



Legislative Bulletin.....April 9, 2008

Contents:

H.R. 2016—National Landscape Conservation System Act

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: \$0

Effect on Revenue: \$0

Total Change in Mandatory Spending: 0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 2016—National Landscape Conservation System Act (*Grijalva, D-AZ*)

Order of Business: The bill is scheduled to be considered today, April 9, 2008, subject to a structured rule ([H.Res. 1084](#)), making eight amendments in order. The RSC will send a forthcoming document summarizing every amendment made in order.

Summary: H.R. 2016 would require the Bureau of Land Management (BLM) to permanently lock 26 million acres of land into the National Landscape Conservation System (NLCS). Land managed by the NLCS under this bill would include any land that is currently designated as:

- A national monument;

- A national conservation area;
- A wilderness study area;
- A National Scenic Trail or National Historic Trail designated as a component of the National Trails System;
- A component of the National Wild and Scenic Rivers System;
- A component of the National Wilderness Preservation System; or
- Any area designated by Congress to be administered for conservation purposes.

The purpose of NLCS' management of these lands would be to conserve, protect, and restore nationally significant landscapes. The NLCS would be required to manage the system in accordance with any applicable laws and in accordance with the "values" of each particular unit.

Additional Background: Land-use on the vast majority of land managed by the BLM includes such activities as grazing, mining, hunting, fishing, camping, hiking, off-road vehicle use, horseback riding and much more. According to their Website, the BLM is mandated to manage lands in a manner that allows multiple public uses of the land. To that effect, the BLM administers over 18,000 grazing permits, 13 million authorized livestock on 160 million acres of rangeland, and 57,000 wild horses and burros. The BLM also manages over 700 million acres of underground mining surfaces, 117,000 miles of fisheries habitat, and 57 million acres of commercial timber forests.

Unlike the National Park Service (NPS), the BLM's purpose is not to protect, conserve, and restore especially significant public lands. Rather, the BLM is required to manage over 258 million acres of mixed-use land owned by the federal government (mostly in the West) in a way that supports a wide variety of activities. Additionally, BLM land differs from NPS land in that it is much more intermingled with private property, especially in the Western U.S., where the federal government owns vast tracts of territory.

The NLCS was established administratively by former Secretary of Interior Bruce Babbitt in 2000. The system, which comprises some 10% of all BLM land, includes over 850 federally recognized areas that are considered more worthy of conservation and preservation than other BLM land. H.R. 2016 would establish a new, two-tiered system of land management within the BLM that would allow the NLCS to permanently regulate land considered to be particularly significant in much the same way as the NPS. Land regulated by the NLCS is often considered the "crown jewel" of the BLM, and land-use within the NLCS is much more carefully restricted to promote conservation.

Republicans on the Natural Resources Committee have expressed concerns that the bill would significantly limit the types of land-use allowed on public NLCS land by subjecting it to a new bureaucratic management entity with seemingly unlimited regulatory power. Critics have asserted that the NLCS management guidelines as provided in H.R. 2016 may cause regulatory inconsistency and confusion. The bill would state that NLCS land must be managed "in a manner that protects the values for which the components of the system were designated." The term "values" also appears in land management guidelines under the NPS Organic Act, and has been interpreted in the past to constitute special federal protection of land designated as "sound-scapes," "view-scapes," and "smell-scapes." The use of such land has, in the past, led to

lawsuits filed by conservation and environmentalist organizations against ranchers and residents within these areas. According to Rep. Rob Bishop (R-UT), Ranking Member on the Subcommittee on National Parks, Forests, and Public Lands, H.R. 2016 “uses language which has haunted National Park Service managers, to the delight of trial attorneys.” Opponents of H.R. 2016 argue that similar vague and subjective definitions have led to lawsuits and public disputes over land-use in the NPS, and may severely limit the land-use activities that take place on BLM land.

In addition, concerns have been raised about violence on some NLCS land as a result of illegal immigration and human trafficking. In February, 2007, an article in *Tucson Weekly* chronicled rampant illegal immigrant activities in Arizona’s Ironwood Forrest National Monument, an 180,000-acre preserve managed by the NLCS.¹ The article reports that “probably hundreds of illegals a week make it into the Ironwood along this portion of the Amnesty Trail... it vividly shows the free-for-all nature of human smuggling in the Ironwood.” The story also quotes BLM officials who acknowledge the problem of human smuggling within NLCS land, stating, “The smugglers are bringing their people farther north and giving them stimulants to keep them walking. Eventually, they abandon those people, and those are the ones we find dead in the monument.” Though BLM officials acknowledge a problem, the “wilderness” and “monument” status of NLCS land can reduce the number of regular border patrols, restrict vehicular travel, and add another layer of bureaucratic red tape for border patrol agents. H.R. 2016 has no language regarding border patrol agents or activities along the hundreds of miles of NLCS border-land.

In addition, questions about Second Amendment rights on lands managed by the NLCS have also been raised. Unlike NPS land, the BLM has historically allowed hunting and fishing throughout its system. However, concerns have been raised that hunting, fishing, and the lawful possession of firearms could be restricted on land managed by the NLCS. In August the National Rifle Association (NRA) sent a letter to the Natural Resource Committee stating that the NRA would support the bill if it were to include language to clarify that access to hunting, fishing, and recreational shooting would be protected on appropriate NLCS managed land, and that nothing in the legislation would supersede states’ authority to regulate hunting and fishing. However, H.R. 2016 passed through the Committee without ensuring that hunting, fishing, or recreational shooting would be allowed on appropriate NLCS land. In response, the NRA sent another letter on March 13, 2008, stating that the bill does not ensure access to hunting or recreational shooting and that “the National Rifle Association opposes H.R. 2016.”

Because of these concerns, 18 of the Natural Resources Committee’s 21 Republicans signed a letter of dissent from the majority’s favorable recommendation of H.R. 2016. The letter stated, among other things, that “We strongly oppose H.R. 2016. The true purpose of H.R. 2016 is to prevent many locally popular, wholesome family recreational opportunities and almost all economic activities from taking place on 26 million acres of BLM land.” In addition to the 18 Republican signees, the following land and gun rights organizations have publically opposed H.R. 2016:

¹ Leo W. Banks, “Following the Amnesty Trail,” *Tucson Weekly*, February 15, 2007.
<http://www.tucsonweekly.com/gbase/Currents/Content?oid=oid:92554>

- The Property Rights Alliance
- The National Rifle Association
- Americans for Responsible Recreational Access
- The American Lands Rights Association
- The Property Rights Project
- The Land Rights Network

Possible Conservative Concerns: Some conservatives may have multiple concerns with H.R. 2016, which permanently locks 26 million acres of Bureau of Land Management (BLM) land into the National Landscape Conservation System (NLCS). Below are a number of the possible concerns.

- *Restricted land-use:* Some conservatives may be concerned that the H.R. 2016 could potentially restrict land-use on 26 million acres of federal land. BLM land has traditionally been used for multi-purpose recreational, farming, and industrial needs. H.R. 2016 locks 26 million acres into a system that is managed from a conservation—rather than a multiple-use—perspective. Conservatives may be concerned that public land-uses such as mining, grazing, hunting, fishing, off-roading, horseback riding, and shooting would be subject to NLCS restrictions.
- *Border Security:* Some conservatives may be concerned that the bill would permanently place hundreds of miles of BLM land on and around the nation’s southwest border under the control of the NLCS. Conservatives may be concerned that current NLCS lands have been difficult for U.S. Border Patrol Agents to monitor and this legislation may exacerbate the problem by adding an additional layer of bureaucracy near the border. Finally, some conservatives may be concerned that the bill does not require the NLCS to even consider illegal immigration or human trafficking in its management plans for units on or near the border.
- *Second Amendment Rights:* Some conservatives may be concerned that hunting and gun rights that have been traditionally allowed on BLM land could be subject to restrictions if the land were permanently added to the NLCS. Further, conservatives may be concerned that H.R. 2016 omits language that would specifically protect hunting, fishing, or gun rights on NLCS land. Also, conservatives may be concerned that the National Rifle Association opposes H.R. 2016.
- *Unlimited Expansion:* Some conservatives may be concerned that while the bill transfers permanent control of a limited amount of land (26 million acres) to the NLCS, it does not prohibit the BLM from drastically expanding the NLCS in the future. The conservationist nature of the NLCS differs greatly from the BLM’s original mandate to allow a variety of public land-uses. Therefore, conservatives may be concerned that expansion of NLCS lands could continue unchecked under H.R. 2016 and infringe on land-use rights throughout the BLM’s 258 million acre system.

Committee Action: H.R. 2016 was introduced on April 24, 2007, and referred to the Committee on Natural Resources. On April 26, 2007, the bill was referred to the Subcommittee on National

Parks, Forests, and Public Lands, which held hearings on June 7, 2007, and took no further action. On March 12, 2008, the full Committee held a mark-up and reported the bill, as amended, by a roll call vote of 24-13.

Administration Position: Although a Statement of Administration Policy (SAP) was not available at press time, the President has indicated that he supports passage of H.R. 2016.

Cost to Taxpayers: According to CBO, H.R. 2016 would not have any effect on the BLM budget or annual authorization levels because the BLM already has administrative control over the NLCS.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, it statutorily authorizes the National Landscape Conservation System (NLCS) within the Bureau of Land Management (BLM), and permanently transfers 26 million acres of BLM land to NLCS management.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? The Committee on Natural Resources, in [House Report 110-561](#), states that “H.R. 2016 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.”

Constitutional Authority: The Committee on Natural Resources, in [House Report 110-561](#), cites constitutional authority in Article I, Section 8, and Article IV, Section 3, but does not cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution. *[emphasis added]*

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