

S 2739 “The Consolidated Natural Resources Act of 2008” (Public Lands bill)

Much has been written and said about this legislation. It has been described as “non-controversial,” “broadly bi-partisan,” and “so obviously in public interest.” It contains 62 separate pieces of legislation, and has been presented as an “all or nothing” package.

Its costs have not even been scored by the Congressional Budget Office (CBO).

Yet, given previous CBO estimates of individual measures contained within this bill (where scores are available), the package authorizes an estimated **\$380 million in new spending**.

The legislation is not paid for. Either Congress intends to brush aside previous commitments, never has any intention of funding the new commitments, or intends to borrow more money.

With our nation nearly \$10 trillion in debt, these new priorities include:

- \$2 million to create a commission to celebrate “the 200th anniversary of the voyage of Robert Fulton in the Clermont, and the 400th anniversary of the voyage of Henry Hudson in the Half Moon.” This includes the ability to hire staff.
- \$2 million to create a commission to celebrate the 400th anniversary of the voyage of Samuel de Champlain.
- “Such sums as are necessary” (blank check) for the establishment of the Piedras Blancas Historic Light Station Outstanding Natural Area (near the world famous Hearst Castle in California). Allows for further land acquisition of nearby properties.
- (slipped into the new bill) Intermodal Transportation Center in Trenton, Maine- The bill authorizes the federal government to pay for 40 percent of planning and construction (no cap) and 85

percent of operations and maintenance of the center (no cap). The site will include a visitor's center, station for the area's Island Explorer bus system and parking. It will include information on the Acadia National Park (which is nearby), but also act as a tourism hub for the city and region. There are three visitors center within the park and at least two more in surrounding communities.

- A \$12 million earmark to help the Eastern Municipal Water District (California) "in the design, planning, and construction of permanent facilities needed to establish operational pressure zones that will be used to provide recycled water in the district." The provision is authored by a Congressman whose District Director (as of most recent salary disclosure) also serves on the Board of the EMWD.
- Such sums as necessary (another blank check) to establish the Jupiter Inlet Lighthouse Outstanding Natural Area and authorizes land acquisition on adjacent lands (all prime real estate).
- \$15 million for the State of New Mexico to plan, study and map water resources, including \$7.5 million for hydrologic mapping and associated equipment. At the start of the most recent state legislative session, lawmakers were project to have \$369 million in new monies available, with \$261 million in surplus budget revenues.¹ The New Mexico legislature just approved a plan to buy the Governor a new \$2.8 million airplane.²
- Re-designation of a trail in Oregon to honor the life and career of a former US Congressman who supported environmental preservation efforts in his home state. He was also the subject of a high profile ethics investigations that found improper use of campaign funds for personal uses.
- \$9 million over five years for the Northern Mariana Islands to send a delegate to Congress. The delegate will have a full House staff, and the expected cost just next year is \$1 million.

¹ <http://www.abqtrib.com/news/2007/dec/05/369-million-new-money-projected-2009-new-mexico-bu/>

² <http://www.abqtrib.com/news/2008/feb/14/new-mexico-governor-sees-few-successes-2008-legisl/>

The island has 60,000 residents. The average House district is around 650,000 people.

- \$3 million in FY 2010 for the Department of Homeland Security (DHS) to assume control of the Northern Mariana Island immigration system (information technology, facilities and staff).
- “Such sums as are necessary” (CBO says \$250,000) for the federal government to initiate a three year study of Cesar Chavez and the Farm Labor Movement, to determine if relevant sites should be recognized and preserved. The federal government is required to consult with the United Farm Workers Union.
- \$10 million to reauthorize the Dwight D Eisenhower Memorial Commission for another five years (\$2 million a year to plan). Since 2000, Congress has allocated **\$6.35 million** to the still unfinished project. It has selected a site near the Department of Education, to commemorate the President’s involvement with the Department of Health, Education and Welfare. Among commission staff, up to three employees are allowed to make up to \$149,000.
- \$3.2 million for a two year commission to study the creation of a National Museum of the American Latino, including a mandatory national conference.
- \$39.85 million in earmarks for multiple recycled water programs in California.

The bill **increases federal land holdings at a time federal agencies struggle to maintain what they already have.** The legislation includes authorizations to acquire more land including:

- The Wild Sky Wilderness Act
- The Piedras Blancas Historic Light Station
- Carl Sandburg National Historic Site Boundary Adjustment Act
- Mesa Verde National Park Boundary Adjustment Act
- The Star-Spangled Banner National Historic Trail Act,

- Eightmile River Wild and Scenic River Act.

The reintroduced bill now includes:

- An additional \$10 million for land acquisition in Acadia National Park;
- A provision allowing for land purchases near the proposed Jupiter Inlet (Florida) Lighthouse Outstanding Natural Area;
- An authorization allowing the federal government to purchase land for the Platte River Recovery Implementation Program

The federal government owns **over 650 million acres**.

- A decade ago, the government owned 25 percent of all land in the United States. As of 2004, that number had grown closer to 29 percent.³
- Between 1997 and 2004, the latest years for which reliable information is available, federal land ownership increased from 563.3 million acres to **654.7 million**.⁴ That is an increase of more than 90 million acres, or a 16 percent increase.
- The amount of land owned by the government is equivalent to the land in 27 States.
- The federal government has long occupied a majority of the property in some states. This includes as much as 84 percent of the land in Nevada, 69 percent in Alaska, 57 percent in Utah, 53 percent in Oregon, and 50 percent in Idaho.⁵ For the 11 “western states” the federal governments owns 47 percent of all land.
- In these states, majority federal ownership means that any bureaucrat in Washington will have authority over **more** land

³ <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>

⁴ [http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Fin al_R2M-n11_0Z5RDZ-i34K-pR.pdf](http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2004%20Final_R2M-n11_0Z5RDZ-i34K-pR.pdf); and http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/owned_inv_97_R2M-n11_0Z5RDZ-i34K-pR.pdf

⁵ Kristina Alexander and Ross W. Gorte. “Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention,” Congressional Research Service, December 3, 2007.

in the state than the governor or legislature of that state
(This bill only makes that situation worse).

The federal government is struggling to maintain previous commitments of Congress. Much of this impacts the National Park Service.

The National Park Service (NPS) faces a \$9 billion maintenance backlog. The NPS is forced by this legislation to take on even more responsibility with little or no way to pay for it.

- A recent memo prepared by the Facility Management Division of the National Park Service reveals at least 10 states where NPS maintenance backlogs exceed \$100 million. At least twenty states have facilities with deferred maintenance exceeding \$50 million⁶. These numbers exclude nearly \$5 billion in parks roads facing serious deferred maintenance costs.
- The NPS maintains 1,466 building built before 1900.
- It has 4,975 buildings constructed before 1950 (such as cabins, interpretative centers, preservation buildings, etc)
- It has over 2500 fixed based assets it no longer needs, but cannot afford to dispose of;
- The National Park Service has 31 sites in California and faces a total state backlog of \$584 million (excluding road maintenance needs). The state is home to national treasures including Yosemite, Golden Gate Recreation Area and Sequoia National Park.

⁶ December 11, 2007 Summary for Congressional Research Service: NPS Asset Management Challenge

- New York national parks facilities face a \$347 million backlog; New York is home to Ellis Island and the Statue of Liberty. Perhaps the greatest symbol of our nation, Statue of Liberty Park faces a \$185 million maintenance backlog.⁷
- National Park in Wyoming face \$205 million maintenance backlog. Sites include Yellowstone, Grand Teton National Park and Devils Tower. Yellowstone faces a \$130 million maintenance backlog.
- In Montana, Glacier National Park faces a staggering maintenance backlog of \$400 million, including the stabilization of historic structures.⁸
- \$371 million backlog in Washington, DC. Our Capital is home to our most treasured memorials highlighting our democratic values and honoring the war heroes who make it all possible.
- New Mexico, which has 16 national parks sites, faces a \$41 million backlog (excluding roads); Sites include Carlsbad Caverns, White Sands and many ancient Indian ruin sites. At Carlsbad, maintenance needs were so pressing that sewer lines were actually leaking into the historic caves. Carlsbad superintendent Benjamin said: "Believe me, if there's sewage dripping down into that cavern, people are not going to believe we're doing a good job."⁹ At the time of his statement, he had three more miles of sewer line to repair or replace. As for New Mexico's other National Park sites, Benjamin says: "you'll hear the same song from all of them, maybe a different verse,"

⁷ Ibid.

⁸ http://www.npca.org/what_we_do/visitor_experience/backlog/maintenance.html

⁹ NATIONAL PARKS FAST FALLING INTO DISREPAIR: From aging facilities to overgrown trails, reaching the backcountry is getting harder. May 25, 2004 <http://www.csmonitor.com/2004/0525/p01s02-usgn.html>

According to an analysis on the maintenance backlog crisis within the National Park Service, “Ancient stone structures are collapsing at Chaco Culture National Historical Park in New Mexico¹⁰.”

- Arizona, which includes perhaps the most identifiable national park, the Grand Canyon, faces a backlog of \$192 million. A leading parks advocacy group places the Petrified Forest National Park among the most ten most endangered parks in America¹¹. The maintenance backlog at the Grand Canyon—considered one of the “seven wonders of the world” faces a deferred maintenance backlog of \$121 million¹².
- In the states included in the Journey Through Hallowed Ground National Heritage Area (designated in this bill), the NPS faces a combined backlog of \$572 million (again excluding roads maintenance). Those states include important national parks sites including Gettysburg (51,000 American died) and Antietam Battlefield (single deadliest one day battle in American history—23,000 lost). Gettysburg faces a \$15 million maintenance backlog; Antietam: \$22 million. In total: the three states face a National Park maintenance backlog of \$573 million.
- “According to studies by the [National Parks Conservation Association](#), the average budget shortfall among nearly 100 park units is 32 percent. Yellowstone's shortfall is 35 percent, Gettysburg's 35 percent, Everglades 32 percent,

¹⁰ NATIONAL PARKS FAST FALLING INTO DISREPAIR: From aging facilities to overgrown trails, reaching the backcountry is getting harder. May 25, 2004 <http://www.csmonitor.com/2004/0525/p01s02-usgn.html>

¹¹ http://www.npca.org/media_center/press_releases/2001/page-27598999.html

¹² January 17, 2008 “CRS Paper Follow to Senator Coburn” Prepared by the National Park Service

Valley Forge's 36 percent, Acadia's 53 percent, Fort Sumter's 24 percent.”¹³.

Each of the new projects authorized in this bill will siphon funds away from these important national treasures, and will add new commitments that Congress cannot afford.

In addition to major land acquisition authorizations, **the bill has major property rights implications.**

It authorizes the creation of three **new National Heritage Areas (NHA)**, and extends the “temporary” authorization for several more.

They include:

- The Journey Through Hallowed Ground NHA that stretches across Virginia, Maryland and Pennsylvania.
- The Niagara Falls National Heritage Area,
- The Abraham Lincoln National Heritage Area in Illinois.

Most American do not realize what a National Heritage Area really is. National Heritage Areas are federally imposed designations that facilitate the establishment of a single local or regional effort to lead land use and preservation efforts. The local entity is guided by the National Park Service and is a conduit for federal funding (though it may raise additional non-federal funds). Because they are created for a narrow special interest (but politically advantageous), heritage areas are also often a favorite target for Congressional earmarks.

The National Heritage Areas program was created in 1984, and 27 of them were designated through 2005. But in 2006, another 10 regions received the distinction. Six more were approved by the House of last fall.¹⁴

¹³ <http://www.nationalparkstraveler.com/2007/09/will-centennial-launch-national-park-service-toward-greatness>

¹⁴ Paul Kane. “Heritage Areas vs. Property Rights; With Designations on Rise, Conservatives Sound Alarm,” Washington Post, November 30, 2007, Page A21.

In addition to this bill, there have been about 30 bills introduced in this Congress to create or study the creation of new NHAs.

Heritage areas operate under the supervision of the National Park Service (they approve management plans), and each is given up to \$1 million annually to finance the “preservation” efforts of one group. The focus of these efforts is to influence local land use decisions.

The NHA groups themselves acknowledge this point:

- The Blackstone River Valley National Heritage Corridor Management Plan, approved by the National Park Service, says the “commission will be a strong voice for local land use planning and regulatory measures.” It commits to working “to enact ordinances that preserve open spaces.”¹⁵
- In describing the efforts and plan of the Wheeling National Heritage Area, the City of Wheeling talks of a strategy that “should include expanded use of historic zoning districts that include measures to regulate building renovation and demolition as well as the design characteristics of new development.”
- The Lehigh and Delaware Canal National Heritage Corridor Management Plan says “careful land management will encourage well designed development in appropriate places, lessening the homogenization caused by urban sprawl.”¹⁶
- The Journey Through Hallowed Ground NHA, authorized in this bill, has hired a local land use consultant who will work with state and local governments to achieve its vision of ideal land use ordinances. “The Alexandria, VA, office of EDAW, Inc., the international land-based planning and design firm, is providing advice on planning and design issues related to the future development of JTHG (Journey Through Hallowed Ground NHA), and attending meetings with local and state agencies to help facilitate discussion of planning issues.”¹⁷

The National Park Service agrees.

- In providing an example of management plans for others to follow, the NPS highlights a strategy that calls on heritage areas to “support

¹⁵ http://www.nps.gov/history/history/online_books/blac/chlm.pdf p 62

¹⁶ http://www.nps.gov/history/history/online_books/heritage/dele.pdf p 32

¹⁷ <http://www.hallowedground.org/content/view/162/12/>

sustainable land use, open space, and greenway planning and preservation...¹⁸”

- It Parks Advisory Board says: “The National Heritage Area approach, with its networks of relationships and ability to leverage resources, can serve as a model for achieving National Park Service conservation goals.”¹⁹

Property owners, private businesses, and homeowners are at a serious disadvantage if they disagree with the NHA. Congress is choosing to endorse and fund one interest in our community, at the expense of all others. Individual citizens will not have the luxury of federal funds, nor the advice and assistance of a major federal bureaucracy.

National Heritage Areas are advertised as a means of promoting tourism. Hidden, is a more ideological agenda that is being funded in our communities.

In a 1994 National Park Service newsletter, NHAs were said to “...represent a sea change in traditional notions of parks and historic preservation.”

It goes on to say: “heritage areas are an outgrowth of the environmental age, a time for sustaining rather than exploiting resources and pursuing the consumption based development model. Heritage area planning is holistic, resource based, and in keeping with the idea that the people’s true heritage is the entire Earth.”

“Parks,” the article notes, “have been separate and apart from working and residential landscapes and a product of pastoral myth.”²⁰

The bill contains no real protections for private land owners, businesses, homeowners, or important national infrastructure.

¹⁸ <http://www.nps.gov/history/heritageareas/REP/notebook.pdf> p 29

¹⁹ <http://www.nps.gov/history/heritageareas/NHAreport.pdf>

²⁰ “The Heritage Area Phenomenon: Where is it Coming From?” Paul Bray. Cultural Resource Management, Volume 17, No. 8 1994, p3.

In fact, one of the most ardent supporters of the Journey NHA (in this bill), and also a member of the Journey management board, is preparing the spend \$3 million to stop the construction of a major transmission line to Northern Virginia and Washington, DC metro area.²¹ This means federal support and endorsement will go to a group opposing critical infrastructure upgrades, that could otherwise impact the economy and security of the Capital region.

The bill also authorizes another **federal wilderness area**, by designating over 100,000 acres in Washington state. Wilderness designations impose severe restrictions on federal lands and shuts off nearly all economic or human activity.

Given that the federal government is already a majority or near-majority land holder in most of the impacted states, the more severe wilderness designation **will give the unelected bureaucratic even more control over the state than the Governor or legislature of the state.**

The designation is achieved pursuant to the Wilderness Act of 1964. At the time the law was passed, the bill's proponents argued that the wilderness system would never exceed **60 million acres**. According to CRS, we have now exceeded **107 million acres**. That amounts to a federal expansion of more than a million acres per year!

Congress has allowed the designation of over 700 wilderness areas, or nearly 17 percent of all federal land and 5 percent of all land in the United States.

In just the 110th Congress, there are 14 other wilderness area Senate bills designating over 20 new wilderness areas in nine states. There are three wilderness areas bills in the Senate just for the State of Oregon (S 374, 2304, 2379).

Since the 106th Congress, 14-18 new wilderness areas have been signed into law per Congress.

²¹ <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/23/AR2008022301830.html>

The more restrictive designation shuts off virtually all economic activity, **and gives federal bureaucrats an even stronger grip on the affairs of our states.** It also impacts the rights of nearby property owners, those with in-holdings in the forest, and agricultural interests (cattle grazing).

The process used to pass this legislation undermines Congress, and its ability to legislate effectively.

The bill contains 62 separate bills. The Majority Leader and the Chairman of the committee refuse to allow an individual review of each bill on its own merits.

“All or nothing” gives cover to bad bills, and holds up important non-controversial measures that should be allowed to pass on their own (just another political game to apply pressure to anyone who may have concerns about any individual bill).

(We have even submitted lists of bills for the record that should be allowed to pass. We also agreed to free up the Nevada National Guard legislation, but the Majority objected. That provision is costing the Nevada Guard \$80,000 per month until it passes.)

In an attempt to force this “all or nothing approach” (and avoid any UC agreement) the committee and the Majority Leader have filed this package on at least five separate occasions, slightly modifying the package each time.

That is a lot of work, just to avoid allowing the bills to stand on their own merits. **The American public may want to ask why its Congress has gone to such great lengths, just to avoid consideration of each provision.**

If the legislation is truly “non-controversial” why are there so many protests opposing consideration of the legislation in the open, and where each senator has a right to review the bills separately?

The fact that a bill that costs more than \$380 million and is not paid for is considered “non-controversial” in Washington, DC explains how Congress has piled up a \$9 trillion debt.