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House passes stimulus; Senate beginning to crank up

Even as opposition continued to build on both sides of the Hill, the House approved January 28 a huge economic stimulus bill (HR 1) with billions of dollars for federal land management agencies. The vote was 244-to-188 with no Republicans supporting the bill.

The bill, as assembled by the House Appropriations Committee, would provide well over \$4 billion combined for BLM, the Forest Service, the Fish and Wildlife Service, the Park Service and the U.S. Geological Survey.

Senate committees got into the act January 27 when they approved comprehensive stimulus legislation similar to the House bill, including a bottom-line price tag of \$825 billion. However, a Senate Appropriations Committee bill (S 336) would provide \$600 million less for federal land management agencies, \$3.4 billion compared to \$4 billion.

Congressional leaders and President Barack Obama want to complete the bill before Congress leaves on a Presidents' Day holiday February 13.

As expected in the House bill the Park Service was the big winner among federal land management agencies with more than \$2 billion. The Forest Service would receive about \$1 billion, with \$650 million for construction and \$350 million for wildfire prevention. BLM would receive \$325 million for construction.

The Senate Appropriations Committee bill would provide \$3.4 billion for restoration of facilities on federal lands and another \$830 million for roads on public land and Indian roads. However, S 336, which is quite different than the House bill, would be far less generous to the Park Service. By one analysis the Senate measure would provide \$1.5 billion less, \$800 million in the Senate bill compared to \$2.25 billion in the House bill.

Republicans are digging in their heels, despite Obama's attempts at ecumenism. Said House Minority Leader John Boehner (R-Ohio) of the House bill January 23, "I think at this point we believe spending nearly a trillion dollars is really more than what we ought to be putting on the backs of our kids and their kids. But at the end of the day this is not our money to spend - we're borrowing this money from our kids - and so we have to find a package that's the right size."

2009 APPROPRIATIONS DELAYED: Temporarily lost in the shuffle are nine fiscal year 2009 appropriations bills, including an Interior and related agencies bill, an Energy and Water bill, and a Transportation bill. Until Congress completes the economic stimulus measure it won't address the fiscal 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 fiscal 2009 appropriations. The only likely thing is the House and Senate will wrap the nine remaining bills into one omnibus bill.

In the House stimulus bill, written like a traditional appropriations bill, descriptions of the federal lands allocations are brief. They run only a half-dozen pages. While the House bill avoids controversial earmarks, it also runs the risk of authorizing many billions of dollars for projects that Congressional committees have not considered, or have considered only briefly.

For instance the salient description in a paragraph in HR 1 appropriating money for BLM says, "For an additional amount for 'Construction', \$325,000,000, for priority roads, bridges, and trail repair or decommissioning, critical deferred maintenance projects, facilities construction and renovation, hazardous fuels reduction, and remediation of abandoned mine or well sites." That's the full description.

Here's the gross number breakdown for federal land management agencies in the House-passed bill, compared to the Senate Appropriations Committee bill:

- * BLM construction and management, \$325 million (Senate, \$315 million)
- * FS capital spending, \$650 million (Senate, \$650 million)
- * Wildfire prevention, \$850 million with \$350 million FS and \$550 million state and local (Senate, \$665 million with \$300 million FS, \$15 million DoI and \$350 million

state and local)

- * FWS construction and management, \$300 million (Senate, \$300 million)
- * USGS modernization, \$200 million (Senate, \$135 million)
- * Park Service construction, management and historic preservation \$2.1 billion (Senate, \$802 million)

Judge blocks much of Utah O&G sale, criticizes BLM

A federal judge January 16 barred the issuance of 100,000 acres of oil and gas leases in Utah, some near national parks and famous recreation areas.

U.S. District Court Judge Ricardo M. Urbina stopped execution of the leases because of concerns about the impact of oil and gas development on the parks and recreation areas. The Utah State Office of BLM held the sale December 19. Urbina's decision does allow BLM to issue an additional 50,000 acres of leases that environmentalists did not protest in their lawsuit.

The order from Urbina, out of the U.S. District Court for the District of Columbia, halted the 100,000 acres of lease sales just before they were to go into effect January 19. Urbina's action also gives the Obama administration an opportunity to reverse the sale, albeit at some legal risk.

Secretary of Interior Ken Salazar said at a press conference January 28, "We are examining our options to see what there is that we may be able to do with respect to those actions. We will take a look at it. We are putting that in the category of midnight actions of the Bush administration."

Environmentalists argue that if the Obama team under Salazar deems the leases are "improperly issued" it can unilaterally block them. Said Megan Mueller, a staff biologist with the Center for Native Ecosystems, "Submitting a leasing application vests no rights to the applicant or potential bidders. The BLM retains the authority not to lease."

For now judge Urbina says that the balance of damages argues for the postponement of the final issuance of the leases. "Because of the threat of irreparable harm to public land if the leases are issued, the balancing of equities also tips in favor" of protecting the land, if only temporarily, he said.

In his order Urbina said the plaintiff environmental groups are likely to succeed in their lawsuit because BLM failed to evaluate the impact of leasing on air outside the leased tracts and on historic properties. "Due to these deficiencies the plaintiffs have shown a likelihood of success on the merits," Urbina concluded.

Steve Bloch, an attorney with the lead plaintiff, the Southern Utah Wilderness Alliance (SUWA), said that if Urbina follows the drift of his order in an injunction or decision at a future date, it should bar BLM from issuing the leases and force the bureau to rewrite resource management plans.

"As the case moves on into the merits we will challenge the (RMPs) and the environmental documentation in them," Bloch said. "The RMPs were hurried and ignored important parts of the equation. The ruling from judge Urbina is the first step toward revisiting those plans."

The authority not to issue leases under the Minerals Leasing Act may also prove a crucial issue downstream as President Obama's team takes over. The Obama side is expected to be less eager to develop oil and gas reserves on public lands than the Bush administration.

The lawsuit was brought by seven conservation groups led by SUWA and including

the Grand Canyon Trust, the National Parks Conservation Association, and the National Trust for Historic Preservation.

The plaintiffs charged specifically that BLM failed to take a hard look at the impact of oil and gas development on ozone, as requested by the National Park Service; failed to assess the impact of leasing on climate change, as required by an order of the Secretary of Interior; and failed to assess impacts of leasing on archaeological sites in Nine Mile Canyon, thus ignoring the concerns of the Hopi tribe.

The December 19 sale became a national controversy after BLM 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 from the sale. It did offer 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.

The take includes \$1.8 million that a nuisance bidder, Tim DeChristopher, bid on 10 tracts. The Salt Lake Tribune said Christopher was a student at the University of Utah and an ardent environmentalist. BLM and the U.S. Attorney in Utah are attempting to determine options for resolving DeChristopher's nuisance bids. BLM can attempt to make him pay the \$1.8 million he bid, but DeChristopher told the press he has no intention of doing so.

If DeChristopher's leases near Arches National Park and Canyonlands National Park are forfeited, BLM may put the tracts up for sale again in February, the Obama administration willing.

Salazar gets a deputy at Interior; are settlements likely?

The Obama administration is beginning to fill top leadership positions in the Interior Department, but is not expected to name agency heads for several months.

The administration announced January 26 the expected nomination of David J. Hayes to the number two position in the Interior Department under Secretary Ken Salazar. Hayes served as deputy secretary of Interior in the Clinton administration from 1999 to 2001.

Hayes headed the Interior Department transition team for President Obama. He has worked recently as a partner with the Latham & Watkins law firm.

Hayes's experience as a natural resources attorney may come in handy if the department and the Justice Department attempt to dispose of a flood of lawsuits against Bush administration rules and decisions. One technique often used by the Bush administration to get around Clinton administration rules was to strike an agreement to settle the suit.

A Bush administration architect of the settlement strategy, former Under Secretary of Agriculture Mark Rey, said it is not an all-inclusive strategy. "I don't think you can generalize," he said. "First, the government must want to settle the lawsuits and governments are never uniform in what they want.

"Second, you have to look at what the plaintiffs are demanding in a settlement. And third, you have to look at the details of disposition. There may be too much complexity from too many plaintiffs. Yes, we did settle some suits with

industry but, no, we did not settle other suits. And yes, we settled some suits with environmentalists, but, no, we did not settle other suits. I don't think you can generalize."

One prominent environmentalist who handles public lands issues for The Wilderness Society, David Alberswerth, said settlements offer the Obama administration a possible opportunity. "If you can settle and not have to go through the whole nine yards in the courts, it could be a good strategy," he said.

Salazar said at a press conference January 28 that his staff is "developing a list" of last-minute actions by the Bush administration and is evaluating possible actions.

The Obama administration has yet to nominate a candidate for Under Secretary of Agriculture to replace Rey. Until a new under secretary is named and confirmed by the Senate Ann M. Bartuska is filling the position on an acting basis. Bartuska has worked recently as deputy chief of the Forest Service for research and development.

As for the chief of the Forest Service, at least some of the old guard hopes the Obama administration doesn't immediately select a new chief to replace Abigail Kimbell, who took the job on Feb. 4, 2007. Unlike most other land management agency heads the Forest Service chief is appointed and does not require Senate confirmation.

Said George Leonard, chairman of the National Association of Forest Service Retirees, "(P)rior to the Clinton Administration, the Chief's job was not regarded as automatically changing with a new administration. It enhances the credibility of advice that the Chief gives to the Administration and the Congress if the position is not seen as just another political appointment. We certainly believe that the long tradition of appointing a career, professional employee from within the organization must be maintained."

As represented by the Public Lands Foundation, the BLM old guard would like the next bureau director to come from professional ranks. Foundation President George Lea wrote Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) January 16 to support a career professional as bureau director.

"We bring to your attention that career agency employees are also successfully leading the National Park Service, the Fish and Wildlife Service and the Forest Service as their director," wrote Lea.

Ron Winker, the Nevada State Director, is acting as bureau director thus far.

The names of possible bureau directors are being circulated by various interest groups. For instance, some environmentalists favor either Matt Millenbach, former BLM State Director in Montana who is now retired, or Robert Abby, retired state director in Nevada.

Omnibus lands bill still on hold in the House

The House at press time had not yet taken up a Senate-passed omnibus lands bill (S 22), because it has been occupied by a huge economic stimulus bill.

But House Democratic leaders are eager to get moving on S 22. "I am working to have this bill considered by the House in an expeditious manner and sent to the President for his signature," said House Natural Resources Committee Chairman Nick Joe Rahall (D-W.Va.) in response to a question from *PLN*.

S 22, 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.

The House has approved many but not all measures in the Senate bill. If the House chooses to modify S 22, the bill would have to go back to the Senate. And if that happens critics such as Sen. Tom Coburn (R-Okla.) would almost certainly use parliamentary tactics to stall 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.

Said Bingaman after the Senate vote, "I can't think of a single bill that has ever done more to ensure the enjoyment of, and access to, wilderness areas, historical sites, national parks, forests, trails and scenic rivers."

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.

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.

Coburn 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 private property rights.

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 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 Sen. Mike Crapo (R-Idaho) that would designate 517,000 acres of BLM-managed wilderness. An alliance of retired BLM employees, the Public Lands Foundation, objects to the bill and says that before designating wilderness sponsors should work with BLM to identify precise boundaries.

* 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.

Rahall reintroduces tough mining law reform legislation

Rep. Nick Joe Rahall (D-W.Va.) and 21 of his Democratic colleagues introduced a mine law reform bill (S 699) January 27 that would establish a four percent royalty on existing hard rock mines. It would impose an eight percent royalty on future mines.

House disposition of the sweeping reform bill is not in question. The House approved a version of the bill in the last Congress by a margin of 244-to-166 and the Democratic majority in this Congress is significantly larger.

The Senate and Secretary of Interior Ken Salazar present the big unknowns. In the Senate, Majority Leader Harry Reid (D-Nev.) always gives the hard rock mining industry a most important hole card. Reid has personally stopped several major attempts to rewrite the 1872 Mining Law in the last few years.

As for Salazar, the hard mining industry says in private conversations he consistently painted himself as a moderate on reform when he was a senator from Colorado.

Rahall, who has championed tough mining law reforms for 30 years, indicated January 27 he was raring to go again. "Given our current economic crisis and the empty state of our national Treasury, it is ludicrous to be allowing this outmoded law to continue to exempt these lucrative mining activities from paying a fair return to the American people," he said.

"Nobody in their right mind would allow timber, oil, gas, coal or copper to be cut, drilled for, or mined on lands they own without receiving a payment in return for the disposition of their resources," Rahall added. "And neither should the United States."

The environmental group Earthworks picked up on Rahall's economic stimulus theme. S 699 "will promote economic development in rural communities throughout the West by creating jobs for abandoned mine clean up while protecting communities and water quality from the damage caused by modern mining," said Lauren Pagel, policy director for the group.

But the National Mining Association said an eight percent royalty would make the nation's mining industry noncompetitive. "This royalty and other provisions of H.R. 699 that are duplicative of other U.S. laws and regulations would needlessly jeopardize U.S. metals mining—further increasing our dependence on foreign sources for the metals we will need to rebuild America," said association president Hal Quinn.

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, as would Rahall. Both Rahall and Feinstein would use the money to pay for an abandoned mine reclamation fund.

However, Feinstein's bill does not address the broad sweep of reform that HR 699 would, such as environmental standards and elimination of patent.

President Obama has taken a somewhat ambiguous position on mine law reform. After the House last approved Rahall's bill 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."

But Obama 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.

The Senate Energy Committee will be hard to read. The panel lost this year 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.) Replacing them are Sens. John McCain (R-Ariz.) James Risch (R-Idaho), Bob Bennett (R-Utah) and Sam Brownback (R-Kansas)

Rahall's bill is co-sponsored by Reps. George Miller (D-Calif.), Henry Waxman (D-Calif.), Ed Markey (D-Mass.), Howard Berman (D-Calif.), Raúl Grijalva (D-Ariz.), Rush Holt (D-N.J.), Jim Costa (D-Calif.), Donna Christensen (D-V.I.), Pete Stark (D-Calif.), Dale Kildee (D-Mich.), Maurice Hinchey (D-N.Y.), Earl Blumenauer (D-Ore.), Patrick Kennedy (D-R.I.), Ron Kind (D-Wis.), Lois Capps (D-Calif.), Adam Schiff (D-Calif.), Mike Honda (D-Calif.), John Salazar (D-Colo.), Anna Eshoo (D-Calif.), Niki Tsongas (D-Mass.), and Gerry Connolly (D-Va.)

Litigation against Bush oil shale program expands

Environmentalists now have three separate lawsuits in the works against BLM regulations that establish ground rules for commercial development of oil shale in the Rockies.

A fortnight ago 13 local and national environmental groups brought a National Environmental Policy Act (NEPA) lawsuits against the regulations. At the same time the groups filed a separate lawsuit that said the Interior Department violated the Federal Land Policy and Management Act of 1976 (FLPMA) by not allowing public comment and state review of the final rules.

Those two suits follow up on the promise of a third lawsuit that will allege the commercial development rules violate the Endangered Species Act. Nine environmental groups notified the Interior Department January 6 the rule didn't adequately evaluate the impacts of oil shale development on threatened and endangered species. The groups promised a lawsuit.

The litigation raises the possibility that Secretary of Interior Ken Salazar will attempt to settle the suits with agreements to redo the regulations and plans sometime in the far future, effectively postponing them. The Bush administration used that tactic to settle timber industry lawsuits in the Pacific Northwest in favor of industry.

Asked at a press conference January 28 if he favored a new moratorium on commercial oil shale development, Salazar said he has questions about the impact of development on water resources, on energy and the efficacy of technology. "Until

those very fundamental questions are answered," he said, "it makes no sense to move forward with a commercial oil shale development program."

At issue is the pace and size of the development of vast reserves of oil shale 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.

BLM issued the final commercial development oil shale regulations Nov. 18, 2008, in time for the rules to go into effect January 17 before the Obama administration took over January 20. Separately, BLM published 12 management plans and a final oil shale programmatic EIS Sept. 6, 2008, that amend existing resource management plans in the Rockies (three in Colorado, six in Utah and three in Wyoming.)

In addition, the week before the Bush administration left office it modified significantly an ongoing research and development (R&D) program. BLM on January 15 asked for a second round of nominations for R&D leases. The new round of leases would be for 640 acres rather than the 160 acres for six existing R&D leases.

On January 16 BLM issued addendums to the six old R&D leases to establish procedures for commercial development under the Nov. 18, 2008, regulations. The R&D leases are for 10 years with a possible five-year extension. And the law allows the R&D leases to be converted to 20-year commercial leases of 4,960 acres, as BLM says, "once commercial production levels have been achieved and all requirements have been met."

Here's what the three oil shale lawsuits are up to:

* **COMMERCIAL REGULATIONS:** The suit, filed by the environmentalist law firm Earthjustice on behalf of the 13 groups, says BLM's regulations of Nov. 18, 2008, didn't adequately consider the environmental implications of development, in part because BLM won't know what those impacts will be until the R&D program is further along. This of course is exactly the argument Salazar made at the press conference. The suit was filed in U.S. District Court in Colorado.

* **MANAGEMENT PLANS:** The suit, filed by Earthjustice on behalf of the same 13 groups, says BLM's 12 resource management plans of September 6 should have been signed by a bureau official to allow for public comment and state review. The plans were signed by then Assistant Secretary of Interior for Land and Minerals C. Stephen Allred. The suit was filed in U.S. District Court in Colorado.

* **ENDANGERED SPECIES ACT:** Nine environmental groups led by the Center for Biological Diversity January 6 notified the department they would file a lawsuit if BLM didn't revise its endangered species documentation in the final regulations.

Idaho roadless rule in court; Risch blasts plaintiffs

Five environmental groups filed a lawsuit January 16 against a Forest Service roadless rule for the State of Idaho that went into effect Oct. 16, 2008.

The groups object most particularly to the allocation of 406,000 acres to general use. They would prefer the 406,000 acres be protected by a 2001 Clinton administration roadless area rule that would bar road construction in 58.5 million acres of roadless national forest. In fact the groups say the entire 9.3 million acres of roadless forest in Idaho should be governed by the Clinton rule.

The groups said the Idaho rule failed to consider adequately possible adverse impacts on the land.

Sen. Jim Risch (R-Idaho), who as then-governor of Idaho submitted the final

petition for the rule, sharply criticized the plaintiffs because the rule was prepared through extensive collaboration with all interests.

"This litigation is a slap in the face of all Idahoans who participated in the resolution of this long and on-going dispute," he said. "It also discourages future attempts to resolve environmental conflicts by the collaborative and compromise method that has proven successful and in the best interest of all parties."

Risch received backing from the only Democrat in the Idaho Congressional delegation, Rep. Walt Minnick. "Sen. Risch's carefully crafted roadless plan is yet another fine example of what can be done when leaders bring people to the table in an effort to find common ground, and I hope (the lawsuit) does not hamper future collaboration. . .," he said.

Environmentalists were divided on the rule. The Idaho Conservation League supported it but a number of other groups objected. But other groups filed the lawsuit, including The Wilderness Society, Greater Yellowstone Coalition, Natural Resources Defense Council, Sierra Club and The Lands Council. The litigants are represented by the Earthjustice law firm.

The Idaho rule, effective on publication October 16, allocates 1.5 million acres to wild land recreation (Risch's petition called for 1.4 million acres), 1.7 million acres to primitive use (the same as the petition), 5.3 million acres to backcountry (the petition called for 5.5 million acres) and 610,000 acres to general forest use (the petition called for a half-million acres.)

The plaintiffs allege the Idaho rule violates the Endangered Species Act by not substantiating Fish and Wildlife Service assertions that the rule won't jeopardize the mountain caribou and grizzly bear. They also argue that the rule violates forest plans by allowing road construction in areas that forest plans formerly forbid such construction and violate the National Environmental Policy Act by not evaluating the site-specific impacts of phosphate mining.

The states of Idaho and Colorado both petitioned the Department of Agriculture for roadless forest regulations tailored to their governor's recommendations.

The Colorado situation is still in limbo. On December 5 at the request of the state, the Department of Agriculture agreed to an additional 60-to-90 day review of a proposed rule. The state has expressed concerns about possible exceptions in the rule that could lead to oil and gas lease development.

That puts the ball in the court of the Obama administration in general and Secretary of Agriculture Gov. Thomas J. Vilsack in particular. Environmentalists are urging the Obama administration to reinstate the 2001 Clinton rule that bars most road construction and timber harvests on 58.5 million acres of national forests.

But the Colorado situation is complicated because U.S. District Court Judge Clarence Brimmer in August ruled the Clinton rule illegal.

Democrats begin trying to roll back Bush ESA rules

The Obama administration and House Democrats are trying to halt the implementation of two Bush administration Endangered Species Act (ESA) initiatives.

On inauguration day January 20 White House Chief of Staff Rohm Emanuel froze all regulations that had not yet gone into effect. The order effectively halted a rule to relist the northern Rocky Mountain gray wolf under the ESA. The rule was scheduled to go into effect in mid-February.

Separately, on January 15 House Natural Resources Committee Chairman Nick Joe Rahall (D-W.Va.) introduced an unusual resolution (HJ Res 18) that would disapprove a Dec. 11, 2008, regulation that eased ESA interagency consultation rules.

The actions are the first of many expected from the Obama administration and Congress to revise ESA. Congressional Democrats charged repeatedly over the last eight years that the Bush administration had politicized implementation of the law at the expense of good science. The Interior Department Inspector General agreed.

A sometime arbiter of the war between the Bush administration and the environmentalists - the Government Accountability Office (GAO) - weighed in January 21 with a new letter to Congress describing FWS's record over the last 10 years in implementing the law. And the record of FWS's sister agency the National marines and Fisheries Service (NMFS.)

The letter, prepared for Rahall and other House Democrats, is not cut-and-dried. For instance, it gives agencies high marks for cooperating with each other, but low marks for spelling out when and how critical habitat should be identified.

On the upside GAO said, "In addition, FWS, NMFS, and some federal agencies they consult with on federal actions have continued to work together to improve efficiencies in the consultation process by adding guidance, expanding training and disseminating information about the process."

On the downside GAO said, "FWS has yet to clarify the role of critical habitat and how and when it should be designated, as we recommended in 2002 and 2003." GAO said FWS now believes it will not complete clarification regulations until this spring "or later." Of course the Obama administration may have something to say about that.

The report, *Endangered Species Act: Many GAO Recommendations Have Been Implemented, but Some Issues Remain Unresolved*, GAO-09-225R, is available at <http://www.gao.gov/cgi-bin/getrpt?GAO-09-225R>.

The wolf rule. On January 14 former Deputy Secretary of the Interior Lynn Scarlett announced that FWS was delisting the Northern Rockies population of gray wolves under the ESA. However, the rule would not go into effect until mid-February, giving Emanuel an opportunity to block it with his sweeping edict against Bush administration rules.

FWS first delisted the Northern Rockies wolves in February 27, 2008. But environmentalists immediately filed a lawsuit and U.S. District Court Judge Donald W. Molloy in Montana put the wolves back on the endangered species list. Among other things Molloy said FWS failed to ensure that subpopulations would interbreed.

FWS and the Interior Department counter that more than 1,500 wolves roam the Northern Rockies and at least 100 breeding pairs are alive in Idaho, Montana and Wyoming. Environmentalists contend 2,500 to 5,000 wolves are needed in the Northern Rockies to establish a thriving population.

Section 7 interagency consultation. On Dec. 11, 2008, FWS and NMFS issued a new rule that grants land management agencies discretion to consult with FWS and NMFS on the impact of projects on imperiled species.

The law firm Earthjustice quickly filed suit against the rule, charging the ESA does not authorize land managers to decide on their own whether to consult with FWS and NMFS. The suit was filed in the U.S. District Court for the Northern District of California.

The Bush administration Interior Department insisted that the rule simply clarifies existing law and that it does not weaken the act's Section 7 consultation requirement.

Rahall and 12 other Democrats disagreed, introducing a joint resolution January 15 that would effectively remove the rule. Rahall introduced HJ Res 18 under the 1996 Congressional Review Act. That law allows Congress to essentially kill regulations, if both the House and Senate approve it within 60 days.

Grijalva bill would lock in Grand Canyon withdrawals

Rep. Raúl M Grijalva (Ariz.) on January 22 moved to bar permanently uranium mining on 1 million acres of public lands adjacent to Grand Canyon National Park.

He introduced legislation (HR 644) that would withdraw from all kinds of mineral entry land near Grand Canyon where the uranium industry has staked claims. The Forest Service had authorized some exploratory drilling in the Kaibab National Forest near the park until a court enjoined the agency.

The Bush administration rejected a previous attempt by Grijalva to block mining in the short term via a withdrawal order from the House Natural Resources Committee. On Dec. 5, 2008, BLM effectively said the House committee order was illegal and ignored it.

Grijalva obviously hopes to have better luck this year from the Obama administration and Secretary of Interior Ken Salazar. "I look forward to working with the Obama Administration and Secretary of the Interior Salazar and hope to convince them to utilize their authority to temporarily protect the canyon due to the emergency circumstances existing now," said Grijalva, who chairs the House subcommittee on National Parks, Forests and Public Lands, on introducing HR 644.

Environmentalists have a related lawsuit working against the Interior Department for not implementing the 2008 House committee order to temporarily withdraw the forest land from mining. They may amend that lawsuit to include the Dec. 5, 2008, BLM rule that says the law is illegal.

"We do believe the BLM regulation is illegal, and are considering all options to help protect the Grand Canyon and surrounding resources from further uranium development," said Mark Fink, senior attorney for the public lands for the Center for Biological Diversity.

The mining industry is not sitting idly by. On January 16 U.S. District Court Judge Neil V. Wake in Arizona granted intervenor status in the case to Quatterra Alaska, Inc.; the Northwest Mining Association; and Uranium One U.S.A. Inc.

In dispute is an emergency withdrawal provision, Section 204(e), of the Federal Land Policy and Management Act of 1976 (FLPMA.) It purports to authorize either the House Natural Resources Committee or the Senate Energy Committee to authorize emergency withdrawals for up to three years.

Both the Bush administration and the House Natural Resources Committee majority base their competing arguments about the legality of Section 204(e) on a Supreme Court decision, *INS v. Chadha*, 51 U.S.L.W. 4907 (June 23, 1983.) In it the court cast doubt whether one House of Congress can direct a federal agency to act without the other house agreeing, i.e. a unicameral decision instead of a bicameral decision. The Republicans say the Supreme Court direction is absolute.

But a House Natural Resources Committee analysis earlier this year said that

case demonstrates that the courts would uphold the withdrawal authority if Congress acted as a landowner. The analysis did warn that a withdrawal as an "exercise of power" by Congress would probably violate *Chadha*.

Grijalva's bill to permanently withdraw the land is brief. It directs the Interior Department to withdraw 1,068,908 acres near Grand Canyon from (1) all entry under general public land laws, (2) from hard rock mining and (3) from energy leasing. The law would protect valid existing rights.

Congress is sorting out committee leadership posts

The House and Senate have begun identifying majority and minority members of most committees, including subcommittee chairmen and ranking Republicans.

The most important public lands changes involve Alaskans in both the House and Senate. In the House Natural Resources Committee long-time ranking Republican and former chairman Don Young (R-Alaska) has been deposed by his own party and replaced by Rep. Richard "Doc" Hastings (R-Wash.) Young will still sit on the committee.

In the Senate Energy Committee long-time ranking Republican and former chairman Sen. Pete Domenici (R-N.M.) retired and was replaced by Sen. Lisa Murkowski (R-Alaska.) Murkowski in turn is the daughter of former committee chairman Frank Murkowski.

HOUSE NATURAL RESOURCES COMMITTEE: Committee Chairman Nick Joe Rahall (D-W.Va.) laid out an agenda for this year that calls for tough hard rock mining law reform, greater diligence in developing oil and gas leases, withdrawal of uranium leases near Grand Canyon National Park, and an aggressive implementation of the Endangered Species Act. His top allies in committee will be House subcommittee on National Parks, Forests and Public Lands Chairman Raúl Grijalva (D-N.M.) and House subcommittee on Energy and Mineral Resources Chairman Jim Costa (D-Calif.)

HOUSE APPROPRIATIONS COMMITTEE: As chairman of the House subcommittee on Interior and Related Agencies Rep. Norman Dicks (R-Wash.) returns as the leading public lands voice on the committee. Of note of the eight Democrats on the subcommittee only Dicks and Rep. Ed Pastor (Ariz.) are from the West.

Rep. Mike Simpson (R-Idaho), a forceful voice for the conservative West, will serve as ranking minority members on the Interior appropriations subcommittee. He replaces Rep. Todd Tiahrt (R-Neb.)

HOUSE ENERGY AND COMMERCE: (Included here because committee will have jurisdiction over giant climate control legislation that could have major impacts on public land policy.) Rep. Henry Waxman (D-Calif.) will be in charge of writing climate control legislation. Rep. Joe Barton (R-Texas) returns as ranking minority member.

SENATE ENERGY COMMITTEE: Sen. Jeff Bingaman (D-N.M.) keeps the committee under New Mexico chairmanship. Rep. Ron Wyden (D-Ore.) is expected to chair the Senate subcommittee on Public Lands and Forests.

Murkowski will serve as the ranking Republican on the committee. Ranking subcommittee members have not been assigned yet. Of note the committee picks up Sens. John McCain (R-Ariz.), Bob Bennett (R-Utah), James Risch (R-Idaho) and Sam Brownback (R-Kansas) to replace departing Sens. Pete Domenici (R-N.M.), Larry Craig (R-Idaho) and Gordon Smith (R-Ore.)

SENATE APPROPRIATIONS COMMITTEE: Sen. Dianne Feinstein (D-Calif.) is expected

to chair the Senate subcommittee on Interior Appropriations once again.

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE: Sen. Barbara Boxer (D-Calif.) will chair this panel that will be in charge of Endangered Species Act legislation as well as climate control legislation.

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: Grazing allotments.

DoI decision: BLM will approve grazing allotments after preparing an environmental assessment.

IBLA administrative judge: Affirmed BLM decision.

Appellant: The grazing decision would allow damage to historic properties and cultural resources.

IBLA decision: Reversed hearing judge and BLM on cultural resources issue.

Case identification: *Escalante Wilderness Project, et al. v. BLM*, 176 IBLA 300, January 14, 2008. Eighteen pages.

Appeal from a decision issued by Administrative Law Judge James H. Heffernan upholding on appeal a Finding of No Significant Impact and Final Decision by the Field Manager of the Kanab Field Office of BLM, to issue 10-year grazing permits. UT-110-03-01; UT-110-03-03.

IBLA argument: IBLA Chief Administrative Judge H. Barry Holt reversed an administrative law judge opinion and a BLM decision approving four grazing allotments in Utah, as those decisions pertained to cultural resources. Holt upheld the rest of the opinion and decision, as those decisions involved other environmental impacts. As to cultural resources Holt faulted BLM's assertion that grazing would have no impact. He said BLM relied on 1983 data prepared for a coal lease that the author warned was weak. Holt also said BLM described historic properties in the area as "lithic scatters," when there were in fact 37 temporary camps, an historic habitation, an historic Navajo sweat lodge and a prehistoric village in the area. Holt concluded by criticizing BLM's archaeological expert for "his failure to field check any of the data in light of its clear limitations." Holt said the expert's analyses "show that his opinion was not supported by the evidence and not credible."

Subject: Combined hydrocarbon leases (HCLs.)

DoI decision: BLM said IBLA should reconsider a decision directing negotiations to settle HCL dispute.

Appellants: IBLA should allow participation in case by applicant to convert HCLs to oil and gas leases.

IBLA decision: Agreed to reconsider, but gave applicant mixed signals on participation.

Case identification: *UOS Energy, LLC*, 176 IBLA 286. January 9, 2009. Fourteen pages. Appeals from decisions of the Utah State Office of BLM, which vacated prior decisions; vacated prior successor-in-interest notices; granted suspensions; determined rentals due; and required additional information. UTU-60566 through UTU-60570 and UTU-67827.

IBLA argument: IBLA Administrative Judge T. Britt Price in this decision responded to a BLM request for reconsideration of a previous board decision involving rights to HCL leases and applications dealing with those leases. Price issued a mixed decision in favor of the appellant in some instances and in favor of major energy companies that are involved with the litigation in other instances. Briefly, appellant UOS Energy, LLC, was the successor to Enercor, which submitted applications to convert CHLs to oil and gas leases. UOS acted on behalf of the predecessors to ExxonMobil, Questar Exploration & Production Company and Pioneer Natural Resources USA, Inc. UOS and the three energy companies are in a catfight now over who has rights to leases, who should pay rental on leases, etc.

Notes

Jim Range, leading sportsman, dies. James D. Range, who helped forge a national alliance of hunters, fishermen and other sportsmen that fiercely contested the Bush administration's western oil and gas leasing program, has died. Range was 63. Although Range and his allies criticized Bush administration plans, Range maintained a friendship with Bush. A memorial service was held January 27 on the banks of the Potomac River outside Washington, D.C. Range, an attorney by trade and a character by instinct, was a founding father of the Theodore Roosevelt Conservation Partnership (TRCP.) It melded hook and bullet groups with more protectionist conservationists. TRCP under Range forged a kind of third way between advocates of consumptive uses of the nation's lands and advocates of blanket protectionism. TRCP filed a blizzard of protests and lawsuits against proposed Bush administration decisions to authorize oil and gas development in the Rockies, particularly in Wyoming. In his day job Range was a senior policy advisor with the firm Baker, Donelson, Bearman, Caldwell and Berkowitz.

TRCP, enviros seek Wyoming O&G plans review. Before BLM offers more oil and gas leases for sale in sensitive areas of Wyoming sportsmen and environmentalists want the bureau to revise resource management plans. Most immediately an alliance of sportsmen called the Theodore Roosevelt Conservation Partnership (TRCP) asked BLM

January 20 to postpone much of an upcoming February 3 Wyoming oil and gas lease sale until the plans are updated. TRCP said BLM is currently revising some of the plans and the bureau should analyze the latest scientific information before holding sales. "The need to finalize management plans prior to allowing drilling for oil and gas should be obvious," said Dwayne Meadows, a TRCP field representative in Wyoming. BLM says it will offer 173,000 acres for sale; TRCP has protested 88,000 acres because of alleged conflicts with big game and sage-grouse habitat. In a separate action environmentalists January 22 asked a federal appeals court to force BLM to consider phased leasing of areas with coal bed methane (CBM) potential in the Powder River Basin. The environmentalists, including the Powder River Basin Resource Council and the Wyoming Outdoor Council, lost a Nov. 26, 2008, decision from U.S. District Court Judge Alan Johnson. He upheld BLM's EIS that backs up CBM leasing in the basin. The environmentalists argue that a federal judge in Montana in 2005 ordered the Montana BLM to consider phased development in the Montana portion of the Powder River Basin, so the State of Wyoming should follow suit.

EPA cracking down on haze. EPA January 14 issued a "finding of failure" that may prod 37 states to develop plans to reduce haze over wilderness areas and national parks. Under the Clean Air Act the states were required to submit haze plans to EPA by Dec. 17, 2007. The EPA finding starts a two-year clock: If states don't develop a plan in that time, EPA will step in and write a Federal Implementation Plan. In October environmental groups filed a lawsuit in the U.S. District Court for the District of Columbia that charged only 14 states have submitted their plans. The lawsuit asked the court to order EPA to comply with the Clean Air Act haze provisions within 60 days. EPA then issued the finding of failure against 37 states, the District of Columbia and the U.S. Virgin Islands. In the Clean Air Act Amendments of 1977 Congress directed EPA to eliminate haze over national parks larger than 6,000 acres, wilderness areas larger than 5,000 acres, national memorial parks larger than 5,000 acres and international parks. Western states in November said they are taking steps to reduce haze over Class I areas. The Western Regional Air Partnership said four public lands states have submitted plans to EPA - Arizona, New Mexico, Utah and Wyoming.

Early action possible on climate change. Rep. Henry Waxman (D-Calif.) says he will attempt to move climate change legislation through the House Energy Committee he chairs by the end of May. If the legislation follows prototype bills from last year, it will authorize the sale of pollution allowances, with some of the revenue allocated to conservation programs on the public lands. A lead Senate bill last year would have provided billions of dollars to such programs, including full funding for the Land and Water Conservation Fund. Although Waxman didn't say what kind of legislation he will promote, at an initial committee hearing January 15 he hosted the United States Climate Action Partnership (USCAP), an alliance of major corporations and environmental groups. And USCAP endorses climate change legislation that would produce many billions of dollars by selling pollution allowances. At the hearing Waxman said, "My goal is to pass comprehensive climate and energy legislation in the Committee before the Memorial Day recess. That is an ambitious schedule, but it is an achievable one. We cannot afford another year of delay." Sen. Barbara Boxer (D-Calif.), the chairman of the counterpart Senate Environment and Public Works Committee, promised to move quickly too. "I will complete a set of principles for my new legislation the coming weeks," she said. "With the addition of Chairman Waxman's announcement and a new proposal from America's business and environmental leaders in the U.S. Climate Action Partnership, the writing is on the wall that legislation to combat global warming is coming soon." There is one huge obstacle facing conservation spending from climate change legislation - the economy. Obama and Congress may worry that a new fee on pollutants would have a depressive effect on the economy, although Waxman argues that an aggressive climate change law would actually stimulate the economy.

Secure Schools pays out \$477 million. The Forest Service said this month it

is distributing \$477 million to counties around the country under a new Secure Rural Schools law. The service will distribute an additional \$52 million to local advisory committees for work on infrastructure, watersheds and related projects. The money is being distributed as a fiscal year 2008 allocation even though we are now in fiscal 2009. The service says fiscal 2009 money won't be allocated until after the fiscal year ends, with payments likely in December 2009 and January 2010. The Secure Rural Schools law (PL 110-343 of Oct. 3, 2008) reauthorized the program for fiscal years 2008, 2009, 2010 and 2011 after a long, difficult political battle.

Renewable energy offices ordered. In one of his last actions as Secretary of Interior, Dirk Kempthorne directed BLM to establish Renewable Energy Coordination Offices in four western states. The offices will be staffed not only by BLM officials but also by representatives of other agencies such as the Fish and Wildlife Service. The offices will be charged with processing quickly development permits. The offices in Arizona, California, Nevada and Wyoming are designed to help BLM meet a Congressional goal of 10,000 megawatts of renewable energy power from the public lands by 2015. The projects will process applications for geothermal, solar, wind and biomass development. And they will help process applications for electrical transmission facilities.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations Interim 2009		
HR 2638 (Price)	President Bush signed into law September 30 as PL 110-329.	Interim spending law extends fiscal 2008 appropriations levels until March 6.
Appropriations Stimulus		
HR 1 (Obey)	House approved January 28.	Would allocate some \$4 billion to
S 336 (Inouye)	Senate Appropriations Committee Approved January 27.	federal land management agencies to help revive the economy.
Omnibus Bill		
S 22 (Bingaman)	Senate approved January 15.	Includes 160+ individual bills, including NLCS, new national parks.
National Landscape Conservation System		
HR 404 (Grijalva)	Grijalva introduced Jan. 9.	Would give NLCS official designation
S 22 (previous item)	Included in omnibus (above.)	by Congress.
Hard rock mining		
HR 699 (Rahall)	Rahall introduced Jan. 27.	Would provide modest increases for most
S 140 (Feinstein)	Feinstein introduced Jan. 6.	park and rec programs.
Grand Canyon withdrawal		
HR 644 (Grijalva)	Grijalva introduced Jan. 22.	Would withdraw permanently from uranium
	.	mining 1 million acres near Grand Canyon.
Appropriations 2009		
No bill number yet.	House subcommittee approved June 11.	Feinstein would establish a gross royalty. Rahall would also rewrite much of the 1872 Mining Law.
Congressional Budget 2009		
H Con Res 312 (Spratt)	House gave final okay June 5.	Would increase natural resources spending
S Con Res 70 (Conrad)	Senate gave final okay June 4.	but mostly for Hurricane Katrina.
ANWR Development		
HR 49 (Young)	Young introduced January 6.	Would authorize oil and gas development in the 1.4 million-acre coastal plain of ANWR.
ANWR Wilderness		
HR 39 (Markey)	Markey introduced January 6.	Would designate 1.4 million-acre coastal
	Lieberman introduced January 14.	as wilderness.