

Federal Parks & Recreation

Bulletin #11: November 21, 2016

Dear Subscriber:

The attached bulletin from Federal Parks & Recreation newsletter reports on the following:

- * **Murkowski, Bishop object to Jarvis park protection order**
- * **Reversal of rules high on GOP agenda under Trump**
- * **Lame-duck session makes little progress, publicly**

NOTE: This bulletin is a supplement to your regular edition of Federal Parks & Recreation. It is NOT your regular issue. The next issue will be published November 25.
The Editors

Jarvis order to protect parks runs into hot water

House and Senate Republican leaders are strongly objecting to a draft Park Service director's order that would give protection of the parks first priority.

Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) on November 17 wrote the author of the proposed Director's Order #100, NPS Director Jonathan B. Jarvis, and asked him for an additional 60-day comment period.

House Natural Resources Committee Chairman Rob Bishop (R-Utah) did the same thing the next day.

Bishop also met with Park Service concessioners November 15 and told those critics of the order that, if Order #100 were approved, it would be a candidate for revocation by the next Congress under something called the Congressional Review Act.

The comment period on the proposal closed November 18 so a 60-day extension would run until January 18, two days before President-elect Donald Trump takes over.

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Administratively, a new Interior Department could always amend or replace the Director's Order, but that may take time. NPS spent four years writing the Jarvis proposal.

At issue is a white paper from Jarvis that would establish protection as a priority even if a threat were not clear and imminent via a key "Precautionary Principle."

"The Precautionary Principle requires that, when an activity raises plausible or probable threats of harm to park resources and/or human health, management should take anticipatory action even when there is uncertainty," says the draft.

The proposed order adds, "When such uncertainty exists, NPS managers will take actions that err on the side of caution to protect natural and cultural resources in accordance with section 7 of this Order. Any decision made using the precautionary principle should take into account: (1) the threat of harm to park resources or public health; (2) the level of scientific uncertainty; and (3) the preventive, precautionary action."

Director Jarvis has already announced that he will leave office in January when the Trump administration takes over.

Sen. Murkowski said that the precautionary approach could backfire on park visitors. "Under such a precautionary approach, I am concerned that many of the roads and allowable activities in our parks today would be under assault," she wrote. "Traditional lifestyles and tourism economies do not deserve to be put at risk due to management philosophies developed in Washington."

Bishop said the proposed order would go beyond direction from Congress. "I am particularly concerned about the National Park Service adopting a number of operational definitions and goals which have not been addressed by the Congress, including 'expand[ing] land/seascape-scale resource management and connectivity by increasing the use of existing authorities to manage resources outside parks.' I have serious concerns about this management approach and respectfully request that you revisit this policy objective."

The American Recreation Coalition said the order "would severely limit the agency's ability to be flexible and responsive to its visitors' changing interests and expectations." The coalition's president Derrick Crandall said, "As NPS moves into its second century, it must do so with a balanced approach to visitor experiences and protection, championing both park resources and the enjoyment of great experiences in the great outdoors."

On the other hand, as we have reported, a senior official at the advocacy group National Parks Conservation Association (NPCA) endorsed Jarvis's overall message.

"What's interesting is the implementation in writing of the Precautionary Principal of proactively protecting the parks, even if we don't know the impacts of activities," said NPCA Vice President for Government Affairs Kristen Brengel. We reached out to NPCA

for its final comments on the proposal but have not received a response yet.

The director's order does not mention active uses except in terms of activities that managers should be aware of. Nor does it mention visitation often.

The order does mention visitation as a derivative of good management. "The overarching goal of NPS resource management should be to steward NPS resources for continuous change that is not yet fully understood, in order to preserve ecological integrity and cultural and historical authenticity, provide visitors with transformative experiences, and form the core of a national conservation land- and seascape," it says.

An environmental group with a different perspective and that has been after Jarvis's scalp all year, the Public Employees for Environmental Responsibility (PEER), criticized the proposed order for not being specific enough.

"The draft of Director's Order #100 is full of lofty but nebulous terms, crammed into a mish-mash of confusing and largely unexplained precepts," said PEER. "Nonetheless, it claims to advance 'a new framework for stewardship decision making' based on wholly 'new conservation concepts and guiding strategies.' None of these fundamental changes are coherently explained, however."

Adding a personal note, PEER Executive Director Jeff Ruch said in a press release, "If Director Jarvis is going to hang on until January, he should be barred from issuing any more agency-wide rules."

Ruch also wrote Interior Secretary Sally Jewell and asked her to defer the order to the next NPS leadership. "Given his highly questionable record, Jon Jarvis' vision for the National Park Service should end with him," said Ruch.

GOP considers reversals of rules; Trump seeks nominees

While rumors swirl about possible candidates for important offices in a Trump administration, Congressional Republicans are focusing on a strategy for revoking Obama administration regulations.

Already on the books is a Congressional Review Act that authorizes Congress to revoke any rule enacted within the last 60 "legislative days." According to an analysis by the Van Ness Feldman law firm, that could include any regulation issued as early as May 30 of this year.

Separately, on November 17 the House approved new legislation (HR 5982) that would allow Congress to revoke any rule issued during the last year.

(There is virtually no chance HR 5982 will be enacted this year because President Obama would veto it if the bill came to his desk. However, Congress may want to try again next year to retroactively go after Obama administration rules.)

House Natural Resources Committee Chairman Rob Bishop (R-Utah) last week told recreation industry officials that he believed a proposed NPS Director's Order #100 now in preparation would be subject to the Congressional Review Act. (*See previous article.*)

Other likely candidates would be new Park Service and Fish and Wildlife Service rules regulating oil and gas development by holders of pre-existing mineral rights.

President Obama still has a few weapons at hand. He can always complete new regulations and hope that the next Republican Congress somehow doesn't muster enough support to shoot them down.

And he has the authority under the Antiquities Act of 1906 to designate national monuments.

Reportedly on his monuments list are a Bears Ears National Monument in southern Utah, a Gold Butte National Monument in southern Nevada, a Greater Grand Canyon Heritage National Monument in northwestern Arizona and an expansion of the Cascade-Siskiyou monument in southern Oregon.

Obama has designated or enlarged 26 national monuments including a dozen in western states. For instance on July 9, 2015 he designated a 704,000-acre Basin and Range National Monument in Nevada and on May 21, 2014, he established a 500,000-acre Organ Mountains-Desert Peaks National Monument in New Mexico.

Already, the Trump team is circulating names for a possible secretary of the Interior. Reportedly, the lead candidate is Forrest Lucas, founder of Lucas Oil Products, a manufacturer of oil products.

Other candidates for Interior secretary mentioned by the *Politico* website include former Alaska Gov. Sarah Palin (R-Alaska); former Arizona Gov. Jan Brewer (R-Ariz.); Oklahoma Gov. Mary Fallin (R-Okla.); Wyoming Rep. Cynthia Lummis (R-Wyo.); and Oklahoma oilman Harold Hamm.

Lummis's mention caught the attention of the Western Watersheds Project environmental group. It said, "The fact that Mr. Trump has advanced (Lummis) to his short list of candidates for Secretary of Interior indicates a hostile stance toward public lands and responsible land stewardship. Rep. Lummis has been an entrenched opponent of conservation throughout her tenure in the House, . . ."

The 20 or so leaders of the Trump transition team are light on federal lands representation. Only Rep. Devin Nunes (R-Calif.) is from a major federal lands state and he represents a primarily agricultural district in the San Joaquin Valley.

An unusual candidate for an Interior Department slot is President-elect Trump's son, Donald Trump, Jr. An avid hunter, he has in the past expressed interest in either the position of secretary of Interior or director of the Park Service. However, it is difficult to believe young Trump would want to give up management of the Trump economic empire from New York City for the daily grind of a government overseer.

A veteran of the federal lands wars, Myron Ebell, will serve as a key member of the Trump transition team in charge of selecting personnel to manage EPA. Ebell, a global warming skeptic, worked most recently at the Competitive Enterprises Institute and was a staffer for the American Land Rights Association group for five years.

The American Land Rights Association advocates for private property rights and has been a long-time critic of federal land acquisitions under the Land and Water Conservation Fund.

Vice President Elect Mike Pence, the former Republican governor of Indiana, has reportedly been consulting with states on possible candidates for Interior Department positions. We hear one possible candidate for an unspecified department position is Sue Black, executive director of Arizona State Parks.

For all the commotion about the transition, little is being said about substantive outdoor policy from the Trump administration. The one thing Trump does advocate is energy development, particularly from the federal lands. He promises to unleash oil, gas, coal and oil shale producers on the public lands.

Indirectly, perhaps, park and recreation programs could get a foothold with a Trump administration \$1 trillion infrastructure program that would include surface transportation.

There is precedent. On Dec. 4, 2015, President Obama signed into law surface transportation legislation (PL 114-94) that includes significant recreation spending over the next five years.

In one major provision of PL 114-94 Congress effectively retained a broad category of spending that finances park and rec programs called the Transportation Alternatives Program. Congress renamed the initiative a Surface Transportation Block Grant Program and set aside \$835 million for it in this fiscal year and the next fiscal year. After that it would receive \$850 million per year.

The law also insures that the Recreational Trails Program, one of the individual programs that would draw money from the block grant program, continues to receive a guaranteed \$85 million per year.

In a second overarching provision the law sets aside \$335 million in fiscal 2016 for federal land roads, with \$268 million of that going to the National Park Service. By fiscal 2020 the federal lands allocation would increase to \$375 million and the NPS share \$300 million. In addition the bill establishes a Federal Lands Access Program for major road projects beginning at \$250 million in fiscal 2016 and growing to \$270 million in fiscal 2020.

While the nation's focus was on the Presidential contest in the November 8 elections, 17 Senate seats were on the ballot and the results indicated that Republicans had retained a majority of 52-to-48.

Among key Senate and House committee and subcommittee chairmen and ranking Democratic minority members, almost all are expected to be back. Sen. Lisa Murkowski (R-Alaska) was the most influential park and rec policy senator up for re-election and she won with ease.

Murkowski chairs both the Senate Energy Committee and the Senate subcommittee on Interior Appropriations. Ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) said she will continue as ranking minority member.

Lame-duck session under the gun after quiet week

In the first week of a compressed lame-duck session of Congress, the House and Senate last week made no public progress on the mountain of must-pass legislation facing them.

Congress won't be in session this week because of Thanksgiving. That leaves two weeks at the end of this month and the beginning of December to complete two years worth of legislation.

Two high priority outdoor initiatives remain - a monster fiscal year 2017 spending continuing resolution (CR) and an omnibus energy bill (S 2012) with important Land and Water Conservation Fund and Park Service Centennial provisions.

Last week appropriators didn't complete a draft of the CR and conferees on S 2012 did not complete a draft of a final report.

So the heavy lifting has been postponed.

Also on the docket, Congress will try to move a Department of Defense Authorization Act with important federal land provisions. A version of a bill (HR 4909) approved by the House May 18 would validate Utah county and state claims to 6,000 miles of RS 2477 rights-of-way across federal lands.

Finally, Congress may complete a huge water resources bill (HR 5303) that includes a \$2 billion Everglades restoration project called the Central Everglades Planning Project. The legislation is now in a House-Senate conference committee.

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