

Controversial Provisions within Senate's Omnibus Lands Bill Identified by New Congressional Research Service Report

The non-partisan Congressional Research Service (CRS) of the Library of Congress has released an analysis of the omnibus lands bill that the Senate is currently scheduled to take up the week of November 17. The report, "[The Omnibus Public Land Management Act of 2008: Senate Amendment 5662 as Submitted on September 26, 2008](#)," outlines some of the controversial provisions within the omnibus. Due to the sheer size of the lands package—it contains over 140 individual bills, authorizes \$4.38 billion in spending, and is more than 1,082 pages in length—more than 15 CRS experts were needed to prepare the analysis.

Despite the claims of proponents that the omnibus lands bill is non-controversial, the term “controversial” appears 37 separate times in the CRS report to describe various provisions throughout the bill. Proponents also claim the bill does not cost anything, yet the term “cost” appears 26 times and “expensive” is mentioned twice.¹

The CRS report notes other potential problems with the bill, such as:

- Adding restrictions that are unnecessary and “harmful to local economies;”
- Establishing at least four initiatives that duplicate existing programs;
- Restricting access to natural resources, including oil and gas;
- Limiting domestic energy development;
- Authorizing programs that are “inappropriate for the federal government” or that “provide little value for federal dollars expended.”
- Removing public areas from multiples uses, such as recreation and livestock grazing;
- Withdrawing land from mining claims and mineral leases;
- Providing additional authority to the government to take over more privately owned land;
- Compromising local water rights and water resource management;
- Building a questionable road through a refuge with “high ecological value;”
- Removing taxable land from local communities;
- Increasing the administrative and financial obligations of the National Park Service at a time when the agency is unable to meet its current obligations;
- Increasing spending on projects considered to be lower priorities;
- Waiving the sovereign immunity of the United States to allow lawsuits against the government; and
- Creating new bureaucracy.

¹ Nic Lane, et. al. “The Omnibus Public Land Management Act of 2008: Senate Amendment 5662 as Submitted on September 26, 2008,” Congressional Research Service Report for Congress, October 31, 2008.

CRS also noted that despite assurance of the bill's proponents that it will not compromise property rights, the bill does not mollify all of the concerns of private landowners.

The following are excerpts of some of the highlights of the CRS report:

“The intent of this report is to provide an overview of policy issues and controversies commonly associated with the subject of each Title, as well as to highlight any specifically controversial provisions within each Title.”²

“Given the large number of individual bills that make up this omnibus amendment, it has numerous supporters and detractors. Proponents may praise what they view as protection of natural resources such as wilderness and national trails, while detractors' criticisms may see these same actions as limiting access to natural resources such as oil and gas.”³

“Some opponents to provisions within S.Amdt. 5662 have cited limitations on energy exploration and development specifically. It may well be the case that limitations on commercial activities such as energy development are an inherent characteristic of specific actions, such as wilderness designations, which by their very nature limit or prevent some commercial activities.”⁴

“In response to concerns by property owners near the affected federal lands, this amendment includes many assurances that private property will not be taken by condemnation, that access rights will continue, and that regulatory schemes will not extend beyond the boundaries of the protected land. Nonetheless, not all private landowner interests may be mollified by these assurances.”⁵

“Additionally some may have concerns regarding the authorization of federal funding which may fall into two general categories: that a specific authorization of funding is inappropriate for the federal government; or that a low perceived benefit to cost ratio for a given program would provide little value for federal dollars expended.”⁶

Title I – Additions to the National Wilderness Preservation System

“Wilderness bills commonly contain additional provisions, designating lands for other purposes (recreation areas, wild rivers, etc.), directing land exchanges, modifying boundaries, and more. The 14 subtitles of S.Amdt. 5662 are no exception.⁷ ... Opponents respond that the restrictions on most commercial activities, motorized access, and roads, structures, and facilities in wilderness areas [unnecessary and can be harmful

² Background and Introduction, page 1.

³ Summary, page i.

⁴ Page 2.

⁵ Page 2.

⁶ Page 2.

⁷ Page 5.

to local economies. Commercial timber harvesting, mining, and oil and gas leasing and development are generally prohibited in congressionally designated wilderness areas.”⁸

“Every Congress since the 90th has added to the System, including the 110th, which added 106,000 acres of wilderness in Washington in P.L. 110-229. Today, the National Wilderness Preservation System includes 107.55 million acres in 44 states. Title I of S.Amdt. 5662 includes 14 subtitles that add to the Wilderness System. In total, the 14 subtitles would designate 1,775,275 acres of wilderness in 8 states -- CA, CO, ID, MI, NM, OR, VA, and WV -- in 35 new areas and additions to 25 existing wilderness areas. (Section 2403, in Title II, would add another 66,280 acres in a new wilderness area in Colorado.)”⁹

Title II – Bureau of Land Management Authorizations

“Title II of S.Amdt. 5662 contains diverse provisions related to the Bureau of Land Management (BLM) in the Department of the Interior. A focus of congressional attention has been on provisions to establish legislatively, within BLM, the National Landscape Conservation System (NLCS). ... The System consists today of about 27 million acres of land, with more than 850 federally recognized units.”¹⁰

“Opposition stems from concern that areas would be removed from multiple uses, possibly including oil and gas development, motorized recreation, and livestock grazing.”¹¹

“An issue that often arises with federally protected areas involves the water rights related to those areas. S.Amdt. 5662 includes a provision that addresses the management of federal water rights in a designated area of Colorado. That water rights provision states that no reserved water rights are created and provides that the federal government would acquire any necessary water rights for the purposes of the designated area through Colorado state law, not by federal reservation. However, Colorado water is overallocated, meaning that some users already holding water rights cannot fulfill those rights. The proposed legislation provides that if the state’s conservation board modifies some water rights such that existing rights to the designated area are insufficient to fulfill the purposes of designation, the Secretary would pursue water rights under state law to fulfill those purposes. Because the proposed legislation does not reserve federal water rights for the area and because Colorado’s water is overallocated, it would likely be very difficult for the Secretary to pursue sufficient rights to fulfill the purposes of the designation.”¹²

⁸ Page 4.

⁹ Page 5.

¹⁰ Page 5.

¹¹ Page 6.

¹² Page 6.

“In one particular instance, regarding the Southern Nevada Limited Transition Area Conveyance, the proposed amendment appears to allow the city of Henderson, NV to use the property in a manner inconsistent with the act, and then sell the property if the Secretary of the Interior fails to act on the right to enforce a reversion. However, there is no provision of time in this section, making unclear how much time is given for the Secretary to consider the reversion before the city can sell the property. Taken to the extreme, it could allow the sale before the Secretary was even aware of the inconsistent use.”¹³

Title III – Forest Service Authorizations

“Subtitle C withdraws (makes unavailable) certain lands in the Wyoming Range of the Bridger-Teton National Forest (WY) from mining claims or mineral leases.”¹⁴

Title IV – Forest Landscape Restoration

“Title IV of S.Amdt. 5662 establishes a program for forest landscape restoration. ... The authorization is \$40 million annually for 10 years.”¹⁵

Title V – Rivers and Trails

“Designation and management of lands within river corridors have been controversial in some cases, with debates over the effect of designation on private lands within the river corridors, the impact of activities within a corridor on the flow or character of the designated river segment, and the extent of local input in developing management plans.”¹⁶

“Subtitle C focuses on additions to the National Trails System. ... Under Subtitle C, six additional trails are designated to the system.”¹⁷

“Land acquisition for resource protection has been controversial in some cases. Legislation to give federal land management agencies the authority to purchase land from willing sellers has been considered, but not enacted, during the last five Congresses. Subtitle D would amend the National Trails System Act to provide authority to purchase land from willing sellers for designated trails that currently lack such authority.”¹⁸

¹³ Page 7.

¹⁴ Page 8.

¹⁵ Page 8.

¹⁶ Page 9.

¹⁷ Page 9.

¹⁸ Page 9.

Title VI – Department of the Interior Authorizations

“This Title covers a disparate collection of issues in six subtitles ... Subtitle A may be viewed as too expensive by some, and there has been considerable controversy associated with Subtitle E.”¹⁹

“Subtitle C includes a provision to encourage preservation of historic water rights at a Colorado national wildlife refuge (NWR). Legislation that involves water rights on federal lands has the potential to be controversial, as new uses of water may affect existing rights.”²⁰

“Subtitle F concerns a federal matching program to be administered by states and tribes for non-lethal wolf control and for compensation for livestock loss. ... some may believe that federal funds should not be authorized for such a program”²¹

“Subtitle A would establish a new cooperative watershed grant program in the Department of the Interior. Some may be opposed to the nearly \$180 million authorization for the program for FY2008-FY2020, as well as its possible duplication of other federal watershed programs and initiatives.”²²

“Subtitle A authorizes grants to establish a cooperative planning group and specifies criteria for additional implementation grants. It may be controversial to those who oppose multi-interest environmental planning and management, or who want one set of criteria to control the planning/management process.”²³

“Subtitle E concerns the controversial transfer of certain federal lands in Izembek NWR and Sitkinak Island-Alaska Maritime NWR in return for certain state lands and lands owned or claimed by an Alaska Native Corporation. The purpose of the transfer is to build a road through the refuge, from King Cove to Cold Bay, AK, to provide additional medical access for King Cove's citizens through the airport at Cold Bay. The chief controversies concerning the exchange have been (a) the high ecological value of the Izembek lands to be relinquished compared to the lands to be acquired; and (b) questions about any superiority of road access between the two communities, vis-a-vis a hovercraft supplied through earlier federal legislation intended to address the access problem.”²⁴

“Some additional controversies may be generated by the specific language of this exchange. Some language could be construed that the proposed amendment seeks to restrict the environmental review under the National Environmental Policy Act (NEPA), by listing some contents of an environmental impact statement, but leaving out a significant portion of such a document -- the alternatives analysis.”

¹⁹ Page 10.

²⁰ Page 10.

²¹ Page 10.

²² Page 10.

²³ Page 10.

²⁴ Pages 10- 11.

Title VII – National Park Service Authorizations

“Enacting stand-alone parks and recreation bills can be daunting, especially in periods of fiscal constraint and competing critical national priorities. While local economies may benefit from new or expanded park units, others object to the loss of taxable land from federal land purchases. Some are also concerned about adding to the System when fiscal limitations make it difficult to adequately maintain the existing units.”

Title VIII – National Heritage Areas

“Some opponents believe that NHAs present numerous problems and challenges and that Congress should oppose efforts to designate new areas or extend support for existing ones. Property rights advocates have taken a lead role in opposing heritage areas. Concerns include that some NHAs lack significant local support, the 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. The lack of a general statute providing a framework for heritage area establishment, management, and funding has prompted a different concern -- that the process is inconsistent and fragmented. The Bush Administration has expressed opposition to the designation of new areas until systemic legislation is enacted. Others are concerned that the enactment of additional heritage bills could substantially increase the administrative and financial obligations of the NPS. Still other observers recommend caution in creating NHAs, because in practice NHAs may face an array of challenges to success. For instance, heritage areas may have difficulty providing the infrastructure that increased tourism requires.”²⁵

Title IX – Bureau of Reclamation Authorizations

“The California project is somewhat unusual in that it authorizes the study of a water tie-in system for four local, nonfederal reservoirs.”²⁶

“The Executive Branch indicates that it has not budgeted for the San Gabriel Basin Restoration Fund in the past, and that it does not support an increased cost ceiling. In testimony before the Senate Energy and Natural Resources Committee's Subcommittee on Water and Power, Reclamation Commissioner Robert Johnson stated that he believes resources should be allocated to other priorities. ... Sec. 9301 increases the authorization to \$146.2 million.”²⁷

²⁵ Page 13.

²⁶ Page 14.

²⁷ Pages 14- 15.

“S.Amdt. 5662 would authorize appropriations to cover the federal share of costs, authorize the Secretary of the Interior to implement [Multi-Species Conservation Program] in accordance with the program documents, and waive sovereign immunity of the U.S. government to allow non-federal parties to enforce program documents. The issue of whether the United States should waive its sovereign immunity so that the other parties to the MSCP can sue to enforce it has been controversial since the legislation was first proposed. ... This provision would allow the nonfederal parties to sue to enforce the agreement.”²⁸

“Many contend that this legislation is an important legislative authorization for an administratively approved program to ensure water supplies and deliveries from the Lower Colorado River while maintaining compliance with the Endangered Species Act. Some express concerns that this legislation might be unnecessary since the project is already underway and the authority for federal participation in the project already exists.”²⁹

“Subtitle F of Title IX is quite broad in the issues it covers on the effect of climate change on hydropower, threatened and endangered species, and stream flow data collection, and more. However, it may also be restrictive since it does not appear to provide an overall strategy to address the possible effects of climate change on water availability and agency responses.”³⁰

“Programmatic provisions that make broad changes to an agency's authority, especially those that may change its relationship and interactions with Congress, can be controversial. For example, § 9503(d) would provide programmatic feasibility authority for climate change mitigation strategies, including the study of new dams, reservoirs, canals, etc. This authority may be controversial in states that have complex water storage and transport systems, conflicts over water quality and quantity, or stakeholder interests in expanding surface storage and conveyance. It also could be controversial since it would reverse a congressional decision from 1965 to revoke Reclamation's programmatic feasibility authority. Additionally, legislation proposing changes to water resources management is often controversial.”³¹

“Subtitle G ... addresses an issue that has been and will likely continue to be controversial: prioritizing a finite budget for asset management objectives.”³²

“More expensive recapitalization projects may exceed the financial means of local operators in the case of transferred works and could drive those entities to seek congressional support for project funding.”³³

²⁸ Page 15.

²⁹ Page 15.

³⁰ Page 16.

³¹ Page 16.

³² Page 16.

³³ Pages 16- 17.

Title X – Water Settlements

“Subtitle A, regarding the San Joaquin River Restoration Settlement, would authorize implementing a settlement in a long-standing dispute and lawsuit over management of waters in the San Joaquin River Basin in the Central Valley of California. The legislation has been very controversial both for its direct spending provisions, potential impacts on downstream interests, and loss of agricultural water, as well as for impacts on Delta and ocean fisheries, and water users if the legislation is not approved. S.Amdt. 5662 reduces the initial direct spending compared to the original legislation -- S. 27 and H.R. 24 -- to \$88 million, which is expected to be offset by early payment of water user repayment obligations. Another \$250 million in discretionary funding is also authorized. Settlement opponents fear water may be required to be released without a guarantee of adequate funding to implement projects to protect property owners and other third parties to the settlement. Total restoration costs are estimated to range from \$250 million to \$1.1 billion. Settlement proponents argue that further funding can be secured and that delay risks putting the issue back before a federal judge for remedy in a case that had already been decided in favor of restoring river flows to re-establish salmon populations.”³⁴

Title XI — United States Geological Survey Authorizations

“Section 11002 concerns the New Mexico Water Resources Study and may be controversial. ... Concerns about § 11002 include the cost and possible duplication of previous and existing federal efforts to study water resources in New Mexico. ... The USGS has several ongoing programs that study the Nation’s groundwater resources.”³⁵

Title XII – Miscellaneous

“This Title contains six apparently unrelated provisions covering ... the creation of an additional Assistant Secretary of Energy... and authorization of appropriations for national tropical botanical gardens.”³⁶

“The question of altering the governing provisions of a trust fund established by a state's enabling act is controversial, largely due to the perceived sanctity of enabling acts.”³⁷

“While none of the remaining provisions appear to be broadly controversial, each likely has its proponents and opponents.”³⁸

³⁴ Page 17.

³⁵ Page 18.

³⁶ Page 19.

³⁷ Page 19.

³⁸ Page 19.