

WebMemo



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Omnibus Lands Bill Restricts Energy Exploration

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In one of the first moves in the lame duck session, Senator Harry Reid (D–NV) is calling for a vote on an omnibus lands package that would create 10 new “heritage” areas and restrict millions of acres as federal wilderness land. As a result, the bill would eliminate major recreation and restrict new oil and gas leasing, logging, mining, and all other business activity in these areas. In total, 3 million acres would be withdrawn from energy leasing. The Congressional Budget Office places an \$8 billion price tag on the omnibus lands bill: \$7.1 billion in discretionary spending and over \$915 million in mandatory spending.¹

The lands bill removes public land that would be available for recreational, commercial, and private ownership use by designating such land as wilderness areas, heritage areas, conservation areas and wild and scenic rivers. Furthermore, the bill places restrictions on existing federal property.

The bill also grants the government the authority to take over more privately owned land. Despite numerous pledges that it will not take away private land, the Congressional Research Service asserts that the National Park Service (NPS) “could exert federal control over nonfederal lands by influencing zoning and land-use planning. Heritage area management plans are overly prescriptive in regulating private property use, private property protections in legislation might not be adhered to, and NHA lands may be targeted for federal purchase and management.”²

Forming National Heritage Areas. The process for forming a National Heritage Area (NHA) begins

when an individual or group identifies a perceived historically significant property. “Historically significant property” is defined by the NPS as “a place designated by the U.S. Congress where natural, cultural, historic and recreational resources combine to form a cohesive, nationally-distinctive landscape ...[to] tell nationally important stories about our nation,” so just about any parcel of land or long-standing structure could be touted as an intricate part of someone’s history and become eligible for federal subsidies, as the proposed NHAs for Mississippi alone reveal. Senator Thad Cochran (R–MS) introduced legislation that designates 30 counties in northeast Mississippi as NHAs, claiming, “The hills of Mississippi are rich in unique historical, natural, and cultural characteristics.”³

There are three key reasons why existing NHAs should become financially independent of the federal government, as their enabling legislation requires, and no additional NHAs should be established.

First, NHAs divert limited NPS resources away from core responsibilities. NPS advocates and staff have long complained about the lack of resources that Congress provides in comparison to its extensive responsibilities. Both the Government Accountability Office and the Congressional Research Service

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estimate that the cost of NPS's maintenance backlog exceeds several billion dollars and is rising despite increased annual appropriations. Park attendance has been in decline in recent years, and camping in the parks has decreased, perhaps in part because of the functional obsolescence of campground facilities.⁴ Some of this decrease in recreational usage can be attributed to silly provisions such as bans on snowmobiles, which significantly reduce tourism and hurt local economies.⁵

Second, federal budget costs for NHAs are expanding at a rapid pace. If enacted, the legislation would cost taxpayers an additional \$110 million to create 10 new NHAs and study the feasibility of adding two more.⁶ But not a single NHA has become financially independent within the time-frame allotted, and all have had their federal funding extended.

Third, private property rights are put at risk. On the surface, most of the legislation designating an NHA, and the subsequent management plans that guide them, explicitly prohibit the NPS or the management entity from using eminent domain to acquire property. They also prohibit the use of federal funds to acquire private property by way of a voluntary transaction with a willing seller. But NHAs pose a threat to private property rights

through the exercise of restrictive zoning that may severely limit the extent to which property owners can develop or use their property. Termed "regulatory takings," such zoning abuses are the most common form of property rights abuse today. They are also the most pernicious because they do not require any compensation to owners whose property values are reduced by the new zoning.⁷

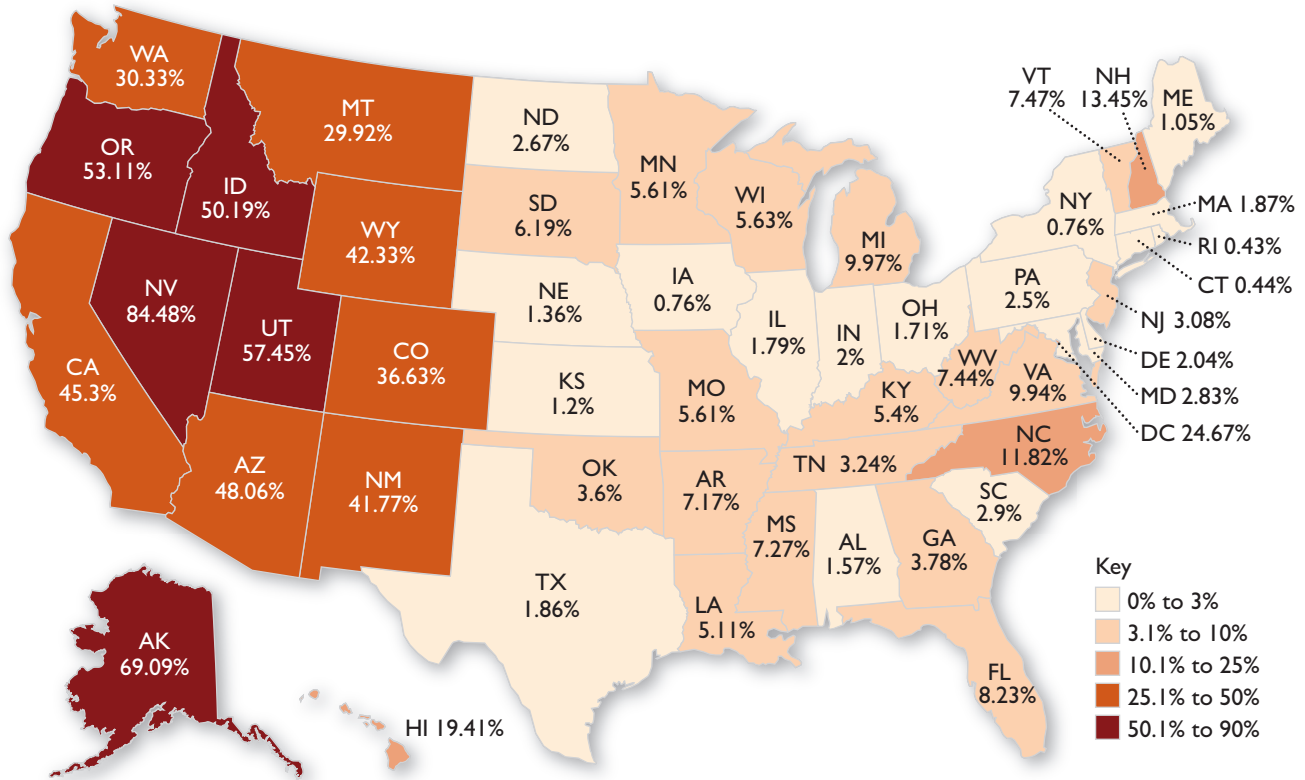
Federal Land Ownership and Restrictions.

The omnibus lands package would allow the federal government to take ownership of specific areas by designating them as wilderness areas, heritage areas, conservation areas, or wild and scenic rivers. Furthermore, millions of acres of existing federal property would restrict the development of natural resources, particularly mineral resources. The federal government already owns and controls 650 million acres of land in the United States, including a large portion of land in the western U.S. For instance, the federal government owns approximately 85 percent of the land in Nevada, 69 percent of Alaska, 57 percent of Utah, and 53 percent of Oregon.⁸

Under the lands package, for example, the federal government would add 794,000 acres to the 45.4 million acres they already have in California, along with 83 miles of river. And it does not stop there. In

1. Congressional Budget Office, "Cost Estimate: S.1193," November 12, 2008, at <http://www.cbo.gov/ftpdocs/99xx/doc9915/s1193OmniLand.pdf> (November 14, 2008).
2. Congressional Research Service, "The Omnibus Public Land Management Act of 2008: Senate Amendment 5662 as Submitted on September 26, 2008," CRS Report for Congress, October 31, 2008.
3. Press release, "Cochran Moves to Establish Mississippi Hills National Heritage Area," November 1, 2007, at <http://www.mshills.org/documents/Cochranpressrelease.pdf> (November 14, 2008).
4. *Ibid.*
5. Erin Hymel, "Banning the Better Alternative," Heritage Foundation *WebMemo* No. 547, August 2, 2004, at <http://www.heritage.org/Research/Regulation/wm547.cfm>.
6. Press release, "Dr. Coburn Says Upcoming Special Session of Congress Should Focus on Economic Crisis, Not Trivial Lands Bill," October 20, 2008 at http://coburn.senate.gov/public/index.cfm?FuseAction=LatestNews.PressReleases&ContentRecord_id=1c14dd8f-802a-23ad-4dac-c03600ce287e (November 13, 2008).
7. The U.S. General Accounting Office (now Government Accountability Office) reported in 2003 that of the 44 regulatory takings lawsuits against the agencies of the federal government (including Interior) that were settled between 2000 and 2002, 14 resulted in cash awards totaling \$36.5 million to property owners. See U.S. General Accounting Office, *Regulatory Takings: Agency Compliance with Executive Order on Government Actions Affecting Private Property Use* (Abstract), GAO-04-120T, October 16, 2003.
8. GSA Office of Governmentwide Policy, "Overview of the United States Government's Owned and Leased Real Property," September 30, 2004, at http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.pdf (October 30, 2008).

Percent of Federally Owned Acreage, by State



U.S. Rankings, from Highest to Lowest

State	Percentage	State	Percentage	State	Percentage
1 Nevada	84.48	18 Virginia	9.94	35 Maryland	2.83
2 Alaska	69.09	19 Florida	8.23	36 North Dakota	2.67
3 Utah	57.45	20 Vermont	7.47	37 Pennsylvania	2.50
4 Oregon	53.11	21 West Virginia	7.44	38 Delaware	2.04
5 Idaho	50.19	22 Mississippi	7.27	39 Indiana	2.00
6 Arizona	48.06	23 Arkansas	7.17	40 Massachusetts	1.87
7 California	45.30	24 South Dakota	6.19	41 Texas	1.86
8 Wyoming	42.33	25 Wisconsin	5.63	42 Illinois	1.79
9 New Mexico	41.77	26 Minnesota	5.61	43 Ohio	1.71
10 Colorado	36.63	27 Missouri	5.61	44 Alabama	1.57
11 Washington	30.33	28 Kentucky	5.40	45 Nebraska	1.36
12 Montana	29.92	29 Louisiana	5.11	46 Kansas	1.20
13 D.C.	24.67	30 Georgia	3.78	47 Maine	1.05
14 Hawaii	19.41	31 Oklahoma	3.60	48 Iowa	0.76
15 New Hampshire	13.45	32 Tennessee	3.24	49 New York	0.76
16 North Carolina	11.82	33 New Jersey	3.08	50 Connecticut	0.44
17 Michigan	9.97	34 South Carolina	2.90	51 Rhode Island	0.43

Source: U.S. General Services Administration, Office of Governmentwide Policy, *Federal Real Property Profile: Overview of the United States Government's Owned and Leased Real Property as of September 30, 2004*, at http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.pdf (November 14, 2008).

total, the federal government would increase its stake in 15 states, reducing private property rights and placing valuable resources off limits.

Energy Off Limits. Moving additional land to government control frequently places energy supplies off limits and the omnibus lands package is no exception. Over 3 million in total acreage would be withdrawn from energy leasing, including areas with enormous potential to extract new oil and natural gas. For example, 331 million barrels of recoverable oil and 8.8 trillion cubic feet of natural gas would be taken out of exploration in Wyoming. The total amount of energy that would be restricted is equivalent to the amount of natural gas the entire U.S. produces in 15 years.⁹

The bill could not only restrict conventional energy resources, but it could also restrict access to oil shale in parts of Colorado and Wyoming. An estimated 1.2 trillion–1.8 trillion barrels of oil is available in the Green River Formation.¹⁰ A moderate estimate of 800 billion barrels of oil that would be recoverable from oil shale in the Green River Formation is three times greater than the proven oil reserves of Saudi Arabia.¹¹

Although not all this potential energy would be off limits under Reid's proposal, recoverable oil refined from oil shale would provide another resource for domestic fuel production, and restricting parts of this land will only make extraction more difficult. Though the price of oil has been in steady decline as the current recession unfolds, the U.S.

would still benefit from an increase in supply, and when the economy recovers, prices may likely rise again.¹² The omnibus lands package would take these valuable and strategic energy resources permanently off the table.

Furthermore, the omnibus package would restrict a number of other activities. Commercial timber harvesting, mining claims, and mineral leases are generally prohibited in wilderness areas designated by Congress.¹³ Concerns also exist that animal grazing and motorized recreational activities would also be off limits.¹⁴ Restricting these uses would undoubtedly hurt local economies by hampering commercial activities and reducing tourism and could lead to even more government rules and regulations.

Not the Time to Restrict Land. The Omnibus Public Land Management Act of 2008 would result in a huge expansion in government ownership of land in the United States. This increase would restrict access to energy and limit economic opportunity at a time when the nation should be increasing domestic supply. Moreover, this bill would restrict other commercial activities such as mining, timber harvesting, and recreational activities, and it would continue the federal assault on private property rights.

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9. Press release, "Dr. Coburn Says Upcoming Special Session of Congress Should Focus on Economic Crisis."

10. Nicolas Loris, "Omnibus Prohibits Oil Shale Development," Heritage Foundation *WebMemo* No. 1754, December 18, 2007, at www.heritage.org/Research/EnergyandEnvironment/wm1754.cfm.

11. Oil Shale and Tar Sands Programmatic EIS Information Center, "About Oil Shale," at <http://ostseis.anl.gov/guide/oilshale/index.cfm> (November 13, 2008).

12. Although the Energy Information Administration has dramatically reduced its 2009 gasoline forecasts, the 2009 projections remain higher than the national average for the date November 10, 2008. For more information, see EIA, "Short-Term Energy Outlook," November 12, 2008, at <http://www.eia.doe.gov/steo> (November 13, 2008).

13. Congressional Research Service, "The Omnibus Public Land Management Act of 2008: Senate Amendment 5662 as Submitted on September 26, 2008" CRS Report for Congress, October 31, 2008.

14. *Ibid.*