

**NATURAL RESOURCES
LEGISLATION AND POLICY:
OUTLOOK FOR THE 110TH CONGRESS**

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What do the 2006 elections mean for natural resources and public lands?

For the first time since 1994, Democrats control both Houses of Congress. They will bring their own agendas, and some issues favored by Republicans will recede. The relationship between Congress and the executive branch agencies will also change.

As they say in baseball, you can't tell the players without a scorecard. Here's a breakdown of the major personnel changes in the House and the Senate leadership and committees, and some predictions on how those changes are likely to affect policy.

The House of Representatives

Leadership

With the recounts complete, the House of Representatives has 233 Democrats and 202 Republicans. The new speaker of the House is Rep. Nancy Pelosi (D-CA) and the majority leader is Rep. Steny Hoyer (D-MD). The new Republican leader is Rep. John Boehner (R-OH).

Republicans sense an advantage in emphasizing the liberal reputation of Rep. Pelosi and her San Francisco district, and Democratic control does mean a general shift to the left. However, the Democratic majority was built on swing districts which could go to either party in the next election. The speaker will have to balance the excitement of the party faithful, eager to wield power, against the reality that independent voters often favor more centrist candidates.

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Natural Resources Committee

Rep. Nick Rahall of West Virginia is the new chairman of the Natural Resources Committee (known as the Resources Committee since 1995). The committee has jurisdiction over most federal lands and forests, Bureau of Reclamation reservoirs, and fish and wildlife issues, including the Endangered Species Act (ESA). As a general matter, Chairman Rahall has indicated support for higher federal royalties and tighter restrictions on industries that exploit natural resources. Rep. Don Young (R-AK), a committee veteran of 34 years, is the new ranking member.

Key subcommittee chairmen and ranking members include Rep. Jim Costa (D-CA) and Rep. Steve Pearce (R-NM), chairman and ranking member of the Energy and Mineral Resources Subcommittee; Rep. Grace Napolitano (D-CA) and Rep. Cathy McMorris Rogers (R-WA) at the Water and Power Subcommittee; Rep. Raul Grijalva (D-AZ) and Rep. Rob Bishop (R-UT) at the National Parks, Forests and Public Lands Subcommittee; and Delegate Madeleine Bordallo (D-Guam) and Rep. Henry Brown (R-SC) at the Fisheries Conservation, Wildlife and Oceans Subcommittee.

The last of these has jurisdiction over the ESA. However, under a chairwoman from Guam, the Subcommittee may be more inclined to focus on fisheries and oceans than the ESA.

Transportation and Infrastructure Committee

The Transportation and Infrastructure Committee has jurisdiction over the Water Resources Development Act (WRDA), among other things. Rep. James Oberstar (D-MN) is the new Chairman, and Rep. John Mica (R-FL) is the committee's top Republican. Rep. Eddie Bernice Johnson (D-TX) will chair the Water Resources and Environment Subcommittee, and Rep. Richard Baker (R-LA) will serve as the ranking Republican.

This committee has not been as ideological as some, and so the partisan change may not change the committee's work too dramatically. Nevertheless, the

committee is likely to enhance its focus on clean water, environmental restoration and other environmental issues.

Other Changes

Other notable incoming chairmen include Rep. John Dingell (D-MI), chairman of the Energy and Commerce Committee, which has jurisdiction over such major environmental statutes as the Clean Water Act (CWA), the Superfund law and the Clean Air Act. He chaired this committee prior to 1995. At that time, he was known for his sharp questioning of government and industry witnesses at public hearings and his pointed, multi-paged letters posing dozens of questions (known as "Dingell-grams"). There is every reason to expect Mr. Dingell to pick up where he left off, with a busy agenda and a hands-on approach.

Finally, Rep. David Obey (D-WI) chairs the House Appropriations Committee, and Rep. Jerry Lewis (R-CA) serves as ranking member. Key subcommittee chairmen and ranking members include Rep. Norm Dicks (D-WA) and Rep. Todd Tiahrt (R-KS) at the Subcommittee on Interior, Environment, and Related Agencies, and Rep. Peter Visclosky (D-IN) and Rep. David Hobson (R-OH) at the Energy and Water Development Subcommittee.

Chairman Obey and incoming Senate Appropriations Committee Chairman Robert Byrd (D-WV) have indicated they will implement reforms governing "earmarks." Though criticized as wasteful spending, Members of Congress have used earmarks to direct funds to specific home state projects for such purposes as water supply and road-building. It will be interesting to see how Congress chooses to treat earmarks as the appropriations process gets underway.

The Senate

The Senate has a Constitutional responsibility to provide "advice and consent" on presidential appointments and treaties. Under Democratic control, President Bush can expect greater scrutiny of his appointments to the bench and to senior executive branch positions.

However, Democrats can't take a one-vote margin for granted, because a single senator can shift control of the whole body. For example, in 2001, then-Sen. Jeffords (VT) switched from Republican to independent and caucused with Democrats, who then controlled the Senate for 18 months. Whether due to personal health or a change in party status, the departure of a single senator from the Democratic caucus could restore Republicans to power.

Senators generally enjoy a right of debate. It takes 60 votes to "invoke cloture" and halt a filibuster (except with respect to certain measures, such as a budget reconciliation bill, which are subject to special procedures that do not allow a filibuster). This means that Republican senators have the ability to block most legislation. Moreover, Democratic senators are well aware that their majority status hangs on a single vote. Should that one vote change, Democrats would likely be subjected to the same rules and precedents they are now applying to Republicans. These two factors tend to suggest greater incentive in the Senate for Democrats and Republicans to work cooperatively, in a bipartisan manner.

Leadership

Sen. Harry Reid (D-NV) is the new Majority Leader, and Sen. Mitch McConnell (R-KY) serves as minority leader. Sen. Dick Durbin (D-IL) is the assistant majority leader (also known as the majority whip). Sen. Trent Lott (R-MS) mounted a remarkable comeback since his resignation from the majority leader post a few years ago to become the minority whip.

Energy and Natural Resources Committee

Sens. Jeff Bingaman (D-NM) and Pete Domenici (R-NM) are the chairman and ranking member of the Energy and Natural Resources Committee. Under Democratic control, the committee may emphasize environmental issues to a greater extent than in the past few years. Nevertheless, generally, this committee has a tradition of bipartisan working relations, which Sen. Bingaman is expected to continue.

Sen. Tim Johnson (D-SD) is the new chairman of the Subcommittee on Water and Power, and Sen. Bob Corker (R-TN) is the ranking member. The new leaders of the Subcommittee on Public Lands and Forests are Sen. Ron Wyden (D-OR) and Sen. Richard Burr (R-NC).

New committee members include Sen. Blanche Lincoln (D-AR), Sen. Bernard Sanders (I-VT), Sen. Jon Tester (D-MT), Sen. Jim DeMint (R-SC), Sen. Corker, Sen. Jeff Sessions (R-AL), and Sen. Jim Bunning (R-KY).

Environment and Public Works Committee

Compared to the relative collegiality of the Energy Committee, the Environment and Public Works Committee has been characterized by sharp differences of opinion on environmental laws. Changes in committee leadership promise only to highlight those differences.

Sen. Barbara Boxer (D-CA) is the new chairwoman. Sen. Boxer is viewed as liberal on environmental issues and in that respect is similar to Sen. Jeffords, who led the committee's minority members in the 109th Congress. However, Sen. Boxer is also known for a more aggressive personal style. She has outlined an ambitious agenda, including action on climate change, wetlands, water quality, and hazardous and toxic substances. The current ranking Republican, Sen. James Inhofe (R-OK), is a forceful advocate for conservative positions.

Sen. Max Baucus (D-MT), a past committee chairman, now chairs the Transportation and Infrastructure Subcommittee, and Sen. Johnny Isakson (R-GA) serves as ranking Republican. This subcommittee oversees WRDA and dam safety, among other things. Sen. Joseph Lieberman (I-CT) is the new chairman and Sen. John Warner (R-VA) is the ranking Republican at the Subcommittee on Private Sector and Consumer Solutions to Global Warming and Wildlife Protection, which has jurisdiction over fish and wildlife issues, including the ESA. Sen. Frank Lautenberg (D-NJ) and Sen. David Vitter (R-LA) lead the Transportation Safety, Infrastructure Security, and

Water Quality Subcommittee, which oversees the CWA, the outer continental shelf and invasive species, among other things.

New committee members include Sen. Benjamin Cardin (D-MD), Sen. Bernard Sanders (I-VT), Sen. Amy Klobuchar (D-MN), Sen. Sheldon Whitehouse (D-RI), Sen. Lamar Alexander (R-TN), Sen. Larry Craig (R-ID) and Sen. Craig Thomas (R-WY).

Other Changes

Sen. Byrd and Sen. Thad Cochran (R-MS) are the new chairman and ranking Republican at the Appropriations Committee. Sen. Dianne Feinstein (D-CA) and Sen. Larry Craig (R-ID) lead the Interior and Environment Subcommittee, and Sen. Byron Dorgan (D-ND) and Sen. Pete Domenici (R-NM) lead the Energy and Water Development Subcommittee.

Outlook for Policy Development in Congress

So, to return to the original question: What do all these changes mean?

Democrats are likely to pursue stricter environmental controls in a number of areas, including CWA coverage of pesticides and the extent of wetlands subject to CWA regulation in response to *Rapanos v. United States*, the recent Supreme Court case. Climate change is also moving to the forefront of environmental issues. This could affect forest and public lands policy, if reforestation gains acceptance as a means of “sequestering” carbon (*i.e.*, keeping it earthbound).

Nevertheless, President Bush still holds the veto power, which Congress can override only with a two-thirds vote of both houses. So despite controlling Congress, Democrats lack the power to pass legislation unless it enjoys substantial bipartisan support.

On more controversial issues, Democrats may hold hearings, draft bills, mark up legislation, speak to the media, and force votes on the House and Senate

floors. However, passage of controversial legislation is unlikely, particularly as the next presidential election draws near.

For these reasons, major shifts in the statutes governing public lands, natural resources, and the environment are not likely. Rather, Democratic control is likely to mean big changes in three other areas: investigations, oversight and nominations.

Interactions between Congress and the Administration

With a Republican Congress, the Bush administration has largely escaped the sorts of investigations that occurred during the Clinton and Reagan presidencies. That may change. Based on the public statements of Democratic members, possible investigations could involve the Jack Abramoff affair, efforts to influence or suppress the opinions of government scientists on such issues as climate change, and development of the administration’s energy policy.

Similarly, the Democratic Congress is likely to pursue more vigorous oversight of natural resource and environmental issues in the form of tough hearings on the administration’s policies in such areas as oil and gas exploration, mining, timber harvest and management, NEPA compliance and wetlands. Oversight activities could also come from areas beyond the committees of legislative jurisdiction. For example, Chairman Henry Waxman (D-CA) of the House Committee on Oversight and Government Reform is well known as a vigorous advocate of liberal views on environmental issues and a fierce critic of the Bush administration.

At the same time, however, the administration may take advantage of legislative gridlock to pursue reform at the regulatory agencies. Potential areas for new guidance or regulation include administrative ESA programs and, again, regulatory coverage of wetlands in light of *Rapanos*.

Finally, the administration is much more likely to face heightened Senate scrutiny for its nominations to key positions. With less than two years remaining in President Bush’s term, that may not seem too critical.

However, if past administrations are any indication, a good number of assistant secretaries and assistant administrators may seek private sector employment as the president's second term winds down, and the administration will likely want to fill those slots.

Conclusion

In short, with Democrats setting the agenda in Congress, there will be more friction between Congress and the executive branch, including controversy on natural resource and environmental issues. Democrats may argue, among other things, that Bush administration policies have been too favorable to industry and not sufficiently protective of the environment. They are likely to pursue these arguments through oversight and investigations.

However, major changes in the law are not likely. Productive policy development, if any, is more likely to occur in areas where there is substantial consensus, or through federal agencies acting under existing statutory authority.



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