

# The Good,

*Congress in a nutshell.*  
By Dave Skinner

In February the passage of two monster bills important to western and rural America presented a perfect example of how Congress really works, or really doesn't. With fiscal and ideological pressures rising, it seems Congress is near terminal constipation: Our seized Congress suddenly plops a big one, or two, then seizes again.

One of our bills was the Consolidated Appropriations Act of 2019, otherwise known as the Homeland Security bill. It's 1,169 pages (which every member of Congress read closely) and \$333 billion in funding for not just Homeland Security, but "other purposes," six other departments including two that matter most for forgotten flyover America: Agriculture and Interior. Its passage ended the 2019 government shutdown.

Lesson learned? Besides the screaming over illegal immigration, which by some strange coincidence is a colossal problem for remote parts of the borderlands West, the most-noticed "shutdown" impacts besides the marble monuments in Washington, D.C., concerned administration of public lands in the West. Simply put, appropriations for Interior, as well as Agriculture, generally rank low on the national priority list, too often left "too late," if not last.

Furthermore, two days before the shutdown ended, the Senate plopped another one, rolling together roughly 120 separate "public lands" bills into one huge, um, er, clot. Yeah, clot. This was S-47, now named the John D. Dingell Jr. Conservation and Management Act, after the former congressman (D-Michigan) died on February 7 at age 92.

Long story short, Dingell spent 58 years in the seat his father died in (and his now-widow took over), building a dualist reputation as Mr. Detroit and Mr. Conservation. Probably most significantly, Dingell oversaw the writing and passage of the Endangered Species Act of 1973.

S-47 bundled 100-plus bills which had passed out of either/and House Natural Resources or Senate Energy and Natural Resources (SENR) in the 115th Congress, then eventually bunched into a kitchen-sink

## Guess at the fun things Congress gets up to when nobody's watching.

bill during the 2018 postelection lame duck. The kitchen sink passed the House but was then blocked by a "hold" from Sen. Mike Lee (R-Utah). Lee's reason for a hold? Land & Water Conservation Fund (LWCF) permanent authorization.

# the Bad, & the Ugly

In the new Congress, former SENR chair Lisa Murkowski (R-Alaska) and her new boss, Chairman Maria Cantwell (D-Washington), agreed to roll all these orphans into one big bill, introduced January 8, a day into the new 116th Congress. There were no committee hearings, no chance for new testimony.

On February 11, Sen. Murkowski submitted the bill as a whole-cloth Senate Amendment (number S-111), found in Congressional Record pages S-926 to S-996—a mere 70 pages, but of solid, single-spaced fine print running around 1,600 words per page, not the usual double-spaced, wide margins of an actual bill page.

Was everyone happy? Heck no—82 amendments (and last-second additions) were offered. Most never got a vote but were clearly "virtue signaling" by senators wanting to pretend, "I tried, I really did!"

Only one amendment, regarding map revisions, passed. Two others lost a vote. Sen. James Lankford (R-Oklahoma) sought a provision regarding LWCF funds, that not "less than five percent shall be used for deferred maintenance needs on federal land"—a multibillion-dollar problem. Thirty-three Republicans (and no Democrats) voted for Lankford's modification, with 20 Republicans voting against.

An amendment by Sen. Mike Lee for a 2023 sunset date on the LWCF also failed, after being derided as a "poison pill" by Sen. Joe Manchin (D-West Virginia). It was tabled 68-30. Finally, after about a half hour of bickering between GOP majority leader Mitch McConnell (Kentucky) and Democratic minority leader Charles Schumer (New York) about the nomination of William Barr for U.S. attorney general, came the final vote: 92-8 in favor.

The legislation then went to the House floor (no committees), passing 363-62 on February 26. Every nay and 133 of the yeas were Republicans.

On March 12, in between border-wall tweets, President Trump signed S-47 into law, mentioning only "constitutional concerns" about a John Adams memorial commission



VIA INTERNET. PARTIAL POSTER OF CLINT EASTWOOD PROMOTING SERGIO LEONE'S 1966 SPAGHETTI WESTERN, "THE GOOD, THE BAD AND THE UGLY"

and who gets to authorize migratory bird hunting seasons.

### The Good

So, what's in this new law? Some issues favored by western rural constituencies passed. For example, Section 1112: Owyhee Wilderness Areas boundary modifications, adjusting wilderness wrongly designated in the 2009 Omnibus Public Lands bill (which put all the Clinton/Babbitt national monuments in a brand-new National Landscape Conservation System).

Then, in Title XIII, there's Section 1301: Designation of OHV Areas in San Bernardino County, Calif., a total of 198,000 acres in six different places.

Title 41 (told you this was a big bill) should make sportsmen happy. It codifies "open unless closed" as a default for shooting and hunting on federal lands, and imposes Federal Register process requirements for area firearms closures, previously left to administrative discretion. Leasing of land for shooting ranges is now a "may" option, except in wilderness (designated or under study) or "scenic" areas. Any firearms closures will be limited to "the smallest area for the least amount of time required."

Finally, in direct relation to the Land & Water Conservation Fund permanent authorization, Section 4105 creates a priority list aimed at fixing "restricted" public access to



SANDSTONE WINDOW FACING FACTORY BUTTE © DAVID MUENCH

*The stunning scenery of Utah's San Rafael Swell, and a bunch more, has been targeted for decades by wilderness advocates who claim the primitive, hand-built roads in the region, allowed by Revised Statute 2477 prior to 1976, are mere "ways." Their claim was formalized by Interior policy changes under Secretary Bruce Babbitt in the Clinton administration, with the upshot being that 5.7 million acres crisscrossed by roads in Utah somehow qualify as potential designated wilderness.*

good hunting on public lands, using LWCF money.

Tellingly, in the Homeland Security bill discussed above, the *Washington Post* reported that Democrats attempted an appropriations "rider" that would have blocked all these sportsman goodies.

Another flash of light comes from Subtitle C, Section 4201: "Open Book on Equal Access

to Justice Act" (EAJA for short). This of course may help get a handle on decades of bureaucratic "sue and settle" concessions to serial environmental litigators. Open Book will require agencies to help with a consolidated "report on the amount of fees and other expenses awarded [each fiscal year]," covering the "number, nature and amount" of EAJA awards and the "claims made," including

## The Bishop

As chairman of the House Committee on Natural Resources, Rep. Rob Bishop (R-Utah) tried hard to reform LWCF, writing in *Politico* (2015) that LWCF had been "hijacked by special interests too close to the government and [thus] must be reformed."

Bishop then introduced a bill, the PARC Act, which would have required reauthorization each seven years. The bill sought to massively de-emphasize federal land purchases, shift a third of LWCF's funds to PILT (Payment in Lieu of Taxes) and rebates for fossil fuel exploration, and target state LWCF share funding toward the needs of communities larger than 20,000 people—quite different from what just became law, with Rep. Bishop's yes vote.

Why did Bishop vote yes? Well, S-47 includes a title bill representing years of work from not just Congressman Bishop,

but also Sen. Orrin Hatch (R-Utah), pushed hard by both in the 115th Congress: the Emery County Public Land Management Act of 2018.

Part 2 of the Emery language establishes the San Rafael Swell Recreation Area (217,000 acres). Within the rec area, the bill restricts motorized use only to "roads and motorized routes" chosen "with extensive public input" and "fully consistent with the settlement agreement" in *Southern Utah Wilderness Alliance v. U.S. Department of Interior*, agreed to Jan. 13, 2017, incidentally, a "sue and settle" in the final week of the Obama administration.

The bill also offers 6,271 acres to Utah to expand a state park and creates an 850-acre Jurassic National Monument—finally, a recognition of Antiquities Act intent limiting monument designations to the "smallest area compatible." Further, there are "conveyances" (sale at market value) of one section for an Emery City Recreation Area, a

half section for airport expansion, and two five-acre parcels for a sheriff's office and tourism information center.

Section 1231 adds about 658,000 acres in 18 parcels to the National Wilderness System, while Section 1234 releases 17,000 acres of "FLPMA Section 603" reviewed lands back to multiple use (where a potential coal mine might go).

Finally, about 12,000 acres of stranded mineral rights under Utah state school trust lands caught up in the new wildernesses will be traded for federal mineral rights elsewhere.

Is this a gain for Emery County? Well, when Sen. Hatch (now retired, with Mitt Romney the new guy) tried to get the bill on board in the prior Congress, SUWA deemed the Emery legislation a "critical threat" to a claimed 1.5 million acres in Emery County "worthy of wilderness protection." The Wilderness Society, however, is happy—at least for now.—DS



awards “made pursuant to a settlement agreement,” regardless of whether the agreement was “sealed” or under nondisclosure.

Open Book will also establish a searchable database of case names, adversaries, agencies involved, parties awarded, and the “basis of finding” for each EAJA award, with settlements being publicly posted within 30 days of payment.

### The Bad

Simply put, the Wilderness Society bragged up the “biggest conservation win in a decade” since the Omnibus Public Lands bill in 2009 with an exclamation point: 1.2 million acres of new wilderness in New Mexico, Oregon, California and 658,000 Utah acres (see “The Bishop” sidebar on previous page). A million acres of mining potential were also permanently withdrawn, with the largest chunk being 341,000 acres of the upper Methow Basin in Washington. Oregon got designation of over 250 miles of new wild and scenic rivers.

There’s more, much more, but the reality is, politics are incremental. Now that these lands are “saved,” professional environmentalists will simply shift their efforts to new locations.

### The Ugly

Section 3001: Reauthorization of Land & Water Conservation Fund. Foremost, LWCF no longer has a sunset clause. Funding proportions were changed so that not less than 40 percent *shall* be used for federal purposes and not less than 40 percent *shall* be used to provide financial assistance to states (a 50/50 funding match for outdoor recreation infrastructure projects)—this “assistance” percentage has been as low as 19 percent.

A new subcategory aiming at the sportsman “priority list” noted above on “landlocked” federal parcels in excess of 640 acres requires that “not less” than \$15 million, and up to \$27 million, be spent each year.

However, the section of federal law that gives Congress appropriations oversight (USC Title 54 Section 200303) remains unchanged, reading that offshore royalty money placed in LWCF “shall be available for expenditure for the purposes of this chapter only when appropriated for those purposes.” Also unchanged is the part of 200303 reading “appropriations may be made without fiscal-year limitation”—and there is theoretically \$20 billion in that pot.

In service of the California Desert Protection Act, other language specifies that federal acquisitions “using amounts from the land

## The Alaska

On Senate passage, Sen. Murkowski explained to Alaska media that much of S-47 dealt with “small, parochial” matters—you know, pet projects and pork—that if not passed now would have to be fed through Congress’ guts again.

Sen. Cantwell got her Methow Basin mining ban, while Sen. Murkowski also saved herself a lot of wasted effort. Among other things, S-47 allows an important gas pipeline right-of-way on the eastern fringe of Denali National Park and Preserve, ends a ban on unprocessed timber exports from Kake Tribal Corporation lands, and conveys 21 sections near Barrow to the Ukpavik Inupiat Corporation for gravel pits. Further, there’s an upgrade for the Alaska (and others) Volcano Observatory, waivers of mining fees, and restoration of certain Alaska claims and arrangements for eventual transfer of federal lands to the Chugach Alaska Corporation, because some Chugach lands are split-estate or under conservation easement and should be traded for “sufficient acres of accessible and economically viable federal land.”—DS

and water conservation fund established under [U.S. code, actually our LWCF, freshly reauthorized]” will be managed so as to prohibit disposal, rights-of-way, leases, livestock grazing, infrastructure, mineral entry, and OHV use. In short, multiple uses won’t be allowed on these new public lands.

### The Sausage That Isn’t

Politics is often compared to making sausage. It’s best not to know all the ingredients you stuffed in the tube, right?

If you can cram enough “small, parochial” items into a bill, and if you have enough otherwise-sane politicians desperate to have something...anything...to point to as an “accomplishment” or “bringing home the bacon,” there’s a chance you’ll get just enough, or more than enough, votes.

But is the final product still sausage? Hint: Sniff first. ■

*Dave Skinner was asked, “How the hell did you analyze that?” Answer: “By careful reading, of course. Just don’t ask me WHY.”*