

**AMENDMENT 675 - To prohibit federal bureaucrats from using eminent domain under the authorities granted by the Omnibus Public Lands Management Act.**

*No person shall be... deprived of life, liberty, or property, without due process of law, nor shall private property be taken without just compensation*

*~Amendment V, United States Constitution*

*"In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights."*

*~James Madison- "Father of our Constitution"*

- The Public Lands omnibus represents one of the largest expansions of federal land authority in two decades and is a substantial threat to property rights.<sup>1</sup>
- The federal government is already the dominant land holder in the nation.
- Federal land agencies, and their supporters, have not been shy about exercising authorities identical to those granted in this bill over private land.
- The Omnibus Public Lands bill empowers bureaucrats to impact property rights including the use of eminent domain.
- Non-partisan experts have acknowledged that eminent domain powers may be used pursuant to the omnibus bill.
- The "protections" offered in the bill are meaningless.

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<sup>1</sup> Oregonian: "Oklahoma senator once again holds up Mount Hood legislation;" November, 15, 2008;  
[http://www.trailadvocate.org/discuss/msgReader\\$1086?mode=topic&y=2008&m=12&d=2](http://www.trailadvocate.org/discuss/msgReader$1086?mode=topic&y=2008&m=12&d=2)

- At a very minimum, Congress should consider basic protections for property owners, such as a prohibition on the use of eminent domain for powers granted in this bill.
- The American people are demanding this commonsense safeguard.
- Property rights form the foundation of our economic liberty.
- This amendment will ensure that eminent domain authority is never used to implement this so called non-controversial bill.

**AMENDMENT 675 - To prohibit federal bureaucrats from using eminent domain under the authorities granted by the Omnibus Public Lands Management Act.**

The federal government currently owns 653 million acres of land, or nearly a third of all land in the United States. In some states, the percentage land owned by the federal government exceeds 80 percent.

The lands package (S. 22) has over 170 different provisions, many of which grant additional land purchase authority to federal bureaucrats. This often includes an existing authority to forcibly take private land by eminent domain.

This amendment will ensure that no federal agency can acquire new land under this Act using eminent domain authority. A reasonable exception is made for obtaining necessary access easements.

**The Public Lands omnibus represents one of the largest expansions of federal land authority in two decades and is a substantial threat to property rights.**<sup>2</sup>

The massive 1,294 page bill includes: Over \$10 billion in spending authority, largely for federal land agencies; 10 new National Heritage Areas; at least 3 new units of the National Park Service (NPS); over 12 studies to initiate the creation or expansion of NPS units; 80 new or expanded federal wilderness area designations totaling nearly 2.2 million acres; and 92 federal Wild and Scenic River designations covering nearly 1,100 miles of shoreline.

According to a leading property rights advocate: "This (bill) is a serious threat to all property owners in this country. Over the past several decades, there has been a proliferation of programs dedicated to the preservation of land that has extended the grasp of the federal government and its influence over private property rights. As a result of this legislation, landowners will see their property value diminish due to increased land use

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<sup>2</sup> Oregonian: "Oklahoma senator once again holds up Mount Hood legislation;" November, 15, 2008; [http://www.trailadvocate.org/discuss/msgReader\\$1086?mode=topic&y=2008&m=12&d=2](http://www.trailadvocate.org/discuss/msgReader$1086?mode=topic&y=2008&m=12&d=2)

regulations and outdoor recreation enthusiasts will find new restrictions on both public and private land.

The expert goes on to say, "Legislation should never arbitrarily attempt to seize land from the public and restrict its use, as the omnibus package would."<sup>3</sup>

### **The federal government is already the dominant land holder in the nation.**

The federal government currently owns 653 million acres, or 29 percent of all land in the United States.<sup>4</sup> Nearly 1 out over 3 acres in this country is owned and controlled by the federal government. In the West, 1 out of every two acres is owned and controlled by the federal bureaucracy.<sup>5</sup>

In many states, the federal government owns the majority of land. For instance: Nevada- 84 percent, Alaska- 69 percent, Utah- 57 percent, 53 percent-Oregon, Idaho- 50 percent. In these states now, the federal government has control over more land the Governor or the legislature of the state.

These statistics do not include all lands where the federal government exercises varying degrees of control, such as national heritage areas, national trails, and wild and scenic rivers.

### **Federal land agencies, and their supporters, have not been shy about exercising authorities identical to those granted in this bill over private land.**

The National Park Service has already acknowledged that it believes it has control over lands **outside** of federal wilderness areas (2.2 million acres in this bill).

In testimony before Congress opposing a provision that would have protected the property rights of landowners surrounding a wilderness area, the National Park Service testified:

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<sup>3</sup> <http://www.propertyrightsalliance.org/index.php?content=SenLand08>

<sup>4</sup> <http://www.congress.gov/erp/rl/pdf/RL34273.pdf>

<sup>5</sup> [http://www.house.gov/hensarling/rsc/doc/Federal\\_Land\\_Ownership\\_05012005.pdf](http://www.house.gov/hensarling/rsc/doc/Federal_Land_Ownership_05012005.pdf)

*“Section 4(d)(2) states that non-wilderness activities outside of designated wilderness shall not be precluded because they can be seen or heard within the wilderness. We are concerned that this section could affect the National Park Service’s ability to protect the designated wilderness. Exempting activities outside wilderness could affect the National Park Service’s ability to address noise, pollutants, or other undesirable effects on wilderness that come from outside the parks. We recommend that this section be removed from the bill.”*<sup>6</sup>

In commemorating the 40<sup>th</sup> anniversary of the Wild and Scenic Rivers Act last year, the National Parks Conservation Association (NPCA) in describing its legal efforts based on the Wild and Scenic Rivers Act noted, “...by helping the National Park Service fight [this dam], NPCA helped reshape Section 7 of the Wild and Scenic Rivers Act, ultimately giving federal agencies more control over development that could influence the rivers they protect both inside the National Wild and Scenic Rivers System, and beyond.”<sup>7</sup>

### **The Omnibus Public Lands bill empowers bureaucrats to impact property rights including the use of eminent domain.**

According to noted property rights advocates Ronald Utt and Nicolas Loris, the public lands omnibus will “continue the federal assault on private property rights.”<sup>8</sup>

While the bill is often silent (by design), it clearly grants additional authority to federal bureaucrats based on laws that grant the right to seize land by eminent domain (Wild and Scenic Rivers, National Trails Act).

The omnibus creates an additional 1,200 miles of “protected” shoreline pursuant to the ***Wild and Scenic Rivers Act of 1968***.

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<sup>6</sup> Statement of Karen Taylor (National Park Service) before the House Subcommittee on National Parks, Forests and Public Lands (Resources), October 30, 2007.

[http://resourcescommittee.house.gov/images/Documents/20071030/testimony\\_taylor-goodrich.pdf](http://resourcescommittee.house.gov/images/Documents/20071030/testimony_taylor-goodrich.pdf)

<sup>7</sup> National Parks Conservation Association website, “Of Time and Rivers Flowing: Forty Years Downstream for the National Wild and Scenic Rivers System.” Summer 2008, <http://www.npca.org/magazine/2008/summer/of-time-and-rivers-flowing.html>

<sup>8</sup> Utt, Ron and Nicolas Loris, “Omnibus Lands Bill Places More Energy Off Limits,” Heritage Foundation.

That original Act reads: “Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, **if** such lands are located within any incorporated city, village or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this Act.”<sup>9</sup>

In other words, if the local government refuses to be steamrolled by federal regulators, local properties are subject to forcible seizure through the eminent domain process.

According to an analysis appearing in the Wild and Scenic Rivers Act in the Lewis and Clark Law School Environmental Law Review, “[the] use of eminent domain to acquire private property [is] allowed if the majority of land along the river segment is *not* federally owned; agency may also use condemnation when necessary to acquire scenic easements through private property.”<sup>10</sup>

Also consider the ***National Trails Act***, which is invoked at least six times in the lands omnibus.

It reads: “The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests...”<sup>11</sup>

### **Non-partisan experts have acknowledged that eminent domain powers may be used pursuant to the omnibus bill.**

The Congressional Budget Office (CBO) noted that while the power would likely be used sparingly, the bill now under consideration *does* allow for the use of eminent domain. “In cases where property is acquired through eminent domain, the Department of the Interior would have to compensate property owners for the fair market value of the property.”<sup>12</sup>

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<sup>9</sup> Wild and Scenic Rivers Act, PL 90-542, <http://www.rivers.gov/wsract.html>

<sup>10</sup> Lewis and Clark School of Law, Environmental Law Review Online; Andy Kerr and Mark Salvo, Issue 38:3, [http://www.elawreview.org/elaw/383/overlapping\\_wilderness\\_and\\_wil.html](http://www.elawreview.org/elaw/383/overlapping_wilderness_and_wil.html)

<sup>11</sup> National Trails System Act, PL 90-543, <http://www.nps.gov/nts/legislation.html>

<sup>12</sup> Congressional Budget Office Cost Estimate: “S. 1193 A bill to direct the Secretary of the Interior to take into trust.” November 12, 2008.

two parcels of federal land for the benefit of certain Indian Pueblos in the state of New Mexico

In a letter recently sent to all members of the Senate, and signed by over 100 citizen and taxpayers groups, “we are concerned the omnibus bill would lock millions of additional acres of land into government regulation, preventing American citizens from exercising their right of property.”<sup>13</sup>

### **The “protections” offered in the bill are meaningless.**

Of the 170-plus provisions in the bill, in less than a dozen instances, the authors of the legislation have included “willing seller” provisions—a term that is never defined and generally considered meaningless by property rights experts.

When asked about a willing seller provision being considered in the 109<sup>th</sup> Congress James Burling, an attorney with the Pacific Legal Foundation, noted: “The so-called protections for private property owners are largely symbolic; so long as regulators can browbeat landowners into becoming ‘willing sellers’ we will continue to see the erosion of fee simple property ownership in rural America.”<sup>14</sup>

More important, the bill DOES NOT repeal or impair the underlying eminent domain authority that exists for most of the provisions of the Omnibus.

In fact, agencies of the federal government have invoked eminent domain authority on “willing sellers.”<sup>15</sup>

### **At a very minimum, Congress should consider basic protections for property owners, such as a prohibition on the use of eminent domain for powers granted in this bill.**

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<sup>13</sup> Property Rights Alliance: Letter dated November 10, 2008,  
<http://www.propertyrightsalliance.org/index.php?content=SenLand08>

<sup>14</sup> Statement of Peyton Knight Director of Environmental and Regulatory Affairs, The National Center for Public Policy Research; Before the U.S. House of Representatives Committee on Resources Subcommittee on National Parks, Recreation and Public Lands; September 28, 2006  
[http://republicans.resourcescommittee.house.gov/archives/ii00/archives/109/testimony/2006/peytonknight\\_092806.pdf](http://republicans.resourcescommittee.house.gov/archives/ii00/archives/109/testimony/2006/peytonknight_092806.pdf)

<sup>15</sup> The US Navy filed condemnation proceedings against private farms/willing sellers in North Carolina,  
[http://www.freedomworks.org/informed/issues\\_template.php?issue\\_id=2302](http://www.freedomworks.org/informed/issues_template.php?issue_id=2302)

The Coburn amendment is simple. It will not prevent a single federal designation from being enacted, nor will it impact the ability of agencies to protect or administer the lands outlined in this bill.

It simply bars federal bureaucrats from taking the extraordinary step of seizing private property under any provision of this bill (remember we are not talking about essential government activities like national defense or even

To those who say it is unlikely such power would ever be used, what is the harm in clearly saying it cannot happen?

To those who have already experienced the pain of having hard earned property taken by the federal government, this amendment says “never again, not on our watch.”

**The American people are demanding this commonsense safeguard.**

When asked in a recent National Constitution Center poll, 87 percent of those polled said that the government should not have the power “to take people’s private property to redevelop an area.”

Regardless of ideology or position on the lands bill, Congress must unite in defense of one of the most important Constitutional rights.

**This amendment will ensure that eminent domain authority is never used to implement this so called non-controversial bill.**

It simply eliminates the possibility that federal bureaucrats will forcibly take private land in the implementation of this legislation.

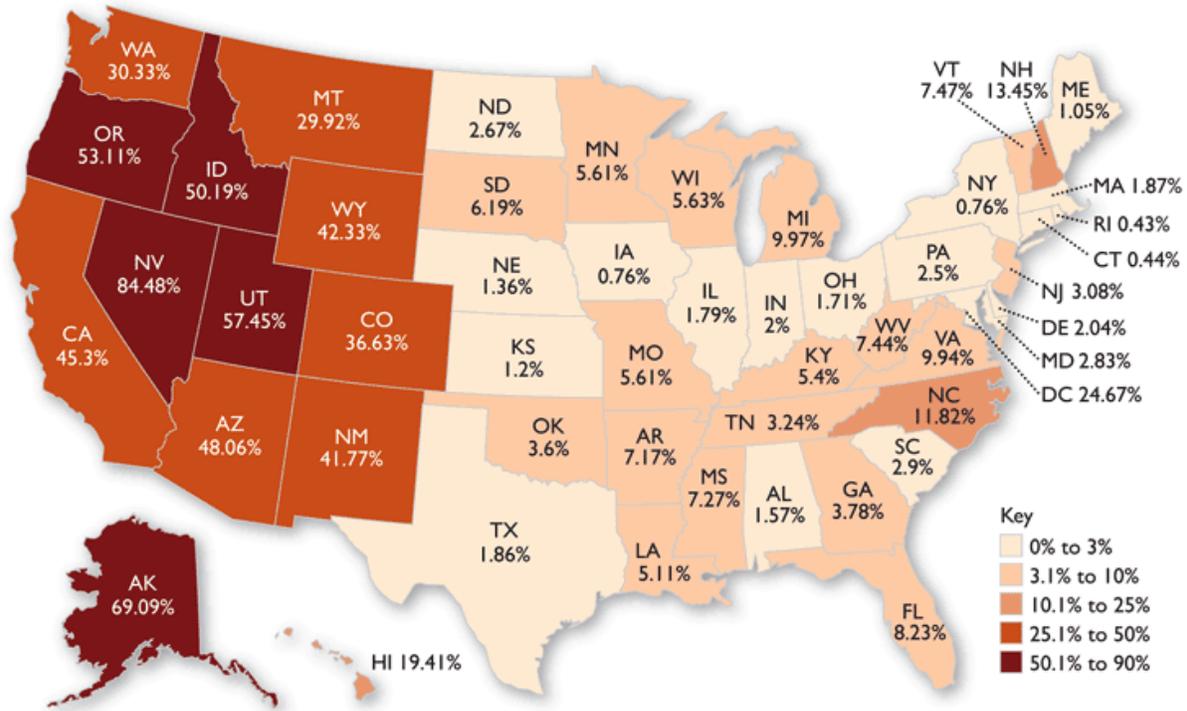
**Property rights form the foundation of our economic liberty.**

Government exists in large part to preserve and protect this essential right. Yet in the modern era, the federal government often poses the greatest threat.

Never satisfied with the size of federal land holdings (653 million acres), or its jurisdictional reach, Congress has paid little attention to the property rights of Americans.

The federal government does not need more land; and it certainly does not need the authority to take it forcibly.

# Percent of Federally Owned Acreage, by State



## U.S. Rankings, from Highest to Lowest

State	Percent of Federally Owned Acreage	State	Percent of Federally Owned Acreage	State	Percent of Federally Owned Acreage
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%20FY2004%20Final\\_R2M-n1\\_0Z5RDZ-i34K-pR.pdf](http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20FY2004%20Final_R2M-n1_0Z5RDZ-i34K-pR.pdf) (November 14, 2008).