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ANWR but one cog in big new House committee energy bill

The House Resources Committee September 26 approved elements of a second energy bill that go well beyond the comprehensive energy bill enacted last month.

Not only would the new measure authorize oil and gas leasing in the coastal plain of the Arctic National Wildlife Refuge, it would also make major revisions to the day-to-day management of onshore public lands. Among other things it would:

- * bar legal appeals of BLM leasing decisions, including protests to the bureau, appeals to the Interior Board of Land Appeals (IBLA) and lawsuits;
- * allow oil and gas leasing under old land use plans;
- * require BLM and the Forest Service to waive timing limits on oil and gas

operations whenever there is an energy supply disruption in the country and;
* establish royalty rates for commercial oil shale production.

House Resources Committee Chairman Richard Pombo (R-Calif.), clearly emboldened by high gas prices spawned in part by Hurricanes Katrina and Rita, intends to provide more production incentives on the public lands. "This month Mother Nature proved just how vulnerable America is to supply disruptions," he said. "While the Energy Policy Act of 2005 was a good first step in solving our energy problems, we must do more to increase and to diversify domestic supplies."

The committee approved the recommendations by a vote of 27-to 16 as a stand-alone bill (no number at press time.) However, the measure may be combined with other energy legislation from the House Energy Committee that deals with siting refineries and other issues. The legislation could go to the House floor as early as next week, a House Republican staff member said.

This second energy bill would supplement a first energy bill that President Bush signed last month (PL 109-58 of August 8). While that Energy Policy Act authorized numerous initiatives to encourage energy development on public lands, such as direction to BLM to begin a commercial oil shale program, not everything that Pombo and company wanted got through. Said a committee staff member, "Mr. Pombo said when Congress approved (the first energy bill) that this is a good first step, but more needs to be done, particularly on the supply side."

On the other side of the Hill, Senate Energy Committee Chairman Pete Domenici (R-N.M.) is also considering new energy legislation to supplement the National Energy Policy Act, but he is not yet looking at public lands development provisions, said an aide to the senator. At this point he is considering such things as encouraging the construction of refineries and establishing new gas mileage standards for cars, a Domenici staff member said this week.

The new House Resources Committee energy bill is separate from, but related to, budget reconciliation recommendations the Pombo committee is expected to make next month. That reconciliation bill is also expected to include authority to lease for oil and gas in ANWR. Senate Energy Committee Chairman Pete Domenici (R-N.M.) is sticking to his plan to write a budget reconciliation bill in late October, a Domenici aide said September 27. That reconciliation bill will probably just authorize oil and gas leasing in the coastal plain of ANWR.

Industry officials support new incentives for energy production on public lands. Said John B. Walker, chairman of the Independent Petroleum Association of America and president/CEO of EnerVest Management Partners, "The government should encourage - not discourage - new oil and natural gas exploration and production. One way to do this is by allowing access to non-park, non-wilderness federal lands where a majority of the nation's natural gas resources can be found."

But Dave Alberswerth, public lands staff member for The Wilderness Society, said the House committee bill goes too far. "This absurd new bill won't do anything for the people who need help right now," he said. "It would only ensure more damage to our public lands and that local citizens and governments couldn't do a thing about it."

Here are a few provisions in the energy bill the committee considered September 28 (the entire measure is available at <http://www.house.gov/resources>.)

LIMIT ON LEGAL ACTION: Section 615. It says simply that any leasing decision covered by a land use plan "shall be considered final and not subject to further administrative or judicial review."

NEPA LIMITS ON LEASES: Section 617. It would exempt from National

Environmental Policy Act (NEPA) review approval of oil, gas or geothermal leases that are covered by a land use plan and by previous environmental document.

EMERGENCY BAR ON DELAYS: Section 614. It would forbid limits on the timing of construction and drilling operations in the event of a significant energy supply disruption.

OIL AND SHALE ROYALTIES: Section 618. It would authorize a range of royalties of between one and three percent on oil shale production in the first 10 years of a lease and between six and nine percent subsequently. (See related article page 7.)

Pombo ESA bill garners big panel vote; recovery emphasis

Although the House was expected to approve September 29 after press time sweeping legislation to revise the Endangered Species Act (ESA), the bill is not guaranteed enactment in this Congress.

The big obstacle lies ahead in the Senate where supporters of the legislation will have to marshal 60 votes to overcome objections of Democrats, and, perhaps, moderate Republicans.

But for now House Resources Committee Chairman Richard Pombo (R-Calif.) has pulled off a significant achievement in moving the bill (HR 3824) to the House floor. The measure was approved by a big 26-to-12 margin September 22 in committee. It is vociferously opposed by most conservation and environmental groups.

Provisions in HR 3824 with major public land applications would (1) eliminate critical habitat designations and substitute recovery plans, (2) ease Section 7 interagency consultation requirements for federal land managers, and (3) require applicants for listing to insure imperiled species meet specific scientific standards (complete with peer review.)

A coalition of Democrats and moderate Republicans at press time was putting together a competing bill for consideration on the House floor. Led by Rep. George Miller (D-Calif.), the coalition has prepared a bill that would also eliminate critical habitat designations but that would insure recovery plans would protect critical habitat. The coalition said its measure would also "ensure that decisions are based on science."

Pombo said his legislation is needed because the ESA now concentrates too much on designating critical habitat and not enough on insuring that species recover. "According to the U.S. Fish and Wildlife Service (FWS), only ten of the roughly 1,300 species on the ESA's list have recovered in the act's history," said Pombo. "That is a less than one percent success rate. And the service's data on our species' progress toward recovery today isn't much better."

But Jamie Rappaport Clark, former FWS director and now executive vice

Transition to an electronic Public Lands News

This is a reminder. At the end of the year we will convert *Public Lands News* to an electronic-only publication. We will eliminate the paper version. By a separate letter we have requested your E-mail address. On receipt of your E-mail address we will assign you a user name and password to provide access to our website, <http://www.publiclandsnews.com>.

We believe the move to all-electronic will provide you with expanded coverage of public lands policy. In addition to the regular *Public Lands News* 24 times a year, we will provide you with 10 or more E-mail bulletins per year and access to our beefed-up, secure website.

The Editors

president of Defenders of Wildlife, said the existing law works. "The Endangered Species Act has been extraordinarily successful at preventing the extinction of our nation's precious wildlife," she said. "Since 1973, only nine out of the 1,800 animals protected by the Act have been declared extinct. Rep. Pombo's legislation would put an end to that astonishing record of success and undermine any hope of protecting endangered plants and animals in the future."

HR 3824 will be costly to implement because it would not only establish a major new program to compensate private landowners for restrictions on their use of land but also create a new grant program. However, the measure neither identifies spending amounts nor guarantees funding outside the appropriations process. It simply authorizes amounts of money that may be needed from fiscal years 2006 through 2010, leaving the hard calls to appropriators.

Here are some important provisions in HR 3824, compared to existing law:

CRITICAL HABITAT EXISTING: FWS and the National Marine Fisheries Service (NMFS) designate critical habitat on listing, although in practice the agencies don't have the money to do the listings. Nonetheless, federal courts have ordered the agencies to designate critical habitat. **HR 3824 RECOVERY SUBSTITUTE:** The bill would eliminate habitat designations. Instead, it would require agencies to publish a recovery plan within two years for any new threatened or endangered species and within one year to publish a priority system for writing recovery plans for already-listed species. The recovery plan would identify areas of special value and then give those areas priority protection.

SECTION 7 CONSULTATION EXISTING: Federal land managers must consult with FWS and NMFS on any project that could affect imperiled species. **HR 3824 SUBSTITUTE:** The bill would allow the Secretary of Interior to authorize "alternative procedures."

SCIENTIFIC STANDARDS EXISTING: FWS and NMFS must use the "best available scientific data" to determine if a species should be listed as threatened and endangered. Pombo says the ESA doesn't define precisely best available data. **HR 3824 SUBSTITUTE:** The bill would establish specific criteria that data must comply with. The bill directs the Secretary to write regulations defining the criteria within one year of enactment.

Would draft House bill make sweeping policy changes?

It's all a big misunderstanding, say House Resources Committee Republicans.

A laundry list of possible budget initiatives the committee prepared for the Congressional Budget Office (CBO) last week is not under serious consideration, says the GOP. The draft list became public September 23 and created political havoc. The implication was the committee was about to rewrite much public land policy in one fell swoop.

But the committee says it has no intention of taking such giant steps as ending a hard rock mining patent moratorium, selling National Park Service units, diverting southern Nevada land sale money, and selling off checkerboard lands in the West. Those are just some of the items on the laundry list.

"At the moment we're not trying to do anything," a committee staff member said. "We have to come up with \$2.4 billion (for the budget) and we made a laundry list of possible ideas for savings." In fact the \$2.4 billion will most likely come from one provision - authority to lease for oil and gas in the coastal plain of the Arctic National Wildlife Refuge (ANWR). All told the list, if enacted, would produce \$10.12 billion, the staff member said.

If the ANWR provision was the likely source of the \$2.4 billion, why then did

the committee submit 285 pages of recommendations to CBO? Just for planning purposes, said the committee staff member. "I'm sure the Department of Defense has contingency plans to invade Mexico and Canada," said the staff member. "That doesn't mean we're going to invade."

Asked specifically why, if the committee wasn't interested, it included on its list a proposal to shift revenues from the Southern Nevada Public Land Management Act (SNPLMA) away from conservation projects in Nevada to federal debt payment. The staff member repeated that the provision was not a serious one. "The chairman has said SNPLMA is a non-starter," the staff member said. "He committed to Mr. Gibbons that SNPLMA was a non-starter." The chairman is House Resources Committee Chairman Richard Pombo (R-Calif.) and Gibbons is Rep. James Gibbons (R-Nev.)

The committee laundry list infuriated environmentalists. Said Sierra Club Executive Director Carl Pope, "One day after Pombo's (R-Calif.) bill to raze the Endangered Species Act passed out of committee, Pombo released a draft bill to sell off America's national parks and open the Arctic National Wildlife Refuge and America's coasts to dangerous drilling." The measure would also expand offshore oil and gas drilling.

The Congressional Budget Office apologized to Pombo September 23 for accidentally releasing the 285-page document. The office of CBO Director Douglas Holtz-Eakin said, "CBO inadvertently disclosed draft legislative language that was developed to enable us to prepare cost estimates and that might have been misconstrued to be the committee's reconciliation proposal."

Meanwhile, in a separate but closely-related action the committee marked up a new energy bill September 26 that also includes authority to lease in ANWR. (See *page one article*.) Although the budget reconciliation process and the September 26 energy bill are complimentary, they will be moved for now in separate legislation. The energy bill is designed just to produce more energy for the country, in part because of the damage wreaked by Hurricanes Katrina and Rita.

The draft list of possible House initiatives is circulating several weeks before committees actually sit down to vote on reconciliation packages. Although the budget originally called for committee recommendations to be submitted this week, Katrina has delayed that schedule into late next month.

Sen. Larry Craig (R-Idaho) put in a pitch for ANWR development as a step toward reducing gas prices immediately after Katrina. "Increasing domestic supplies, such as drilling in ANWR, must be a part of the equation," he said. "Congress has a responsibility to take a hard look to find what can be done in the long and short term to bring relief to American families who are feeling the pinch."

Here are some details in the Pombo submission to CBO:

* **HARD ROCK MINING:** The draft would eliminate a Congressional ban on the patenting of hard rock mining claims. That ban, designed to block the sale of public land for as little as \$2.50 per acre, has been around for a decade. The draft would go beyond a simple removal of the patenting ban by also allowing patent applicants to purchase claims for \$1,000 per acre.

* **CHECKERBOARD SALES:** The draft would authorize two kinds of sales of 640-acre tracts of checkerboard national forest. First, it would authorize the sale of public domain tracts in the West. Second, it would extend existing Townsite Act authority. Under existing law communities in the West (11 contiguous states and Alaska) may acquire 640-acre tracts. The draft bill would extend that authority to all states.

* **SNPLMA:** The draft would redistribute revenues from land sales around Las Vegas from 85 percent federal (with all money being used for conservation purposes

on federal lands in Nevada) and 15 percent local to 45 percent state, 40 percent U.S. Treasury and 15 percent federal conservation projects.

* NATIONAL PARK SALES: The draft would authorize the sale of these 15 parks, primarily for energy development: Alibates Flint Quarries National Monument, Texas; Aniakchak National Monument and Preserve, Alaska; Bering Land Bridge National Preserve, Alaska; Cape Krusenstern National Monument, Alaska; Eugene O'Neill National Historic Site, Calif.; Fort Bowie National Historic Site, Ariz.; Frederick Law Olmsted National Historic Site, Mass.; Kobuk Valley National Park, Alaska; Lake Clark National Park, Alaska; Mary McLeod Bethune Council House, Washington, D.C.; Minute Man Missile National Historic Site, S.D.; Noatak National Preserve, Alaska; Thaddeus Kosciuszko National Monument, Pa.; Thomas Stone National Historic Site, Md.; and Yukon-Charley Rivers National Preserve, Alaska.

Utah moves to lock in RS 2477 ROWs after court decision

The State of Utah has launched a program to record and maintain most, if not all, routes in the state it believes are RS 2477 rights-of-way (ROW), a move that may give counties control of the ROWs, now.

The state says its program follows the lead of a landmark decision handed down by the Tenth U.S. Circuit Court of Appeals September 9. The Tenth Circuit said BLM does not have authority to decide if a way constitutes an RS 2477 ROW or not. Only a court does. The court also laid out guidelines for judging the validity of RS 2477 ROWs.

The state said in a September 21 release that the recordation of each way in each county, a process that began "immediately," should make clear that the counties can claim roads across public lands as their own. "While the validity of a few roads may still be at issue, thousands of uncontested and non-controversial roads will be identified in the county records," the state said.

Further, said the state, "The effect of the recording, combined with the maintenance agreement, should put an end to struggles and controversies over the majority of lands in the State of Utah."

Lee Stevens, Utah public lands policy coordinator, told *PLN* that the Tenth Circuit decision, federal law and state law all allow communities to consider routes RS 2477 ROWs now, if the routes had been used for transportation for 10 years before the Federal Land Policy and Management Act of 1976 (FLPMA) was enacted. That law terminated the RS 2477 law and required counties to apply for ROWs from BLM. Moreover, said Stevens, "The RS 2477 law doesn't require any permission, grant or approval of a right-of-way."

But environmentalists said that doesn't jibe with the Tenth Circuit decision. "If the 10th Circuit decision is clear on one thing, counties can't get a right-of-way without going to court," said Ted Zukoski, an attorney with the law firm Earthjustice, which is representing environmental groups in the litigation. "They can't just squiggle lines on a map. And I have no idea what they mean when they talk about secret maintenance agreements with BLM."

The state of Utah release said the state and BLM are negotiating road maintenance agreements with the 29 counties in Utah that the counties believe are RS 2477 ROWs. Said the state, "Additionally, the State of Utah and (BLM) are working on an agreement to be made available to each county regarding how roads across BLM-managed land will be maintained."

The state said it is taking the recordation and maintenance steps to comply with the Tenth Circuit decision. "Because no recorded documents or filing of constructions records were required at the time that roads were created, nor were

they required at the time of passing (FLPMA), the State and counties have decided to put their roads on the record," said the state.

Stevens told us, "The RS 2477 law and Utah law never required roads to be recorded or maintained. Reading the Tenth Circuit decision, it gave us the final incentive to do so. We weren't driven by the decision since we already intended to do that. It just gave us more incentive."

In its September 9 decision the Tenth Circuit, after saying only federal courts have authority to decide if a way constitutes an RS 2477 ROW, laid out guidelines for lower courts to use. It said federal law "governs the interpretation of R.S. 2477," but it added that "state law provides convenient and appropriate principles for effectuating congressional intent."

In describing standards for the lower court the 10th Circuit began with a BLM definition that an RS 2477 must be (1) on public lands, (2) have been constructed physically and (3) been a highway. The court then set qualifications for the last two. The court rejected the notion that an RS 2477 must have been constructed. "Consistent with our conclusion that acceptance of the grant of R.S. 2477 rights of way is governed by long-standing principles of state law and common law, we cannot accept the argument that mechanical construction is necessary to an R.S. 2477 claim," said the panel.

But the circuit court made clear that the burden of proof in court will lie with state and local applicants. Said the appeals court, "The district court correctly ruled that the burden of proof lies on those parties 'seeking to enforce rights-of-way against the federal government.' Under Utah law determining when a highway is deemed to be dedicated to the use of the public, '[t]he presumption is in favor of the property owner; and the burden of establishing public use for the required period of time is on those claiming it.'"

Although the Tenth Circuit said the ultimate arbiter of RS 2477 ROWs will be the courts, Utah's Stevens said RS 2477 ROWs may be designated without first going to court. That is, local governments could designate RS 2477 ROWs right now and would only have to go to court if an environmental group sued. Otherwise, said Stevens, the recordation of an RS 2477 ROW would serve to verify its use.

Environmentalists have not decided if they will appeal the Tenth Circuit decision, said Zukoski of Earthjustice. He said environmentalists were considering the option of filing a request to the 10th Circuit for a rehearing by all members, not just the three judges who handed down the September 9 decision.

R&D oil shale lease requests double the number BLM expected

BLM said this week it received more than twice as many hits as expected to its request for nominations for lease of 160-acre tracts for research and development (R&D) of oil shale.

The bureau received 19 nominations but it expected nine or fewer. The interest may have been aroused by Congressional passage of legislation (PL 109-58 of August 8) that directs BLM to get moving on a commercial oil shale program. The high price of oil didn't hurt.

"It seems interest went up after Congress approved the energy bill," said Nick Douglas, BLM's senior policy advisor on oil shale. "There were a lot of hearings and the process got people thinking about what they were doing. (The companies) are beginning to feel more comfortable with technology."

In a related development the House Resources Committee September 28 approved a

new supplemental energy bill that would establish ranges of possible royalties for leases. For the first 10 years of a lease it would authorize a range of royalties of between one and three percent on oil shale production and after the 10 years a royalty between six and nine percent.

In addition the provision would provide states with up to 80 percent of royalty revenues for 10 years, instead of the 50 percent existing law provides from oil, gas, coal and geothermal royalties. And, of the state money, half would be reallocated to counties.

In the BLM R&D program, technological viability, economic viability and environmental protection now become key issues in evaluating the nominations to determine how many tracts to lease. BLM received ten nominations in Colorado, eight in Utah and one in Wyoming. The Interior Department will put together a team to review nominations that includes representatives from the three states, the Department of Energy, the Department of Defense and, of course, BLM. BLM says the team will begin to review applications in October.

Because the process is just beginning Douglas is not venturing a guess as to how many R&D tracts will be leased. "It will depend on technology and the environmental program," he said.

Of great importance, in addition to the 160-acre R&D tract, each applicant will receive a preference right commercial lease of 4,960 contiguous acres. That preference right won't be exercised until an R&D program proves economically and environmentally viable. At that time the holder of the preference lease must pay fair market value for it.

The R&D leases have a life of 10 years with an option for an additional five years on proof of diligent development. BLM will require bonds and will charge rent of 50 cents per acre.

In the omnibus energy bill Congress directed BLM to get moving on a commercial leasing program now. It told BLM to begin oil shale leasing within two-and-a-half years. It also set guideposts of 18 months for completion of a programmatic EIS and, six months after than, completion of regulations.

Congress made two major changes involving the size of leases. Under the old law one company could only hold one lease of up to 5,120 acres; Congress increased that to 5,760 acres. The old law said a company could hold no more than one 5,120-acre lease in any one state; Congress increased that to 50,000 acres.

BLM says this country has reserves buried in shale equivalent to 2.6 trillion barrels of oil. More than 70 percent of that is on federal land underlying 16,000 square miles.

Douglas offered no estimate as to when companies would begin commercial oil shale development on public lands. "I don't think anyone can answer that today," he said. "That's pure speculation. They are working in lab conditions now. When they roll out of commercial operations comes no one has any idea what will happen."

Administration and Thomas still have AML fee differences

Westerners September 27 resumed their battle with the Bush administration over retention of Abandoned Mine Land (AML) fees collected from coal mining companies.

At a hearing of the Senate Energy Committee Sen. Craig Thomas (R-Wyo.), sponsor of a major bill to extend the program (S 1701), said states and Indian tribes must be guaranteed half of AML funds collected each year. That is a position

the Bush administration does not necessarily agree with. Thomas said at the hearing his bill would insure states and tribes are provided their 50 percent, both from fees paid in the past and from future fees.

"Existing law has always credited one-half of the fee to states and Indian tribes, and one-half to the federal government," Thomas began. "That provision remains in effect today." The Thomas bill would not only retain that 50 percent allocation, it would also begin distribution of a backlog of collected fee money.

Thomas went on, "Under existing law, of the more than \$1.7 billion already collected and held in trust, \$1.1 billion is due States and Indian tribes. Under existing law, my State of Wyoming is owed more than \$450 million." He added, "The bill I introduced two weeks ago begins the process of returning money to the states and Indian tribes. It extends the AML fee for an additional 10 years, ensuring that money continues to flow to this worthwhile program."

In testimony on behalf of the Bush administration Thomas Shope, chief of state of the Office of Surface Mining (OSM), didn't directly disagree with Thomas's recommendation. But he did repeat administration policy that future allocations should go to high priority projects first (mostly in the East, thereby reducing allocations to the West) and should come under budget.

Said Shope, "We believe that shifting the program's focus to historic production, which is directly related to the AML problems that currently exist in so many states, and distributing future fees based on need, offers a national solution for reducing the current, ongoing threats to the health and safety of millions of citizens living, working and recreating in our nation's coalfields."

When asked point blank by Sen. Jeff Bingaman (R-N.M.) if states should retain 50 percent of fees, Shope said the administration last year "did recognize removal of the state share" so that the program could treat "high priority reclamation needs within budget."

The AML program is authorized through June 30, 2006, via a temporary extension. The last Congress wrestled with an extension but was unable to reach agreement with the administration. The Thomas bill would extend the program through 2016. (Rep. Barbara Cubin (R-Wyo.) has introduced a counterpart to the Thomas bill in the House, HR 1600.) Sen. Jay Rockefeller (D-W.Va.) has introduced a competing bill (S 961) that would extend the law through 2019 and would not guarantee western contributor states 50 percent of fees. (Rep. John Peterson has introduced a counterpart to the Rockefeller bill, HR 2271.)

The Thomas bill would gradually reduce fees charged producers for each ton of coal and would collect \$2.8 billion over the next 10 years. The Rockefeller bill would maintain existing fee rates and collect \$4.4 billion.

Agencies trying to identify emergency Katrina money

Federal land management agencies are scrambling to estimate the damage caused by Hurricane Katrina.

As those estimates are refined they will form the basis of Bush administration requests to Congress for emergency supplemental appropriations.

"Some of this will be done strictly on our nickel," said an Interior Department spokesman who is sitting in on damage assessment sessions. "National Park Service and Fish and Wildlife Service employees who are looking after their lands, those costs for deployment are going to be covered eventually by Interior Department funds."

But the Forest Service and Interior Department agencies have also poured more than 1,000 employees into the Gulf from the Interagency Fire Center in Boise, Idaho, on search-and-rescue missions. Interior will attempt to recoup those expenditures from the Federal Emergency Management Agency (FEMA).

All federal land management agencies have seen extensive damage to federal lands. A brief summary:

Park Service: Gulf Islands National Seashore in Mississippi and Florida suffered substantial damage to most structures. Katrina did minimal damage to the headquarters of the Jean Lafitte National Historical Park & Preserve/New Orleans Jazz National Historical Park.

Fish and Wildlife Service (FWS): Katrina caused at least \$90 million in damage to 16 FWS units in south Louisiana. FWS is still adding up the costs more precisely.

Forest Service: Katrina did most damage to non-federal forests, but it also damaged DeSoto National Forest in Mississippi. Altogether, counting public and private land, Katrina downed 19 billion board feet of timber worth \$5 billion.

Thus far Congress has approved two emergency spending bills for Katrina with all the money going to the FEMA Disaster Relief Fund and the Department of Defense. When the next administration emergency request comes along in October, it may include money for agencies with public lands responsibilities. A fourth emergency bill is expected in the coming months.

Some public lands programs in the Interior Department and the Forest Service could be at financial risk because agencies may borrow from those programs to meet immediate needs. "The Interior Department in the past has used emergency transfer authority to shift money from land acquisition and construction to meet emergencies, such as fires and hurricanes," said one appropriations committee staff member. "Some of those costs have been recovered in the past from FEMA."

The Interior Department spokesman said that the department has enough money on hand, for now. "At this point we have enough funds and are not borrowing (from other programs)," he said. "But there will be supplemental requests and OMB (the Office of Management and Budget) has requested numbers for that."

However, *PLN* has obtained a memo from Secretary of Interior Gale Norton directing the department to borrow \$27.2 million from other programs - \$10 million in the Fish and Wildlife Service, \$9.2 million in the National Park Service and \$8 million in the Bureau of Indian Affairs.

But, said Norton in a September 21 letter to Assistant Secretary of Interior for Policy Lynn Scarlett, the department expects to recoup the money. "We are working with the Office of Management and Budget to address the replacement of these funds in one of the supplemental appropriations that will provide funding following this incident," said Norton.

As for replacing structures on federal lands and for repairing damaged natural resources, the Bush administration will put that in a supplemental, said the Interior Department official. "For facilities we're going to have to do more assessments later," he said.

Immediately after Katrina hit Congress put up \$10.5 billion in an initial emergency supplemental appropriations bill. Of that \$10 billion is going to FEMA and \$500 million to the Department of Defense (PL 109-61 of September 2). A second appropriations bill provides \$51.8 billion in disaster assistance, with \$50 billion

for the FEMA Disaster Relief Fund, \$1.4 billion for the Department of Defense, and \$400 million for the Army Corps of Engineers (PL 109-62 of September 8).

The White House is making clear that the burden of paying for the recovery from Hurricane Katrina will be borne by discretionary domestic spending. Thus, public lands programs are in for a rough ride over the next couple of years.

Al Hubbard, assistant to the President for Economic Policy, said at a press conference September 16 the money for Katrina will not be paid for by tax increases. "The most important thing that we need to do is make sure that this economy remains very, very strong," he said. "A strong economy is what will provide the resources for the rebuilding for the disaster as a result of the Katrina storm. We're fortunate that the economy is very, very strong now; it will continue to be strong. But the last thing in the world we need to do is raise taxes and retard economic growth."

Paying for Katrina almost certainly will put great pressure on House and Senate Appropriations Committees to cut spending on public lands programs in fiscal 2007. "There is no question," said one House Appropriations Committee staff member. "It wasn't going to be a very favorable year to begin with. We haven't heard any numbers yet but we knew before Katrina that next year was going to be tough. It's going to be very tough now."

In addition, Rep. Marsha Blackburn (R-Tenn.) introduced three bills September 27 to reduce funding in fiscal 2006 across-the-board by one percent (HR 3903), two percent (HR 3904) and three percent (HR 3906).

Senate rider would once again end wild horse slaughter

The Senate September 20 approved legislation that would prevent the mass destruction of wild horses and burros by shutting down the three main slaughterhouses in the country.

No senator spoke out against the proposal before the Senate approved the provision 68-to-29 as an addition to a fiscal year 2006 Department of Agriculture appropriations bill (HR 2744). The House approved a similar amendment to HR 2744 by a 269-to-158 margin June 8. HR 2744 now goes to a House-Senate conference committee.

The sponsor of the Senate amendment, Sen. John Ensign (R-Nev.), described the situation this way, "Last year, nearly 100,000 American horses were slaughtered for human consumption overseas (not all from public lands). Sixty-five thousand of these were sent to three slaughterhouses in the United States, and more than 30,000 were shipped across our borders to Canada and Mexico for slaughter."

Added Ensign, who is a veterinarian, "Our amendment effectively stops this practice. It restricts the use of Federal funds for the inspection of horses being sent to slaughterhouses for human consumption. Without these inspections, required under the Federal Meat Inspection Act, horses cannot be slaughtered, or exported for slaughter, for human consumption overseas."

That does not mean horses can't be put away. "Concerns have been raised about what will happen if this slaughter is ended," Ensign said. "Many of these horses will be sold to a new owner. Some horses will be kept longer by their original owner, others will be euthanized humanely by a licensed veterinarian, and still others will be cared for by the horse rescue community."

Sen. Robert Bennett (R-Utah) told opponents of the Ensign amendment September 20 they could have their say on the floor. "I have heard others who for one reason or another have already been opposed to it," he said. "But so far, none of them have come to the floor to express that opposition." And none did.

The controversy over killing wild horses and burros began with a provision in a fiscal 2005 Interior money law (PL 108-447 of Dec. 8, 2004) that allowed the sale of horses to the highest bidder. The horses had to be either at least ten-years-old or have been passed over at auction three times.

When 41 wild horses and burros that BLM sold were slaughtered this spring, humane groups asked Congress to kill the provision. A first initiative failed July 26 when a House-Senate conference committee rejected a rider to an Interior appropriations bill that would have banned the sale of wild horses and burros. A House-Senate conference committee struck the provision from the Interior bill (signed into law August 2 as PL 109-54).

Now the House and Senate have each approved the more circuitous initiative that would shut down slaughterhouses. The Senate gave final approval to the Agriculture money bill September 22 and sent it on to a conference with the House. Although adoption of the provision would prevent slaughter of wild horses, it would not bar sales.

When word of the killing of the 41 wild horses reached BLM it changed its sale contracts to avoid a recurrence of the slaughter. With the steps in place BLM has resumed sale of the animals.

In one major change the bureau is now including in all sales contracts a threat to bring criminal charges against violations of the terms of the contracts. Under BLM's old contracts a purchaser only needed to swear to its "intent" to provide humane care.

FS withdraws in its entirety proposed grazing guidance

After two months of proposing and repropounding changes to grazing directives the Forest Service said September 20 it was going back to ground zero and start again.

The agency pulled all past proposals and requests for comments. "Proposed rangeland management policy along with procedures for comment will be reevaluated prior to requesting future public comment," the Forest Service said September 20 in the *Federal Register*.

The Forest Service ran into political heavy water when it proposed July 19 handbook changes that would have set seven-year limits on base property and share-animals in grasslands. North Dakota Gov. John Hoeven (R) and Sen. Byron Dorgan (D-N.D.) complained the provisions would pose near impossible hurdles to young ranchers seeking grazing permits.

The Associated Press quoted Under Secretary of Agriculture Mark Rey as admitting the Forest Service made a mistake. In a press conference with Hoeven Rey reportedly said, "It will not surprise you to know that sometimes the government screws things up. It may, however, be refreshing to hear somebody in government say that."

The Forest Service August 16 had withdrawn the month-old revisions to its handbook. The agency said at the time it would review the two controversial provisions and would put the entire grazing handbook out for public comment for 60 days.

But now the Forest Service has decided to begin again. It said in the September 20 notice that it has rescinded not just the two controversial changes but the entire July 19 proposal and replaced it with the previous policy.

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. A court order prevents IBLA from accessing the Internet. 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: Hard rock mining.

IBLA decision: BLM will contest the validity of nine claims it believes do not contain valuable deposits.

Appellant: BLM erred because evidence submitted by appellant demonstrated valuable deposits.

IBLA hearing judge: Affirmed BLM contest and declared all nine claims null and void.

IBLA decision: Affirmed BLM on eight claims, but ordered feds to allow appellant to do further work on one.

Case identification: *United States v. Milan Martinek*, 166 IBLA 347. September 13, 2005. Eighty-four pages. Appeal from a decision of Administrative Law Judge Harvey C. Sweitzer, who declared nine lode mining claims null and void.

IBLA decision: IBLA Administrative Law Judge Lisa Hemmer agreed with hearing judge Sweitzer that eight hard rock mining claims involved in this case should be declared null and void. She concurred that the claimant, Milan Martinek, failed to prove the claims contained valuable deposits that a prudent person would attempt to develop. But on the ninth claim Hemmer said the jury was still out, but barely. She said the National Park Service (NPS), on whose lands the claims lay, misled the claimant on the need to enter one adit on one claim. She said an NPS letter to the claimant inferred that the claim was valid. Hemmer said the letter "deliberately discouraged Martinek from attempting to re-open adits on the Comstock No. 2 claim, which action might have either convinced Martinek that the tunnel was mined out or convinced him that a discovery of a valuable mineral deposit existed on the claim." But Hemmer said the misleading letter does not necessarily mean the Comstock No. 2 claim was valid. In addition Hemmer said the NPS letter did not rise to the level of estoppel, which could bar the federal government from taking action.

In other recent IBLA decisions. . .

Seneca Resources Corp., 167 IBLA 1. September 15, 2005. Offshore oil and gas development. IBLA upheld Minerals Management Service decision assessing an \$85,000 civil penalty for failing to ensure proper operation of an automatic shutdown valve.

Notes

DoE, DoI writing multi-state ROW EIS. The Departments of Interior and Energy announced September 28 they will prepare an EIS to back the designation of energy right-of-way (ROW) corridors across the 11 western states. The department will hold a scoping hearing in each of the states in October and November. An omnibus energy bill that was signed into law August 8 (PL 109-58) orders the departments to designate corridors. The departments said they would consider alternatives that would designate no new corridors, increase utilization of existing corridors, designate all new corridors, or use a combination of existing and new corridors. The draft EIS is scheduled for publication in "early spring" of 2006. Scoping comments may be sent to: Julia Souder, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Phone (202) 586-9052.

FS roadless advisory panel named. Secretary of Agriculture Mike Johanns September 16 named 12 members to a Forest Service roadless area advisory board. The members, selected to represent specific interests, will review state applications for federal policy on roadless areas in national forests in their states. As we reported in the last issue of *PLN*, California, New Mexico and Oregon filed a lawsuit against the rule August 30, complaining that it lacked an environmental assessment. Since then, Under Secretary of Agriculture Mark Rey told us that as many as 15 states have demonstrated an interest in submitting petitions to establish customized Forest Service roadless area rules in their states. And he guessed that perhaps a "dozen" would submit applications.

Wyoming O&G lease sale prepped. The Wyoming State Office of BLM will offer more than 137,000 acres for oil and gas leasing Tuesday (October 4). BLM will put up 188 tracts in its regular quarterly sale. Under new BLM procedures protests must be filed at least 15 days before the sale. The next Wyoming sale is scheduled for December 6.

BLM yields on Alaska river/lake system. The Alaska State Director of BLM signed documents September 26 that open the way for the State of Alaska to take possession of 29 miles of riverbed and 107,840 acres of lakebed in Wood-Tikchik State Park. The BLM director, Henry Bisson, signed a recordable disclaimer of

interest that essentially said the federal government does not claim the subject lands. The lands at issue are in the Wood River and Lakes System in the Bristol Bay region.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations 2006 (Interior Etc.)		
HR 2361 (Taylor)	President Bush signed into law August 2 as PL 109-54.	Keeps most operations level, before inflation, and boosts PILT.
Omnibus energy bill		
HR 6 (Barton)	President Bush signed into law August 8 as PL 109-58.	Law encourages oil and gas development on public lands, establishes oil shale leasing program. ANWR not included.
Coastal plain of ANWR (Budget provision)		
H Con Res 95 (Nussle)	House approved March 16.	Senate budget opens the way for separate legislation that would authorize leasing in ANWR.
S Con Res 18 (Gregg)	Senate approved March 17.	
	See omnibus energy bill (above.)	
Coastal plain of ANWR (Stand-alone bills)		
HR 39 (Young)	Young introduced Jan. 7, 2005.	Young would authorize leasing on the coastal plain of ANWR. Markey, Lieberman would make it wilderness.
S 261 (Lieberman)	Lieberman and Markey introduced February 2.	
HR 567 (Markey)	See omnibus energy bill (above.)	
Endangered Species Act		
HR 3824 (Pombo)	House Resources Committee approved September 22.	Would defer designation of critical habitat from listing to recovery.
Clean Air Act		
S 131 (Inhofe)	Senate committee rejected	Inhofe introduced administration Clear Skies bill. Jeffords introduced competing bill.
S 150 (Jeffords)	S 131 March 10.	
Forest County Payments Renewal		
HR 517 (Walden)	Senate hearing March 8.	Would extend forest county payment law for seven years.
S 267 (Craig)	House committee approved May 18.	
Payments-in-Lieu of Taxes		
HR 788 (Mark Udall)	Udall introduced February 10.	Would guarantee counties \$350 million per year. Cubin would phase in over three years.
S 496 (Salazar)	Salazar introduced March 2.	
HR 2337 (Cubin)	Cubin introduced May 17.	
Central Idaho public lands bill		
HR 2514 (Simpson)	Simpson introduced May 19.	Would designate 300,000 acres of BLM and national forest wilderness.
National Forest roadless areas		
HR 3563 (Inslee)	Inslee introduced July 28	Would restore Clinton rule that bars road building in roadless areas.
Utah Wilderness (Red Rock statewide)		
HR 1774 (Hinchey)	Hinchey and Durbin introduced April 21.	Would designate 9.5 million acres of BLM wilderness in Utah.
S 882 (Durbin)		
Utah Wilderness (Cedar Mountains)		
HR 1503 (Bishop)	Bishop introduced April 6.	Would designate 100,000 acres of wilderness in Utah.
Northern California Wilderness		
S 128 (Boxer)	Senate approved July 26.	Would designate 300,000 acres of wilderness in Cedar Mountains.
HR 233 (Thompson)	Thompson put in January 4.	
Wild Sky Wilderness (Washington)		
S 152 (Murray)	Senate approved July 26.	Would designate 106,000 acres of national forest wilderness.
HR 851 (Larsen)	Larsen introduced Feb. 16.	
Rockies Prosperity (wilderness) Act		
HR 1204 (Shays)	Shays introduced March 9.	Would protect 18 million acres of