but subsequent litigation did not clearly define whether the emergency withdrawal power is valid.

The Congressional Research Service reached the same conclusion as Watt in a memo this year, concluding that while the House Natural Resources Committee could exercise its right under the law, Kempthorne would not necessarily have to comply with the order.

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