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PUBLIC LAND POLICY IS RIPE FOR CHANGE

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CHANGING FEDERAL OWNERSHIP AND MANAGEMENT:
PUBLIC LANDS AND PUBLIC BENEFITS

Natural Resources Law Center
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Boulder, Colorado

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Several have attacked the plan saying that it allows for less logging than expected and gives environmental considerations too great a role.

III. HR 1977 - Fiscal 1996 Appropriations Bill

A. House Version

1. Includes a ban on the patenting of hard rock mining claims for the fiscal year 1996. The Senate did not approve a similar measure in their version of HR 1977, but Senator Dale Bumpers is expected to ask them to do so.
2. Transfers the National Biological Service to the USGS rather than creating a new agency or eliminating it as a stand alone agency.
3. Rider from Senator Ted Stevens (R-AK) implements a forest plan in the Tongass National Forest.
 - a. The FS opposes the rider because it does not protect species.
 - b. Objective of the rider is an increase in timber sales.
 - c. Additional measures to increase timber sales in the Tongass National Forest

S 1054 - permanent legislation that would mandate a substantial timber sale in the forest
 - d. Removes \$599,000 from the National Park Service budget for the management of the Mojave National Preserve and leaves \$1 for the appropriation. Adds \$599,000 to the BLM budget for management of the Preserve. There is no similar provision in the Senate version.

B. Senate Version

1. Approves fair market value payment to patent the surface of a claim. The amendment grandfathers approximately \$15 billion worth of claims, in terms of mineral values, that have reached a first-stage certificate (from the Department of Interior). Does not approve an extension of the moratorium on patent applications for hard rock mining claims.
2. The Senate Appropriations Committee directed the consolidation of all

Interior Department biological programs into one new agency.

3. Contains a provision forbidding the Secretary of the Interior from implementing new grazing rules for 90 days (from 8/9). House did not approve a similar version, therefore Interior Secretary Bruce Babbitt is not bound by the amendment.
4. Places a one-year moratorium on any new listings under the Endangered Species Act.

C. There are a number of differences between the House and the Senate version in relation to appropriations: Senate appropriates \$4 million less than the House for BLM operations (\$566 million to \$570 million); Senate appropriates \$10 million less than the House for National Forest system operations (\$1,256 billion to \$1,266 billion)

IV. The Timber Resource

A. Current laws: Organic Act of 1897, Multiple-Use Sustained-Yield Act of 1960, Forest & Rangeland Renewable Resources Planning Act of 1974, National Forest Management Act, National Environmental Policy Act.

B. Reform Proposals

1. PL 104-19 (timber salvage sale program outlined above)
2. HR 1977 (provisions outlined above)
3. Alaska's Tongass National Forest
 - a. S 1054
 - (1) Sponsored by Senators Frank Murkowski and Ted Stevens for Alaska.
 - (2) Last action: July, Referred to the Senate Energy and Natural Resources Committee.
 - (3) Mandates the Forest Service to provide enough timber from the 17 million acre forest to sustain the 1990 timber industry employment level of 2400 jobs.
 - (4) Forces the Forest Service to meet market demand for

Tongass timber.

- (5) Repeals the Tongass Timber Reform Act prohibition on “highgrading.”
- (6) Has been delayed due to stiff opposition.

V. The Wildlife Resource

A. Current Laws

- 1. Endangered Species Act of 1973, 16 USC §1531-1543
 - a. Substantive protection of wildlife and habitat.
 - b. Section 9 - prohibition on federal, state, or private action that results in a “taking” of a listed species.
 - (1) Broad definition of “taking.”
 - (2) Includes habitat modification by land management practices that results in a “taking.”
- 2. Migratory Bird Treaty Act, 16 U.S.C § 703 et seq.; National Wildlife Refuge Administration Act of 1966, 16 U.S.C. § 668dd et seq.; Bald and Golden Eagles Protection Act, 16 U.S.C. § 668-668d; Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331-1340.

B. Reform Proposals

- 1. House version
 - a. Original sponsor: Representative Richard Pombo (CA) - plans to introduce it in September 1995.
 - b. The ESA can no longer override all other laws at all times.
 - c. Overturns the recent Supreme Court decision, *Babbitt v. Sweet Home*, 115 S.Ct 2407 (1995).
 - d. Creates “biodiversity reserves” -- 290 million acres of federal land, including wilderness areas, national parks, and wildlife refuges -- where endangered species would live and be protected. (But, the GAO has reported that 90 percent of species now listed as endangered or threatened rely on non-federal lands for habitat.)

- e. Requires compensation be given to private landowners when species protections outside of the reserves reduce property values by 20 percent or more. Requires the federal government to buy the land outright if the loss exceeds 50 percent of the value.
- f. Creates incentives for landowners to protect species on their property, such as easements, grants, and land exchanges.
- g. Decisions on designating endangered species and identifying their habitat taken away from scientists and given to the Secretary of the Interior. Grants the Secretary of the Interior the power to choose extinction for some species if recovery costs are too great.
- h. Requires Congress to grant special protections for some endangered animals (anything less than an entire species) before the federal government can take action to protect them.

2. S 768

- a. Proposed by Senator Slade Gorton (WA).
- b. Last action: March, Referred to the Senate Environment and Public Works Committee.
- c. Divests the Secretary of the Interior of his authority under Section 9 to regulate ordinary land uses that modify habitat.
- d. Decisions on designating endangered species and identifying their habitat taken away from scientists and given to the secretary of the interior. Grants the secretary of the interior the power to choose extinction for some species if recovery costs are too great.
- e. Allows states to take over from the federal government if they develop a conservation plan for a listed species.
- f. Allows the Secretary of Interior to set a conservation goal for a species that ranges from full protection to nothing.
- g. Eliminates the ESA's application on private lands. Overturns the Supreme Court's *Babbitt v. Sweet Home* decision.

- h. Eliminates the ability to protect a population rather than an entire species.
- i. Allows bred populations to be considered in determining the status of a species.

VI. The Mineral Resource

A. Current Laws

- 1. Hard Rock Mining - General Mining Law of 1872, 30 U.S.C. §21-42 (1988).
- 2. Mineral Leasing Act of 1920, 30 U.S.C. §181-287.

B. Reform Proposals

- 1. S 506 - Mining Law Reform Act of 1995
 - a. Original sponsor: Senator Larry Craig (ID)
 - b. Last action: March, Senate Subcommittee on Forests and Public Land Management held a hearing.
 - c. Objective: to amend the general mining laws to promote mineral exploration and development, ensure land reclamation, and avoid claims of takings under the Fifth Amendment to the Constitution. Also, to provide a reasonable royalty from mineral activities on federal lands, to specify reclamation requirements for mineral activities on federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on federal lands.
 - d. Imposes a three percent royalty of net proceeds. This royalty is waived for mines with gross yields below \$500,000
 - e. Repeals 1994 patenting moratorium and reinstates 1872 rules for one year. Afterwards, patenting of land for fair market value applies to surface land only.
 - f. Establishes no specific environmental standards. Relies on inconsistent State laws and regulations. Requires reclamation only to the extent “economically and technically practicable.

- g. Establishes an abandoned mine reclamation cleanup program. There is not federal supervision or direct federal cleanup.
 - h. Secretary has no authority to deny a permit.
 - i. Directs at least one-third of all royalties collected under the bill to be directed to the states to finance cleanup of abandoned mine lands.
 - j. Stalelated in the Senate Energy and Natural Resources Committee. Opposed by Senator J. Bennett Johnston (D-LA) because it does not satisfy: an end to patents, a gross royalty of 2.5 percent, and no diminution of the federal government's powers to regulate mining.
2. S 504 - Surfaces Resources Act of 1995
- a. Original sponsor: Senator Dale Bumpers (AR)
 - b. Last action: March, Senate Subcommittee on Forests and Public Land Management held hearings.
 - c. Sets a minimum royalty amount of eight percent of the gross income from the production of locatable minerals.
 - d. Requires that lands subject to mineral activities be restored to a condition capable of supporting their prior uses. Requires the Secretary to establish reclamation standards.
 - e. Eliminates patenting.
 - f. Includes strong national environmental provisions to regulate basic mining activities. Denies the right to mine on federal land to anyone in violation of a federal or state law. Requires detailed reclamation plan before approval of operations plan.
 - g. Establishes abandoned mine reclamation cleanup fund. Fund can make grants to states. Federal government monitors state efforts.
 - h. Gives Secretary of the Interior authority to deny a permit for a badly designed or situated mines.

- i. Requires the Secretaries of Interior and Agriculture, in preparing land use plans, to determine those lands unsuitable for certain mineral activities, and withdraw them from exploration and development.
3. S 639
 - a. Sponsors: Senators Campbell and Johnston
 - b. Contains a three percent gross royalty on gold, a two percent gross royalty on other minerals, and variances for marginal mines.
 - c. Allows patenting for minerals only. Mineral rights revert to the federal government after mining has stopped for five years.
 - d. Establishes some national environmental protection standards based on best management practices for a few activities. No federal standards to protect water resources.
 - e. Establishes abandoned mine reclamation cleanup fund. Allows federal government, Indian tribes, or a State to carry out the work.
 - f. Secretary of the Interior has the authority to deny permits for mines proposed near national conservation units.
4. HR 1580 - Mining Law Reform Act of 1995
 - a. Original sponsor: Representative Don Young (AK)
 - b. Last action: May, Referred to House Resources Committee.
 - c. Imposes a royalty of three percent of the net proceeds upon the production and sale of locatable minerals from any unpatented mining claim and certain patented claims, up to 50 percent of which will help finance abandoned mine cleanup programs.
 - d. Charges fair market value for the title to federal lands used for mining.
 - e. Reaffirms environmental statutes that apply to miners.
5. HR 357 - Mineral Exploration and Development Act of 1995
 - a. Original sponsor: Representative Nick Rahall (WV)

- b. Last action: January, Referred to House Public Lands and Resources Committee; July, cosponsors added.
- c. Requires the Secretaries of Interior and Agriculture, in preparing land use plans, to determine those lands unsuitable for certain mineral activities, and withdraw them from exploration and development.
- d. Requires that lands subject to mineral activities be restored to a condition capable of supporting their prior uses, or to other beneficial uses which conform to applicable land use.
- e. Subjects the production of locatable minerals to a royalty scheme of eight percent of the net smelter return.

VII. Bureau of Land Management Lands - transfer proposals

A. S 1031

- 1. Original sponsor: Senator Craig Thomas
- 2. Last action: Referred to Senate Energy and Natural Resources Committee.
- 3. Requires the Secretary of the Interior to offer to transfer all right, title, and interest of the federal government in and to all lands and interests in lands administered by the BLM to the State in which such lands and interests are located. Would allow states to control all land now managed by the BLM within their borders, including wilderness areas.
- 4. A State may only accept the offer of **all** lands or reject the offer.
- 5. Caps spending by the BLM in carrying out its duties, functions, and responsibilities at \$800 million per year, beginning with the fiscal year in which the act is enacted.
- 6. Vast resources are included in these potential transfers: 1/3 of US coal reserves, 12.5 trillion cubic feet of natural gas, 1.4 billion barrels of oil, 170 million acres of grazing land, 48 million acres of commercially valuable forests, 35 percent of the nation's uranium reserves, 80 percent of US oil-shale reserves, billions of dollars worth of ore deposits. Less

tangible assets include: wildlife areas, archaeological treasures, and recreation sites.

7. Requires that any lands previously designated by Congress as wilderness shall be managed by the State as wilderness in accordance with the requirements specified in the wilderness act.
8. Under the Act, the Secretary of the Interior shall transfer all water rights of the US associated with those lands to a State. Certain rights are protected:
 - a. Rights of US under an international treaty, interstate compact, or existing judicial decree.
 - b. Any obligation of the US to Indians or Indian tribes or any claim or right owned or held by or for Indians or Indian tribes.
 - c. Any right to a quantity reserved for government purposes prior to enactment of the Act.
 - d. Any license or permit issued prior to enactment of the Act.
9. Criticisms
 - a. Would transfer as much as 270 million acres now managed by the BLM to the states. Potentially allows for management by ranchers, loggers, and other local residents.
 - b. Ultimately, is a transfer of tremendous national assets and revenues to a small number of states.
 - c. States will have most of the income producing mineral resources on these lands.
 - d. Allows states to decide whether they want to restrict uses of the land or sell it to private purchasers. There is no guarantee that the public will have access to these lands. A logical next step would be to sell the lands to the highest bidder.
 - e. Proposals do not guarantee to taxpayers that the government would receive compensation from either the sale of the lands or the use of them.

- f. Lands would be opened up to excessive economic exploitation while limiting public access.
- g. Lands belong to the country as a whole, and should not be transferred to individual states.
- h. Contradicts the concept that the federal government holds the public lands in trust for this and future generations.

B. HR 2032

- 1. Identical to S 1031
- 2. Original sponsor: Representative James Hansen (UT)
- 3. Last action: August, House Subcommittee on National Parks, Forests, and Lands held a hearing.

VIII. Recreation / Access

A. HR 2081

- 1. Original sponsor: Representative James Hansen (UT)
- 2. Last action: July, Referred to House Judiciary and Resources Committees, House Subcommittee on National Parks, Forests, and Lands held a hearing.
- 3. Opens the way for state and local governments to claim thousands of RS 2477 rights-of-way. The rights-of-way are ancient grants of access across federal public lands, primarily to local and state governments, that were granted under a 19th century uncodified statute (Revised Statute 2477). Approximately 4000 RS 2477 applications are now pending in the Department of the Interior. The Department of the Interior, in August 1994, had proposed a tough standard to verify a claim to a RS 2477 right-of-way, requiring state and local governments to show that construction had taken place. The new proposal is to counter this Department policy and allow the claims to be granted.
- 4. Gives individuals and state or local governments ten years to file petitions for rights-of-way and allows the federal government two years to respond.

Failure to respond by the federal government results in the right-of-way being granted. If an agency objects to a request, the federal government is required to file a federal suit and show why the claim should not be granted.

5. Criticized as forcing the federal government to conduct expensive and time consuming studies on the validity of claims.
6. A moratorium prohibiting any agency of the federal government from developing regulations that would set tough standards for states to obtain access roads across public lands is included in HR 1977.

B. S 440 - National Highway Designation Act of 1995

1. Original sponsor: Senator John W. Warner (VA)
2. Last action: Passed in Senate.
3. Includes a moratorium prohibiting any agency of the federal government from developing rules or regulations that address RS 2477 rights-of-way (those authorized pursuant to Revised Statute 2477).

IX. The Range Resource

A. Current Laws: Taylor Grazing Act of 1934, 43 U.S.C. § 315; Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701-1784; Public Range Lands Improvement Act of 1978, 16 U.S.C. § 1901-1908. Include delegation of authority to and range management by the Bureau of Land Management.

B. Reform Proposals

1. PL 104-19 (provisions outlined above).
2. S 852 -Livestock Grazing Act
 - a. Original sponsor: Senator Pete Domenici (R-NM)
 - b. Objective: land use plans shall manage livestock grazing under the principle of multiple use and sustained yield.
 - c. Chairman's mark from Senator Frank Murkowski was passed by the Senate Energy and Natural Resources Committee on July 19 and reported in the Senate. It incorporates much of what was in

original version of S 852.

- (1) Delegates significant control over the public lands to local western interests. Allows livestock interests to dominate land management. Applies to the BLM and the FS.
- (2) Eliminates NEPA review for individual permits
- (3) Increases grazing fees to a little over \$2.10 per animal unit month (AUM) from existing level of \$1.61.
- (4) Directs the Secretary of the Interior to establish (1) grazing use advisory committees and (2) resource advisory councils and grazing advisory councils for each grazing district. Limits participation in grazing advisory committees primarily to livestock interests.
- (5) States that no water rights shall be acquired or transferred in connection with livestock grazing management unless authorized by State law. Prohibits the federal government from obtaining an interest in water rights or improvements to an allotment.
- (6) Delegates substantial responsibility to states and localities in the establishment of standards and guidelines.
- (7) Transfers National Grasslands out of the Forest Service and into the Department of Agriculture for management.
- (8) Decreases public involvement in grazing decisions.
- (9) Penalizes ranchers if they try to take land out of grazing to give it time to heal.
- (10) Extends the terms of leases from 10 to 15 years.
- (11) An attempt to head off the proposed Clinton administration policy which went into effect on August 21.

3. HR 1713

- a. Original sponsor: Representative Wes Cooley (R-OR))

- b. Last action: House subcommittee that oversees the public lands failed to act on it. Representative Richardson invoked a rule that prohibits subcommittees from meeting while the full House is in session. The House then went on a one-month summer vacation the same day.
 - c. Includes most of the provisions of S 852.
 - d. Raises the fee from \$1.61 per AUM (current level) to about \$2.10.
 - e. Limits BLM ability to manage for uses other than livestock as well as their ability to protect sensitive areas. Makes livestock grazing the dominant use of the land.
 - f. Limits the public's role in grazing management on public lands. The public would not be allowed to participate in decisions about grazing permits or grazing allotments.
 - g. Waives consideration of a rancher's willingness to provide access to public lands when the BLM grants a permit.
 - h. Waives consideration of major wildlife protection laws, including the Bald Eagle Protection Act and the Endangered Species Act.
4. Department of Interior / Administration Grazing Reforms
- a. Omit fee increases, toughen environmental restrictions, and allow non-ranchers more input into management of the public lands in the West.
 - b. Establish community grazing boards. Rancher-only grazing boards are replaced by resource advisory councils. Fifteen member councils are comprised of ranchers, environmentalists, scientists, and elected officials.
 - c. Contain a provision that prevents ranchers from holding title to permanent improvements they make on public lands.
 - d. Leaves the decision making to the people who live on and near grazing lands.

5. S 629
 - a. Original sponsor: Senator Craig Thomas (WY)
 - b. Last actions: March, Referred to the Senate Environment and Public Works Committee; April, cosponsors added.
 - c. Provides that neither the preparation of an environmental assessment nor any other action under the NEPA shall be required to be taken in connection with renewals of permits that have expired before, on, or after the Act's enactment for grazing on National Forest lands for which a land and resource management plan under the Forest and Rangeland Renewable Resources Planning Act of 1974 is in effect.

X. HR 721 - Public Resources Deficit Reduction Act of 1995

- A. Original sponsor: Representative George Miller (CA)
- B. Last action: July, the House Subcommittee on National Parks, Forests, and Lands held a hearing.
- C. Prohibits any timber, minerals, forage, or other natural resources owned by the US, any federally owned water, or hydroelectric energy of a federal facility from being sold, leased, or otherwise disposed of by any federal entity for less than fair market value.
- D. Requires mining claimholders to pay a royalty of eight percent of gross income for production of locatable minerals on federal lands.
- E. Amends FLPMA to direct the Secretaries of the Interior and Agriculture to establish and implement an annual domestic livestock grazing fee equal to fair market value.
- F. Prohibits below-cost timber sales from national forest lands.
- G. Amends the Reclamation Project Act of 1939 to require that irrigation water from the Bureau of Reclamation used to grow surplus crops be paid for at the full cost of delivery.
- H. Requires the Secretary of the Interior to award concession contracts through a

competitive selection process.

XI. Preservation / Wilderness Resource

A. Utah Wilderness

1. HR 1745 - Utah Public Lands Management Act of 1995
 - a. Original sponsor: Representative James Hansen (UT)
 - b. Approved by the House Resources Committee.
 - c. Wilderness acreage of 1.8 million acres reflects a recommendation submitted to Congress by the Bush administration (Bush recommendation was 1.9 million acres)
 - d. Hard language that emphasizes that released lands would be available to nonwilderness uses.
 - e. Two amendments that were defeated but will likely reappear this fall when the bill reaches the House floor:
 - (1) One would increase the wilderness acreage from 1.8 million acres to the 5.7 million acres recommended by environmentalists (HR 1500).
 - (2) One would amend the hard release language of the bill that emphasizes that wilderness study lands released by the bill should be used only for nonwilderness purposes.
2. S 884 - Utah Public Lands Management Act of 1995
 - a. Original sponsor: Senator Orrin Hatch (UT)
 - b. Last action: June, referred to Senate Energy and Natural Resources Committee; July, Subcommittee on Forests and Public Lands Management concluded hearings.
 - c. Identical to HR 1745.
3. The initial wilderness studies performed by the BLM are being criticized as inadequate. As a result, the former BLM director, Jim Baca, has stated that the bill introduced is outrageous, unbelievable, and a disservice to future generations of Americans.

B. HR 260 - National Park System Reform Act of 1995

1. Original sponsor: Representative Joel Hefley (CO)
2. Last action: Reported in the House, amended.
3. Requires the Secretary of the Interior to develop a plan to guide the direction of the National Park System into the next century. Requires the Secretary to review the existing system, determine any units that do not conform, and recommend which units should be modified or terminated.
4. Could lead to the liquidation of many of America's national parks.
 - a. The majority party of the House and Senate would appoint members to a review commission.
 - b. The commission would review the Secretary's report or develop one, recommending System units where NPS management should be terminated.
 - c. The process to consider parks for closure would be exempt from NEPA.

C. Arctic National Wildlife Refuge

1. H Con Res 67 - Oil and Gas Drilling
 - a. The Senate recommended that ANWR development legislation be written (H Con Res 67 - Congressional budget resolution for fiscal year 1996-2002). The budget "assumes" \$1.3 billion in revenue from the sale of oil and gas leases, therefore, need to find that amount in savings elsewhere in the budget.
 - b. Alaska state officials have stated that they will accept a 50-50 split of royalties with the federal government.
 - c. H Con Res 67, using Department of Interior estimates, anticipates that development would contribute \$1.3 billion in revenues for the federal government between 1996 and 2000.
 - d. Canada, in a letter to the Senate Natural Resources Committee, argues that opening the refuge to oil and gas drilling will disrupt

the sensitive calving grounds and the migratory patterns of the porcupine caribou herd on which thousands of Canadian and American aboriginal people depend.

2. The Administration is considering declaring the Arctic National Wildlife Refuge a national monument. This designation would keep the 1.5 million acre tract off-limits to drilling.

XII. Conclusion