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Public Lands Council



Capital Issues

~December 2010~

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Highlight:

Lame Duck Session of 111th Congress

Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

On Friday, Dec. 17th, President Obama signed into law the \$858 billion bill that will extend the Bush tax cuts. It includes a hard-won provision to set the estate tax top rate at 35% with an exemption of \$5 million per individual and \$10 million per couple. The exemptions include a stepped up basis and are tied to inflation. On Wednesday, Dec. 15, the Senate voted overwhelmingly in support of the tax package by a vote of 81-19; the bill passed the House of Representatives late Thursday, December 16th by a vote of 277-148.

Summary of Tax Package:

- Two-year extension of 2001 & 2003 Bush tax cuts for all income levels
- Estate tax level set at \$5 million & 35% tax rate for two years
- Unemployment Insurance extended for 13 months
- Capital Gains remains at 15% for two years
- Alternative Minimum Tax (AMT) patch for two years
- Social Security payroll tax reduced 2% for 2011, from 6.2% to 4.2%
- Businesses will be allowed to write off the full cost (100%) of new capital investments for 2011
- One-year extension of ethanol tax credit at 45 cents & tariff at current rates

Summary of Estate Tax Provisions:

- Establishes an estate tax exemption of \$5 million a person (\$10 million per couple) and top rate of 35 percent
- Reinstates stepped-up basis
- Indexes the estate tax exemption for inflation
- Contains a spousal transfer of any unused estate tax exemption amount
- Estates of those dying in 2010 are given a choice of the new exemption and rate or current 2010 law (no estate tax and modified carryover basis)

Extension of Bonus Depreciation

Under current law, businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress allowed businesses, beginning January 1, 2008, through December 31, 2009, to take an additional depreciation deduction allowance equal to 50 percent of the cost of the depreciable property placed in service in those years. Under the Small Business Jobs Act of 2010, this temporary increase in the depreciation deduction allowance was extended through December 31, 2010. The bill extends and temporarily increases this bonus depreciation provision for investments in new business equipment. For investments placed in service after September 8, 2010 and through December 31, 2011, the bill provides for 100 percent bonus depreciation. For investments placed in service after December 31, 2011 and through December 31, 2012, the bill provides for 50 percent bonus depreciation. The provision also allows taxpayers to elect to accelerate some AMT credits in lieu of bonus depreciation for taxable years 2011 and 2012.

Credit for Conservation Easements

Extension of provision encouraging contributions of capital gain real property for conservation purposes. The bill extends for two years (through 2011) the increased contribution limits and carry-forward period for contributions of appreciated real property (including partial interests in real property) for conservation purposes.

1099 Tax Form

Efforts to include in the tax package a repeal of the onerous new 1099 reporting requirement failed. The healthcare reform law will require all businesses to send 1099

federal tax forms to every individual or company from whom they purchase more than \$600 in goods and services throughout the tax year, beginning Jan. 1, 2012.

PLC worked diligently with members of Congress to increase the exemption levels and reduce the top rate for estate taxes during the lame duck session. We are pleased that Congress and the White House realized that allowing the death tax to revert to a \$1 million exemption with a top rate of 55 percent was unacceptable for our industry and the American economy. We will continue to push in the 112th Congress to repeal the 1099 tax provision of the health care bill.

FDA Food Safety Modernization Act Passes

Passed by unanimous consent, this new law will extend to the Food and Drug Administration (FDA) a host of new regulatory powers and funding. It places stricter standards on imported foods and expands the FDA's authority to inspect and regulate food processing plants, in-state recalls, and more. Producers and food processors will have to tell the FDA how they are working to keep food safe at different stages of production. However, exempt from these expensive requirements will be producers who make less than \$500,000 a year and sell directly to consumers, local restaurants and supermarkets within their state or within 275 miles of their farm.

Continuing Resolution to Fund Congress through March 4th

On December 21st, a continuing resolution (CR) was passed to fund the government until March 4. The CR will provide funding at a rate of about \$1.16 billion more than fiscal 2010 levels, and will allow the upcoming Congress to address spending for Fiscal Year 2011, since no appropriations measures were passed during the 111th Congress.

The CR was a favorable alternative to a 2,000 page, \$1.1 trillion omnibus spending bill that, due to Republican push-back, Senator Reid was forced to abandon. The bill was packed full of at least 6,600 earmarks (about \$8 billion worth) and \$1 billion in funding for the implementation of the unpopular and recently partially ruled unconstitutional health care law. It also contained multiple measures that posed a threat to public lands ranchers. Among them were a 660,000 acre wilderness bill in Montana (a bill introduced by Senator Tester of Mont.); increased funding of the Land and Water Conservation Fund; and language that would have severely reduced road access and maintenance on US Forest Service lands.

PLC worked closely with Montana PLC and Montana Stock Growers to oppose the omnibus spending bill, primarily due to inclusion of the wilderness language.

Omnibus Lands/Waters Bill Fails

The omnibus land and water bill introduced by Senate Majority Leader Harry Reid (D-Nev.), the "America's Great Outdoors Act of 2010", consisted of more than 110 land and water bills. After major opposition from many multiple-use interests and a lack of support among Senators, the Majority Leader was forced to abandon the idea of an omnibus lands bill and pulled the legislation.

The legislation consisted of various land and water bills many of which had never been considered in committee. By packaging the bills together, Reid had hoped to overcome a Republican filibuster.

Reid continued to push parts of the legislation right up through the end of the lame duck session, attempting to use Unanimous Consent for passage – he was unsuccessful in his attempts.

PLC actively opposed the idea of passing an omnibus lands bill during the 11th hour in the lame duck session. We are pleased that the efforts to pass such a large bill which would have locked up tens of thousands of acres of public lands failed. PLC continues to believe that individual land designation bills need to be brought to a vote as stand-alone bills in order to have full debate and analysis by all interested parties.

Wolf Delist Bill Sees Last-ditch Effort

Idaho Senators Mike Crapo and Jim Risch made a last attempt at passing [S.3919](#), a bill to remove the gray wolf from consideration for protection under the Endangered Species Act (ESA) and return management to the states. However, the bill failed when Democrats objected when brought up under unanimous consent.

“Unfortunately, we have not been able to return management of wolves to the states, mostly because of litigation and the inflexibility of the Endangered Species Act,” Crapo said on the Senate floor. “In the meantime, wolf populations are growing at a rate of 20 percent per year, resulting in substantial harm to our big game herds and domestic livestock.”

“Most people on this floor don’t have a full appreciation of what those of us in the West have to deal with,” said Risch.

PLC will continue to pursue measures to delist the wolf in the 112th Congress.

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LEGISLATIVE UPDATE

Republican Natural Resources Committee Members, Subcommittee Chairmen Announced for 112th Congress

Natural Resources Committee Chairman-elect Doc Hastings (WA) has announced the Natural Resources Subcommittee Chairmen for the 112th Congress (listed in alphabetical order by subcommittee):

Subcommittee on Energy and Mineral Resources
Chairman: Doug Lamborn (CO-05)

Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Chairman: John Fleming (LA-04)

Subcommittee on Indian and Alaska Native Affairs
Chairman: Don Young (AK-at large)

Subcommittee on National Parks, Forests and Public Lands
Chairman: Rob Bishop (UT-01)

Subcommittee on Water and Power
Chairman: Tom McClintock (CA-04)

Chairman-elect Hastings also announced the Republican Members of the Natural Resources Committee.

“This is a very knowledgeable and talented team of Members, and includes 15 newly-elected Republicans,” said Chairman-elect Hastings. “Each of our Members will play key roles as the Natural Resources Committee begins its work in January to focus on creating jobs, growing our economy, reducing spending and increasing American energy production.”

Returning Members

Doc Hastings (WA-04)
Don Young (AK-at large)
John Duncan (TN-02)
Louie Gohmert (TX-01)
Rob Bishop (UT-01)
Doug Lamborn (CO-05)
Robert Wittman (VA-01)
Paul Broun (GA-10)
John Fleming (LA-04)
Mike Coffman (CO-06)
Tom McClintock (CA-04)

New Members (in alphabetical order)

Glenn Thompson (PA-5)
Daniel Benishek (MI-01)
Jeff Denham (CA-19)
Jeff Duncan (SC-03)
Charles Fleischmann (TN-03)
William Flores (TX-17)
Paul Gosar (AZ-01)
Andy Harris (MD-01)
Bill Johnson (OH-06)
Raul Labrador (ID-01)
Jeffrey Landry (LA-03)
Kristi Lynn Noem (SD-at large)
David Rivera (FL-25)
Jon Runyan (NJ-03)
Steve Southerland (FL-02)
Scott Tipton (CO-03)

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House Agriculture Committee Members & Subcommittee Chairmen Named

Chairman-elect Frank Lucas of Oklahoma has announced that Rep. Bob Goodlatte of Virginia will serve as Vice Chairman of the full committee. The six members to serve as Subcommittee Chairmen of the House Agriculture Committee will be:

- Rep. Glenn "GT" Thompson (Pa.)--Conservation, Energy, and Forestry: Jurisdiction--Soil, water and resource conservation, small watershed program, energy and biobased energy production, rural electrification, forestry in general and forest reserves other than those created from the public domain.
- Rep. Jeff Fortenberry (Neb.)--Department Operations, Oversight, and Credit: Jurisdiction--Agency oversight, review and analysis, special investigations and agricultural credit.
- Rep. K. Michael Conaway, (Texas)--General Farm Commodities and Risk Management: Jurisdiction--Program and markets related to cotton, cottonseed, wheat, feed grains, soybeans, oilseeds, rice, dry beans, peas, lentils, the Commodity Credit Corporation, risk management, including crop insurance, commodity exchanges, and specialty crops.
- Rep. Tom Rooney (Fla.)--Livestock, Dairy, and Poultry: Jurisdiction--Livestock, dairy, poultry, meat, seafood and seafood products, inspection, marketing and promotion of such commodities, aquaculture, animal welfare and grazing.
- Rep. Jean Schmidt (Ohio)--Nutrition and Horticulture: Jurisdiction--Food stamps, nutrition and consumer programs, fruits and vegetables, honey and bees, marketing and promotion orders, plant pesticides, quarantine, adulteration of seeds and insect pests and organic agriculture.
- Rep. Timothy V. Johnson (Ill.)--Rural Development, Research, Biotechnology and Foreign Agriculture: Jurisdiction--Rural Development, farm security and family farming matters, biotechnology, foreign agriculture assistance and trade promotion programs, generally.

Rep. Lucas also released the complete Republican Agriculture Committee roster for the 112th Congress:

Frank D. Lucas (OK), *Chairman-elect*
Bob Goodlatte (VA), *Vice Chairman-elect*
Timothy V. Johnson (IL)
Steve King (IA)
Randy Neugebauer (TX)
K. Michael Conaway (TX)
Jeff Fortenberry (NE)
Jean Schmidt (OH)
Glenn Thompson (PA)
Tom Rooney (FL)
Rick Crawford (AR)
Scott DesJarlais (TN)
Renee Elmers (NC)

Stephen Fincher (TN)
Bob Gibbs (OH)
Chris Gibson (NY)
Vicky Hartzler (MO)
Tim Huelskamp (KS)
Randy Hultgren (IL)
Reid Ribble (WI)
Martha Roby (AL)
Bobby Schilling (IL)
Austin Scott (GA)
Steve Southerland (FL)
Marlin Stutzman (IN)
Scott Tipton (CO)

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ADMINISTRATION UPDATE

NLCS, Wild Lands Secretarial Orders Threaten Grazing and Multiple Use

PLC opposes two Secretarial Orders recently issued by Secretary of Interior Ken Salazar. Both present serious threats to grazing.

[Secretarial Order 3308](#), signed by the Secretary on November 15, elevates the Office of the National Landscape Conservation System (NLCS) and Community Partnerships to the level of a directorate within the Bureau of Land Management (BLM). The NLCS, created by Secretary Babbitt and codified in the 2009 omnibus public lands bill, puts monuments, wilderness areas, trails and wild/scenic rivers, and other specially designated BLM lands into one management system, effectively creating yet another bureaucratic layer in the management of public lands.

While the impacts of NLCS on grazing are yet unknown, the Secretary's Order, through vague language that "make(s) conservation a top priority," threatens to render livestock grazing vulnerable to lawsuits. It may also be in conflict with existing land management statutes and the BLM's mission of multiple use management. See the [letter](#) submitted to Secretary Salazar by PLC and other livestock groups, as well as [the press release](#).

[Secretarial Order 3310](#), signed December 23rd, directs BLM to "designate appropriate areas with wilderness characteristics under its jurisdiction as 'Wild Lands' and to manage them to protect their wilderness values." This overturns the Bush Administration's policy which prohibited the BLM from unilaterally protecting lands it finds have "wilderness qualities." See the [draft guidance](#) for DOI/BLM Field Offices.

The so-called "Wild Lands," will be managed like Wilderness Areas and Wilderness Study Areas, but will not require the legislative process that normally precedes such designations. This Order usurps the congressional designation prerogative and jeopardizes federal land ranchers' ability to maintain range improvements and keep grazing livestock on BLM lands. PLC leadership is presently planning its course of action. This Order is sure to meet with strong opposition.

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USDA Promotes Sage-Grouse Protection Efforts in the West

On December 2nd, USDA's Natural Resources Conservation Service (NRCS) Chief Dave White

announced that efforts to partner with ranchers and farmers in 11 Western states to protect the Greater and Gunnison sage-grouse are significantly improving habitat for the species and reducing threats that will eventually help to increase their overall population.

To support the partnership between NRCS and farmers and ranchers, NRCS is providing up to \$30 million in fiscal year 2011 through the Environmental Quality Incentives Program (EQIP), the Wildlife Habitat Incentives Program (WHIP), and the Wetlands Reserve Program (WRP) to help farmers and ranchers continue implementing conservation practices to protect sage-grouse populations and habitat. NRCS collaborated with the Department of the Interior's Fish and Wildlife Service (FWS) this summer to provide protection to landowners who enroll these programs in the event that the birds are listed as threatened and endangered under the Endangered Species Act.

For more information and to see a breakdown of financial assistance funding being provided to states in fiscal 2011, go to the [NRCS news release](#).

PLC applauds the Chief's efforts to offer funding through the above mentioned programs in order to work with ranchers to ensure the grouse is not listed under ESA.

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Obama Appoints New Director to Fish & Wildlife Service

President Obama has picked the Fish and Wildlife Service's second-in-command, Dan Ashe, to become the agency's new director. Ashe, a 15-year agency employee who helped engineer FWS's climate change adaptation strategy, will succeed acting director Rowan Gould.

As science adviser for FWS from 2003 to 2009, Ashe helped develop the agency's scientific policy and procedures for resource management. He was named deputy director in August 2009, with broad responsibility over assistant directors in the service's Washington, D.C., office.

From 1998 to 2003, Ashe served as the chief of the National Wildlife Refuge System, spearheading operations and land acquisitions for 93 million acres of refuges and wetland management districts.

Ashe reportedly intends to remove both the grizzly and the wolf from Endangered Species Act protection, and would seek congressional action for delisting wolves in the northern Rockies if necessary. While we are pleased to hear this, we are also concerned with his focus on climate change and philosophy of managing "across landscapes".

"We can't deal with [the changing climate] with our traditional individual approaches. It's just too big a problem," he said.

PLC will proceed with clear, strong communication with Ashe, encouraging him to delist the wolf nationwide, and opposing any efforts to further remove land management from local decision-makers.

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GAO Border Security Report: Need Better Federal Response to Illegal Activity on Federal Lands

Federal land management agencies lack sufficient data to effectively track and respond to criminal activity on federal lands, the Government Accountability Office (GAO) said in a [report](#) released this month. (See the [highlights](#).)

Agencies surveyed by GAO – including the Forest Service and the Interior Department’s Bureau of Land Management, National Park Service and Fish and Wildlife Service – have a limited understanding of the scale and frequency of criminal threats, making it difficult to allocate law enforcement resources effectively, the report found.

For example, BLM officials cited in the report said tracts they manage in southwestern Colorado are only occasionally patrolled by law enforcement officers but that if the agency boosted the number of patrols in the area, the number of reported incidents would likely increase as well.

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Wild Horse:

OIG Report Addresses Expanding Wild Horse and Burro Population

PLC and [National Cattlemen’s Beef Association](#) (NCBA) were pleased to see the conclusions reached by a [report](#) on the Bureau of Land Management (BLM) Wild Horse and Burro Program released by the U.S. Department of the Interior’s Office of the Inspector General (OIG). The objective of the report was to determine whether BLM gathers of wild horses and burros are necessary and justified. The report concluded that while they sometimes result in the “unavoidable consequence” of animal deaths, the gathers are being carried out in a humane manner and are a necessary tool for population control. According to the report, “The growing population of these animals must be addressed to achieve and maintain a thriving natural ecological balance of the authorized uses of the land, thus gathers are necessary and justified actions.”

The Wildlife Society Supports Sensible Wild Horse Management

PLC supports the written comments submitted by The Wildlife Society regarding the BLM Wild Horse Program.

“Current management practices are severely restricted by popular opinion, which has failed to consider the noteworthy impact of feral horses (*Equus caballus*) and burros (*E. asinus*) on native species and natural ecosystems or the growing and substantial cost to taxpayers,” said the report.

“Free-roaming herds currently range across 18.6 million hectares. Like any invasive species, feral horses damage the ecosystem they colonize, putting native plants and animals in danger. Feral horses can damage landscapes by trampling vegetation, hard-packing the soil, and overgrazing. Areas inhabited by feral horses tend to have fewer plant species, less plant cover, and more invasive cheat grass, and this can have a pervasive influence on the entire ecosystem.”

Equine Experts Give BLM Passing Marks for Roundups

An independent assessment of the Bureau of Land Management’s (BLM) Wild Horse and Burro program gives the agency generally high marks for its wild horse roundups. The four equine specialists -- from Michigan State University, the University of Vermont, Rutgers University and the University of California at Davis -- evaluated gathers at the Owyhee Herd Management Area in Nevada, Stinking Waters Herd Management Area in Oregon, and the Twin Peaks Herd Management Area in California. The assessment comes in response to recent pressure from members of Congress and advocacy groups to address ongoing problems with the Wild Horse and Burro Program, including criticisms that horses are ill-treated by BLM personnel, particularly through the use of helicopters to gather the animals.

The [report](#), prepared by four equine experts affiliated with the American Horse Protection Association and released by BLM last week, evaluated the agency’s performance during three roundups in 2010. Overall, the experts found that the animals’ handlers – both BLM

employees and private contractors – generally “appeared to be gentle and knowledgeable” in their work.

The experts did, however, offer about a dozen suggestions to reduce the potential for animal stress and injuries, noting that some of the horses appeared anxious when herded into pens.

Horse Summit

[Summit of the Horse](#) organized by the United Horsemen will be held in Las Vegas, Nevada, from January 3 to 6, 2011. It will be held at the Southpoint Casino. It is sponsored in part by PLC and NCBA.

BLM Director Bob Abbey, NCBA vice president J.D. Alexander, PLC president John Falen, renowned animal behavior expert Temple Grandin, and others, ranging from ranchers to lawmakers, will present and discuss possible solutions to the problem of the unwanted horse, both wild and domestic.

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JUDICIARY UPDATE

Judge Discards ‘Sloppy Science’ by FWS on Delta Smelt

Good news from a case regarding the delta smelt in California’s Sacramento-San Joaquin River Delta: federal District Court Judge Oliver Wanger has ruled invalid the biological opinion that the government used as the basis for cutting off water to San Joaquin Valley farms.

“The public cannot afford sloppy science and uni-directional prescriptions that ignore California’s water needs,” the judge wrote, adding that the state Legislature had failed “to provide the means to assure an adequate water supply for both the humans and the species dependent on the delta.”

The ruling remands the bi-op back to the Fish and Wildlife Service to correct its work, which lawyers close to the case said should take at least nine months to complete. Those behind the lawsuit – a coalition of urban and rural water districts in Central and Southern California – praised the decision as a victory for common sense over what they argue was a faulty recovery plan from the outset.

About 25 million California residents rely on the delta for water, which together with the San Francisco Bay represents the largest estuary on the West Coast of North America.

[Click here](#) to view Wanger’s ruling on the smelt.

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LITIGATION UPDATE

Appellants Argue in Ninth Circuit En Banc Case

The extent to which nonfederal parties can participate in environmental litigation is now under review by an en banc panel of the U.S. Ninth Circuit Court of Appeals following a case argued on December 13, 2010. The appellants are motorized recreation interests who have been

excluded from participation and are asking the Circuit to change the law. PLC, the National Cattlemen's Beef Association (NCBA), and other groups have submitted "friend of the court" briefs in support of the recreation groups' position.

A video recording of this argument is available for public viewing [here](#). The status of this and other cases being considered en banc, including the names of individual panel members, can be viewed on the Court's [website](#).

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MORE NEWS

NCBA and PLC leadership resume quarterly updates

This month, PLC President John Falen and PLC staff held a conference call with National Cattlemen's Beef Association's (NCBA's) President Steve Foglesong; President-elect Bill Donald; Vice President J.D. Alexander; and Vice President of Government Affairs, Colin Woodall. The conversation included updates on issues important to both PLC and NCBA, such as wild horse issues and the upcoming Summit of the Horse; estate tax; monument and wilderness designations; and more. We look forward to continuing these information-sharing calls every three months.

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Montana launches 5-year Study of Brucellosis in Elk

Montana regulators will launch a five-year study seeking answers to rising incidences of brucellosis among Yellowstone elk, including questions about whether the animals are congregating on private lands to avoid hunters and predators.

Quentin Kujala, wildlife management section chief for Montana Fish, Wildlife & Parks, said that in the past six years, seroprevalence -- or the presence of brucellosis-fighting antibodies -- has risen from 0 percent to 2 percent in Yellowstone-area elk to as high as 5 percent to 16 percent. The state of Wyoming feeds elk that migrate in and out of Yellowstone National Park, and experts believe that the concentration of the animals in feeding areas provides a primary pathway for the disease to spread.

At the end of the study, elk that continue to test positive for exposure to brucellosis will be killed so their tissue can be tested. But there is no plan to slaughter Yellowstone elk, Kujala said.

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PLC on the Road

December proved to be a busy month for PLC state affiliates. PLC's Executive Director Dustin Van Liew traveled to the Utah Cattlemen's Association, Wyoming Stock Growers Association, and Montana PLC meetings. At each meeting Van Liew updated ranchers on PLC's activities in Washington DC and the legislative and regulatory issues affecting the public land ranching industry.

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ASI Annual Convention

The American Sheep Industry Association/National Lamb Feeders Association annual convention will be held [January 19-22, 2011 in Reno, Nevada](#). To take advantage of the lower

registration rate, be sure to register by January 5th. Registration forms are available at www.sheepusa.org/Annual_Convention. Don't miss this industry-wide meeting as a great line-up of meetings and presentations are being offered.

NCBA Annual Convention

Follow this link to learn more about the [February 2-5, 2011 Convention in Denver, Colorado](#).

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Environmental Steaks

See NCBA's monthly newsletter, [Environmental Steaks!](#)

American Sheep Industry Association News

Go to www.sheepindustrynews.org.

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