

# Federal Parks & Recreation

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## Will energy legislation bring royalties conservation's way?

The conservation community will be watching closely next month as Congress begins to write a comprehensive new energy policy.

Of great importance to conservationists is the disposition of oil and gas royalties if Congress decides to authorize additional leasing offshore and in the coastal plain of the Arctic National Wildlife Refuge (ANWR.)

Most conservation groups - particularly national environmental associations - oppose additional leasing. At the same time programs they support could come in for significant new revenues at a time of dwindling appropriations. In the mix for possible assistance are not only such old-line conservation programs as the Land and Water Conservation Fund and state wildlife conservation grants, but also a Park Service Centennial Challenge.

"For the record we do not support new leasing," said Rich Dolesh, public policy director for the National Recreation and Park Association (NRPA.) It represents state and local rec agencies and is a staunch supporter of the state side of LWCF. "But if Congress does move a bill, we hope there will be a conservation benefit."

There is precedent. In 2006 Congress approved a Gulf of Mexico Energy Security Act that directs the Minerals Management Service to allocate to the state side of LWCF 12.5 percent of royalties from Gulf of Mexico offshore oil and gas lease sales from so-called 181 Areas.

The fiscal year 2008 allocation is \$8 million for the Gulf program. The program is to run through fiscal 2016. The money is guaranteed, does not rely

on an appropriation and is in addition to any regular appropriation that Congress might make.

The lead author of the Sale 181 provision, Sen. Lamar Alexander (R-Tenn.), said at a Senate hearing this spring he wants to expand the program to future offshore oil and gas lease sales. And he said he would hope eventually to secure guaranteed funding of \$900 million per year for LWCF.

Alexander will be in a position of some influence because he sits on the Senate Energy Committee and he is a Republican who supports offshore energy development.

It is understood the Bush administration is eyeing new offshore and ANWR revenues to help pay for Park Service Centennial Challenge legislation (HR 3094, S 2817.) The \$2 billion program to upgrade the National Park System as it approaches its 100th Anniversary in 2016 needs a \$1 billion offset from Congress to match \$1 billion in partner contributions.

"I think we have a good chance in new energy legislation," said a source close to the administration who is working on the Centennial Challenge legislation. "Any new leasing would provide new revenues that could be used under PAYGO (Congressional budget rules.) The precedent was set in the 2006 legislation (Alexander's state LWCF provision.)"

There are three solid indications that Democrats are moving towards a deal that would accept Republican demands for some new leasing.

First and foremost, Senate Majority Leader Harry Reid (D-Nev.) and Senate Minority Leader Mitch McConnell (R-Ky.) have agreed to an energy summit when Congress returns from a summer vacation in September. Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), long a supporter of conservation spending, will chair the summit.

Second, ten senators from both parties put together a "compromise" energy proposal before leasing on a

five-week vacation August 1 that would allow some increased offshore oil and gas development. Third, probable Democratic candidate for President Sen. Barack Obama (D-Ill.) last week gave his Democratic colleagues some room to compromise when he said he was willing to accept additional offshore and onshore energy development on public lands.

A Senate Energy Committee staff member warned interested parties not to get too excited. "Staff is only now starting to talk amongst themselves on how to organize, structure and scope this discussion, which subject matter experts to recommend be invited, what topics to focus on, what the desired outcomes should be, and so on and so forth," he said. "No decisions have been made yet. I believe they are looking at the week of September 15."

This aide added, "Not surprisingly, we've received many expressions of interest from folks on all sides of the Great Energy Debate. At the moment there are waaaaaay more questions than answers."

## **Former Sens. Baker, Johnston go to bat for national parks**

Two former senators announced August 12 they will convene a year-long, blue ribbon commission to recommend policies for the National Park System in the next century. The system will turn 100 in 2016.

Former Senate Majority Leader Howard H. Baker, Jr. (R-Tenn.) and former Senate Energy Committee Chairman J. Bennett Johnston, Jr. (D-La.) will cochair the 30-member panel.

"Never before has a group of this caliber, independent and non-partisan, convened to conduct a comprehensive examination of the state of the national parks today, and their potential for the future," said Johnston.

The National Parks Conservation Association will finance the commission's work. It will cost about \$1 million, said a spokesman for the commission.

The commission will hold an inaugural meeting August 25-27 near Santa Monica Mountains National Recreation Area in Calif. Subsequent meetings will be held in Yellowstone National Park in Wyo.; Gettysburg National Military Park in Pa.; Lowell National Historical Park in Mass.; and Great Smoky Mountains National Park in Tenn.

The commission anticipates completing a final report in the fall of 2009.

Baker and Johnston "applauded" Secretary of Interior Dirk Kempthorne for his proposal for a \$3 billion Centennial Initiative to upgrade the Park Service for its 100<sup>th</sup> anniversary in 2016. The commission's work will complement the initiative.

The parks commission is not connected to an 18-member Outdoor Resources Review Group (ORRG) that is studying outdoor recreation policy around the country. Honorary Cochairs are Sen. Jeff Bingaman (D-N.M.) and Lamar Alexander (R-Tenn.) "That effort is entirely independent of ours," said the commission spokesman.

Henry Diamond, a partner with the law firm Beveridge & Diamond, and Patrick Noonan, chairman emeritus of The Conservation Fund, are leading the ORRG. The group anticipates submitting its recommendations to Congress in May.

The National Parks Second Century Commission members include such national luminaries as former Supreme Court member Susan Day O'Connor and such Park Service luminaries as former deputy director Denis Galvin.

Other members include:

LINDA BILMES, MBA Professor of Public Policy at Harvard University's Kennedy School of Government;  
 JAMES BLANCHARD, former Governor of Michigan;  
 MILTON CHEN, executive director, The George Lucas Educational Foundation;  
 RITA COLWELL, distinguished professor, Johns Hopkins School of Public Health;  
 SYLVIA EARLE, explorer-in-residence, National Geographic Society;

JOHN FAHEY, president, National Geographic Society;  
 BELINDA FAUSTINOS, executive director, San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy;  
 VICTOR H. FAZIO, former U.S. Representative (D-Calif.);  
 CAROLYN FINNEY, assistant professor, Environmental Science, University of California, Berkeley;  
 MARIA HINOJOSA senior correspondent for NOW newsmagazine for PBS;  
 SALLY JEWELL, chief executive officer of Recreational Equipment, Inc. (REI);  
 TONY KNOWLES, former Governor of Alaska (D);  
 STEPHEN H. LOCKHART, chairman of the board, Yosemite National Institutes;  
 GRETCHEN LONG, former chair, Cary Institute of Ecosystem Studies;  
 JAMES McPHERSON, George Henry '86 Professor of American History Emeritus, Princeton University;  
 GARY B. NASH, professor emeritus, Department of History, University of California, Los Angeles;  
 ROB PORTMAN, former director, Office of Management and Budget;  
 TIMOTHY J. ROEMER, former U.S. Representative (D-Ind.);  
 JERRY L. ROGERS, former associate director for Cultural Resources, National Park Service;  
 DEBORAH A. SHANLEY, dean, Brooklyn College School of Education;  
 PETER M. SENGE, senior lecturer, Sloan School of Management, Massachusetts Institute of Technology;  
 W. RICHARD WEST, founding director emeritus of the National Museum of the American Indian;  
 MARGARET WHEATLEY, board president Emerita and Management Consultant on Organizational Behavior, Berkana Institute; and  
 EDWARD O. WILSON, Pelligrino University

### Notice: Publishing Schedule Change

Dear Subscriber:

The next issue of *Federal Parks & Recreation* will be published on September 12, after we take a little vacation. We will then resume a regular biweekly publishing schedule. All offices will be open.

Research Professor, Harvard University.

## **Omnibus lands bill runs into some heavy water on Hill**

House Republicans last week criticized legislation (HR 2016, S 1129) that is the centerpiece of a 90-bill omnibus measure now nearing the Senate floor. The disputed measure would give Congressional certification to the 26 million-acre National Landscape Conservation System (NLCS) managed by the Bureau of Land Management (BLM.)

Twenty-seven House Republicans ratcheted up the criticism of the NLCS bill August 4 when they asked President Bush to veto HR 2016 if it came to him. The House Republicans didn't mention the Senate omnibus bill; they simply criticized HR 2016. The Republicans said HR 2016 would "lock up" 26 million acres of BLM-managed land.

Said a press release from the lead signatory, Rep. Bill Sali (R-Idaho), "The measure would lock up 26 million acres of (BLM) land, including land in Idaho, and would prevent many popular family recreational opportunities and almost all economic activities from taking place on the land."

Sali himself said, "This bill could have huge energy implications, as all land permanently locked up under this bill would also mean these lands are permanently off limits to energy development."

However, the Interior Department in the past has strongly supported the bill. In a hearing on the measure held by the House subcommittee on National Parks, Forests and Public Lands on June 7, 2007, Elena Daly, director of the NLCS for BLM, said, "The Department supports H.R. 2016, a bill that would legislatively establish the NLCS in order to conserve, protect, and restore nationally significant landscapes."

Daly did give the White House a little wiggle room when she noted that there was some disagreement about bill language that requires management "in a manner that protects the values for

which the components of the system were designated." But, Daly said, "We understand that the bill is intended to maintain the current management of the NLCS' individual units."

The omnibus bill (S 3213) has other problems in the Senate. Above all Republicans are demanding a vote on energy legislation, particularly expanded offshore drilling. Until they get that vote they won't let anything move.

The Republicans are so determined they are backing "holds" applied by Sen. James Coburn (R-Okla.) against virtually all legislation that comes to the floor, even if that legislation would benefit their states. Senate Majority Leader Harry Reid (D-Nev.) had been packaging numerous popular bills to get around Coburn.

When Reid brought up a package of miscellaneous bill (S 3297) July 28 the Republican senators refused to budge and the bill could not reach the Senate floor. The vote was 52-to-40 with 60 votes needed to break the hold. Included in S 3297 was a measure (S 1506) that would help states protect beaches.

Also troubling for the lands omnibus bill, the ranking Republican on the Senate Energy Committee, Sen. Pete Domenici (R-N.M.), has not signed off on the package yet. His staff said he is concerned about the NLCS bill. While Domenici personally may not object to the bill other committee members may, said a Republican aide.

The BlueRibbon Coalition, an alliance of powered recreation interests, blasted the omnibus lands bill, S 3213, last week in an alert asking its members to oppose the measure. The coalition said it objected to the marshaling of 90 bills into one measure, escaping individual review.

The coalition suggested that its members write their Congressmen and say, "I am also very concerned about how specific bills contained within the Omnibus package will eventually eliminate public access to public lands. Specifically, the National Landscape

Conservation System (S. 1139 & H.R. 2016), the Prehistoric Trackways National Monument (S. 275) and the Owyhee Public Land Management Act of 2008 (S. 2833)."

Committee staff on both sides warn about writing off the omnibus lands bill, S 3213, right now because it won't come before the Senate for another three weeks. That's because the Senate (and the House) are on a summer vacation until September 8.

The staff members said that discussions between the parties are continuing and that Democratic and Republican leaders won't really focus on the legislation until next month.

On the plus side for the legislation, ongoing negotiations between Democrats and Republicans are expected to produce an agreement next month on additional offshore oil and gas drilling.

The beaches bill, approved by the House April 16 by voice vote (HR 2537), would increase the authorization for grants to states to monitor the health of beaches. Under an existing 2000 law Congress may authorize up to \$30 million per year in grants, although appropriators usually put up \$10 million. HR 2537 would increase the authorization to \$40 million. S 3297 would increase it to \$60 million. Both bills would extend the law through 2012.

Meanwhile, in recent actions the House approved two more of the bills in S 3213, giving the measures a leg up if the Senate approves S 3213. On July 10 the House approved a bill (HR 1286) that would designate a Washington-Rochambeau Revolutionary Route National Historic Trail through Mid-Atlantic States.

Separately, on July 8 the House approved legislation (HR 3981) endorsed by the last two First Ladies that would formally authorize a Preserve America program and a related Save America's Treasures program.

Beyond the NLCS, the Washington-Rochambeau trail and the Save America and Preserve America bills, S 3213 includes individual bills that would:

- \* Designate two new National Park System units: Paterson National Historical Park in New Jersey and Thomas Edison National Historical Park in New Jersey,

- \* Authorize additions to nine existing National Park System units,

- \* Designate ten new national heritage areas (NHAs) and authorize studies of two NHAs. The new NHAs would be: Sangre de Cristo National Heritage Area, Colorado; Cache La Poudre River National Heritage Area, Colorado; South Park National Heritage Area, Colorado; Northern Plains National Heritage Area, North Dakota; Baltimore National Heritage Area, Maryland; Freedom's Way National Heritage Area, Massachusetts and New Hampshire; Mississippi Hills National Heritage Area; Mississippi Delta National Heritage Area; Muscle Shoals National Heritage Area, Alabama; and Santa Cruz Valley National Heritage Area, Arizona. The study areas are Chattahoochee Trace in Alabama and Georgia and Northern Neck in Virginia,

- \* Designate four national trails: Arizona National Scenic Trail; New England National Scenic Trail; Ice Age Floods National Geologic Trail; and Washington-Rochambeau Revolutionary Route National Historic Trail,

- \* Authorize studies of additions to four National Historic Trails: Oregon National Historic Trail; Pony Express National Historic Trail; California National Historic Trail; and The Mormon Pioneer National Historic Trail,

- \* Add three wild and scenic rivers: Fossil Creek, Arizona; Snake River Headwaters, Wyoming; and Taunton River, Massachusetts, and

- \* Designate a Snowy River Cave National Conservation Area of about 3.5 miles of cave passages in Lincoln County, New Mexico.

## **Section 4(f) fight revives in Peters new roads proposal**

A proposed new Bush administration surface transportation policy not only recommends the elimination in principal of direct federal spending on park and recreation programs, it also takes aim at a Section 4(f) environmental protection policy.

Section 4(f) of federal highway

law forbids construction of roads across parks, recreation areas, historic sites and wildlife areas. Under existing law highway planners must not enter such areas unless there is "no feasible and prudent alternative."

The new surface transportation proposal from Secretary of Transportation Mary Peters would replace the "no feasible and prudent alternative" with a "public interest" standard. Peters would begin with ten pilot programs conducted by states or cities, while holding out the possibility of a sweeping new 4(f) policy.

Said the National Trust for Historic Preservation, "Preservationists are concerned that this pilot program may be the precursor to a diminution and diluting of 4(f) as it relates *solely* to protecting historic and cultural resources." While the National Trust focused on historic and cultural resources, the proposal would also apply to parks, recreation areas and wildlife protection areas.

Meanwhile, an aide to House Transportation Committee Chairman James Oberstar (D-Minn.) said his boss considers the Peters proposal irrelevant. "Mr. Oberstar's comment about the dead hand of this administration reaching back from the grave stands," he said. "There will be a new administration and a new Congress next year (to write a new surface transportation law.)"

Under Peters lead, the Bush administration proposed a long-term surface transportation policy July 29 that would largely eliminate direct federal spending on park and recreation programs, except for federal lands roads.

Peters would delegate most responsibility for non-federal highway spending to states. In so doing she would eliminate the gasoline tax for nonfederal programs, the foundation for the programs for the last 50 years. (The report is available at <http://www.fightgridlocknow.gov>.)

The proposal would retain the gasoline tax to pay most of the freight for federal programs, such as federal

land highways, but replace state and local funding with a number of initiatives, such as toll roads, fees for vehicle miles driven and partnerships.

Substantively, the proposal would replace 102 "silo" programs such as transportation enhancements, recreational trails, scenic byways, Safe Routes to School, etc. with a half-dozen broad initiatives. New initiatives such as Metro Mobility and Mobility Enhancement would allocate money primarily based on the miles of roads in a jurisdiction and miles driven.

The 80-page *Refocus. Reform. Renew.* report does not mention recreation and only mentions parks in the context of national park roads. The report does mention transportation enhancements once, to call for its elimination. The program provides well over \$500 million per year to activities such as bicycle trails.

Recreation interests were immediately alarmed by the proposal. As we reported in the last issue, Americans for Responsible Recreational Access Executive Director Larry Smith objected to elimination of a Recreational Trails Program (RTP).

Rather than shrinking programs, Oberstar will look to increase highway and other surface transportation spending next year, his aide said. "I think Mr. Oberstar is looking at making the pie larger and getting the revenues to address all needs," said the staff member.

"Will there be changes in recreation programs? It's way too early to tell," he said. "Will they be bigger, smaller, different? I don't want to paint us into a corner. As of right now Congressman Oberstar continues to support the recreation transportation aspect."

At issue in the Section 4(f) dispute are regulations issued March 12 by FHWA that implement a provision in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU.) The Section 4(f) law, written in 1966, re-

quires agencies building highways and transit facilities with federal money to find a "feasible and prudent" alternative to damaging parkland.

Park and rec interests thought the dispute was settled by a March 3, 1971 decision of the U.S. Supreme Court, *Citizens to Preserve Overton Park v. Volpe*. The court held Section 4(f) "is a plain and explicit bar to the use of federal funds for construction of highways through parks - only the most unusual situations are exempted." Justice Thurgood Marshall said the law "indicates that protection of parkland was to be given paramount importance."

But the Bush administration and its Republican allies have charged that Section 4(f) is overly restrictive and blocks needed highway projects. So in 2005 they persuaded Congress in SAFETEA-LU to ease Section 4(f.) First, SAFETEA-LU said that when a project would have a "minimal" effect, Section 4(f) could be waived. Second, it said that a transportation department may use parkland only if there are no reasonable alternatives. Those changes are carried out in the March 12 FHWA regulations.

Now the Bush administration is trying to revise Section 4(f) again in the Peters report. It proposed that Congress authorize 10 new Performance Oriented Pilot (POP) projects in the next surface transportation law that would allow states and cities to substitute broad programmatic standards for detailed regulations.

Said the report, "Building on the revisions enacted in SAFETEA-LU section 6009, POP participants' projects would be subject to a 'public interest' standard under Section 4(f), rather than the existing 'no feasible and prudent alternative' standard. Under this new standard, 4(f) analysis would require an evaluation of impacts on all environmental resources (human and natural environment, excluding economic impacts) and a balancing of potential 4(f) adverse impacts against potential adverse impacts to other protected environmental resources based on the value, importance, type of impact, and level of

impact to each." (Page 67 of the report.)

## **NPS Centennial bill takes one step forward and one back**

The House Natural Resources Committee filed a much-anticipated report on a Park Service Centennial Challenge bill (HR 3094) in late July just before Congress left on a five-week vacation. Program supporters had hoped the report would open the way for House consideration of HR 3094.

However, the committee failed to identify offsets to pay the \$1 billion federal share of the \$2 billion program designed to upgrade the National Park System for its 100<sup>th</sup> anniversary in 2016. The lack of offsets has stalled the bill for the last year-and-a-half.

Now, with Democrats and Republicans increasingly gridlocked by megadisputes over energy policy and spending, it is unlikely that Congress will produce a bill under normal procedures. The best remaining hope then is that Congress will throw the legislation into a last-second appropriations bill called a continuing resolution.

"Everything is focused on November 4 (elections)," said Derrick Crandall, president of the American Recreation Coalition. "I'm pretty convinced that the Challenge will end up as part of the wrap-up package."

That presents problems of its own. "We risk the possibility that the people who put the package together won't cross all the t's and dot the i's," he said. "There won't necessarily be all the right people involved in writing the legislation."

Meanwhile, the White House and Congressional Democrats and Republicans continue to scramble to find offsets to pay the \$100 million federal share. One new possibility popped up in the last fortnight as Hill Democrats began to move toward acceptance of some increased Outer Continental Shelf (OCS) oil and gas development. Supporters of the

Challenge Fund hope some royalties from that development will make their way to the fund.

"(Probable Democratic Presidential nominee Barack) Obama and other Democrats are migrating that way," said one source with close ties to the White House. "They have agreed to some loosening on the ban on OCS drilling. We think a good chunk of new energy legislation may come the way of the Challenge program." *(See related article page one on energy legislation.)*

The House Natural Resources Committee approved a Centennial Challenge bill (HR 3094) May 7, but failed to identify offsets to pay the \$100 million per year federal share of centennial grants.

Committee Democrats initially considered unspecified fees on users of federal lands, presumably mining companies. That did not go over well with commodity users of the public lands. Other recommendations considered by the committee include a two percent levy on the state share of federal oil and gas leasing royalties, cancellation of an ultra-deepwater offshore oil and gas research program and a levy on each application for permit to drill for oil and gas on federal land. Those proposal did not go over well with western Congressmen.

Committee Republicans (and the Bush administration) have also recommended authorization of oil and gas drilling on the coastal plain of the Arctic National Wildlife Refuge, with some royalties going to the Centennial Challenge. And the committee Republicans have suggested allocation of revenues from timber salvage sales. Both of those proposals are unacceptable to committee Democrats.

In the Senate the lead sponsor of a counterpart bill (S 2817), Sen. Ken Salazar (D-Colo.), is also searching for revenues for bill. Unlike the House committee Salazar wrote into S 2817 two offsets - \$90 million from Outer Continental Shelf oil and gas revenues that exceed projections and \$10 million from special postage stamps.

The House and Senate bills substantively are similar. Both would give priority to projects that have a dedicated match, i.e. major parks with friends groups, but the bills would also authorize projects without matches.

The bills would allow NPS to spend money for seven kinds of projects with the only major limit that no more than 30 percent of the money could be spent on construction of facilities that cost more than \$5,000,000. The seven areas are: education, diversity, personnel, environmental leadership, natural resource protection, cultural resource protection, and health and fitness.

### **Interest groups go to war over BLM Moab plan in Utah**

The Bureau of Land Management (BLM) proposed a resource management plan for its Moab Field Office August 1 that has stirred an old war between off-highway vehicle (OHV) users and environmentalists.

The Wilderness Society and the Southern Utah Wilderness Alliance (SUWA) immediately attacked. "The Moab plan is out of touch with the public's values," said Liz Thomas of SUWA. "Although less than seven percent of visitors to the Moab area report that their main activity is motorized recreation, the new plan ignored that information and is weighted heavily on the side of dirt bikes, 4-wheelers and jeeps."

OHV users had their own problems with the plan but were incensed by the attack by The Wilderness Society and SUWA, particularly the implication that the Bush administration is doing them a favor by delineating trails where OHVs may - and may not - be used.

"More roads and trails have been closed by the Bush administration than by any administration in history," said Brian Hawthorne, public lands coordinator for the BlueRibbon Coalition. The coalition represents powered recreation interests. "We're looking at significant closures, significant changes in use access, and a significant decrease in open areas."

The proposed final Moab plan (BLM still must produce a record of decision) and EIS cover about 1.8 million acres within the 2.8 million acres of planning area.

Said BLM, "Under the Proposed Plan, 1,866 acres would be open to cross country OHV use, 339,298 acres would be closed, and OHV use would be limited to designated routes in the remainder of the planning area. Approximately 2,643 miles of travel routes (including motorcycle trails) would be designated."

Last month BLM proposed a similar plan for the Kanab Field Office in Utah that would close 25,000 acres of the 554,000 in the Kanab area to OHV use, and would allow limited OHV use on 528,000 acres.

BLM is in the process of revising Kanab, Moab, Monticello, Price, Richfield and Vernal management plans in Utah that would govern 11 million of the 23 million acres BLM manages in the state over the next decade. Interest groups around the country have focused on the plans because of implications for OHV use, energy development, wilderness and other uses.

Of the six areas most OHV and environmentalist interest groups believe the Moab is most important. Moab includes Arches National Park, views of Canyonlands National Park and numerous canyons managed by BLM, many of which environmental groups have recommended for wilderness designation.

Hawthorne of the BlueRibbon Coalition said he hoped BLM would eliminate some "poison pills" in the proposed plan. As an example of a poison pill he cited a BLM proposal to reroute a Thompson Trail that loops from Grand Junction, Colo. to Crescent Junction, Utah, and back.

"Where BLM would preserve the trail conflicts with a SUWA wilderness proposal, setting us up for a controversy," he said. "We thought they would designate the trail outside of the wilderness proposal, not in it."

The BlueRibbon Coalition also is

concerned about authority in the plan to charge permits to enter recreation areas. "If I read the plan right, we'll be making a big issue there," Hawthorne said. "The motorized community understands the agencies' problems. They don't have the money and must charge fees. The only thing we ask is we get a say on when and where the fees are charged."

## **Extension of '08 money bills could boost some programs**

Assuming that a gridlocked Congress simply extends fiscal year 2008 appropriations into fiscal 2009, almost all park and rec programs would receive more money than from Bush administration recommendations. But they would receive less than the House Appropriations Committee has recommended in fiscal 2009 money bills.

However, one prominent program - Park Service operations - would receive more from the Bush administration budget than from either the fiscal 2008 appropriation or the amount approved by a House subcommittee June 11 in a fiscal 2009 Interior and related agencies spending bill.

But there are no guarantees at the moment that the Democratic Congress will even be able to extend fiscal 2008 appropriations bills. House Republicans threaten to block all spending legislation unless Congress allows votes on expanding Outer Continental Shelf oil and gas drilling. That in turn would shut down the government.

However, there is movement toward an overarching agreement on energy policy. Senate Majority Leader Harry Reid (D-Nev.) and Senate Minority Leader Mitch McConnell (R-Ky.) have agreed to an energy summit when Congress returns from a summer vacation in September.

Second, ten senators from both parties have put together a "compromise" energy proposal that would allow some increased offshore oil and gas development. The group is led by Sens. Kent Conrad (D-N.D.) and Saxby Chambliss (R-Ga.) (See related article page one on

*possible conservation spending from energy initiatives.)*

Third, probable Democratic candidate for President Sen. Barack Obama (D-Ill.) last week gave his Democratic colleagues some room to compromise when he said he was willing to accept additional offshore energy development drilling.

Meanwhile, the House and Senate are gridlocked over appropriations bills because of the energy dispute and because Republicans oppose increased spending included in House and Senate Appropriations Committee money bills.

In a lead bill the House Appropriations subcommittee on Interior and related agencies approved a fiscal 2009 bill June 11. But Republican promises of energy amendments, and the good possibility those amendments might succeed, has frozen the bill in place. Likewise, the Senate Appropriations Committee scheduled a mark-up of a counterpart Interior and related agencies bill for July 24, but then backed off when threatened by energy amendments.

The Senate Appropriations Committee did approve a Transportation appropriations bill (S 3261) July 9. Among other things it would patch a shortfall in surface transportation spending for fiscal 2009.

The bill calls for an \$8 billion transfer from general funds to ensure federal highway programs receive full funding of \$41.2 billion. The House Appropriations subcommittee on Transportation marked up a counterpart bill June 20 but did not authorize the \$8 billion transfer, leaving the bill short of full funding.

In addition the Senate Appropriations Committee approved an Energy and Water money bill (S 3258) July 10 that would provide \$559 million more than the Bush administration requested for the Corps of Engineers in fiscal 2009 and \$333 million more than the administration requested for the Bureau of Reclamation.

The House Appropriations Committee approved a similar bill June 25 that would increase Corps spending by \$590 million and Bureau of Reclamation spending by \$163 million over administration requests.

Assuming the energy talks are successful and the gridlock is broken, Congress is then expected to approve a continuing resolution that largely extends fiscal 2008 spending into fiscal 2009. However, Congress always makes some changes in such a bill so there is no guarantee precise fiscal 2008 numbers will be extended.

In addition continuing resolutions sometimes pick up major pieces of legislation. Thus, some supporters of a bill (HR 3094) to establish a \$2 billion Centennial Challenge program to mark the 100th anniversary of the National Park Service hope Congress will use the resolution to enact it.

Assuming a straight extension of fiscal 2008 spending, here's how some individual programs would make out in fiscal 2009, compared to Bush administration recommendations and House Appropriations Committee recommendations:

\* STATE LWCF: \$25 million; the same as the House subcommittee on Interior; \$25 million more than the administration request,

\* FEDERAL LWCF: \$129.7 million, House subcommittee, \$132.2 million; administration, \$42.5 million,

\* URBAN PARKS AND RECREATION RECOVERY: No money; House subcommittee approved no money; administration asked no money,

\* FOREST LEGACY: \$52.3 million; House subcommittee, \$43.5 million; administration, \$12.5 million,

\* FOREST SERVICE RECREATION: \$262.6 million; subcommittee, \$278.5 million; administration, \$237 million,

\* FOREST TRAILS: \$76.4 million; House subcommittee, \$78.9 million; administration, \$50.4 million,

\* HISTORIC PRESERVATION: \$70.4 million; House subcommittee, \$82 million; administration, \$66.7 million,

\* SAVE AMERICA'S TREASURES (within Historic Pres line item above): \$24.6

million; House subcommittee, \$25 million; administration \$15 million,

\* PRESERVE AMERICA (within Historic Pres line item above): \$7.4 million; House subcommittee, \$5 million; administration, \$10 million,

\* NPS OPERATIONS: \$1.971 billion; House subcommittee, \$2.125 billion; administration, \$2.132 billion,

\* NPS CENTENNIAL INITIATIVE: \$25 million. The House subcommittee met the administration request for core operations in the above line item, but provided no money for the Centennial Challenge, leaving that job to the House Natural Resources Committee that is writing an authorization bill,

\* NPS WASHINGTON, D.C. MALL: The House subcommittee approved \$100 million to upgrade the National Mall even though it wasn't requested. New program,

\* BLM MANAGEMENT: \$1.008 billion; House subcommittee, \$1.013 billion; administration, \$987 million, and

\* FWS REFUGE MANAGEMENT: \$434 million; House subcommittee, \$469 million; administration, \$434 million,

## **USDA pleases sportsmen by retaining CRP penalties**

The Department of Agriculture has decided not to allow farmers to pull acreage from the Conservation Reserve Program (CRP) without penalty.

Reversing an earlier position, Secretary of Agriculture Ed Schafer July 29 said the country didn't need more CRP land put back into agriculture to counter soaring food costs and to produce ethanol.

"Despite the damage and disruption caused by the very severe floods that hit the Midwest last month, the indications so far are that the impact on this year's corn and soybean crops will be less than what was originally feared," said Shafer. "The markets have been reacting favorably to the good growing weather we have been experiencing in recent weeks and encouraging reports on crop conditions. Cash prices for corn are down 25 percent and for soybeans 14 percent from their record highs just last month."

That was good news for hunters and fishermen who rely on the more than 32 million acres in the program to protect habitat. "If early outs from CRP were allowed," said Theodore Roosevelt Conservation Partnership (TRCP) Senior Vice President Tom Franklin, "it could lead to millions more acres of scarce fish and wildlife habitat being plowed under."

But the outlook is not all rosy. For one thing, even though they face penalties such as rental payback and interests, farmers have already taken nearly 300,000 acres out of CRP in the last 19 months, the department said.

Second, when Congress rewrote the farm bill last year (it was enacted May 23), it reduced the cap on the total number of protected acres from 39.2 million to 32 million acres. In addition farmers are eligible to pull 9.3 million acres out of the program over the next three years without penalty as old contracts expire.

"We're not out of the woods yet," said Neil Shader, a communications specialist for Ducks Unlimited. "There are still threats to the CRP including loss of acreage under the farm bill. But we're fairly confident the situation will self-correct if the department does not let people out without penalty."

Although 9.3 million acres are eligible for removal without penalty, Shader said, "We're counting on some people re-enrolling." It would help if the Department of Agriculture would increase rental payments as an incentive for farmers to stay in, sportsmen say.

"This program has too many important benefits to our society for us not to work toward modernizing the rental rates and making them more competitive in today's marketplace," said Geoff Mullins, farm policy initiative manager for TRCP.

According to TRCP, wildlife habitat included in the CRP helps produce 13.5 million pheasants and 2.2 million ducks.

In late spring some members of

Congress and farm groups had lobbied the Bush administration to release without penalty up to 24 million acres from CRP so the land could be put back into crop production. At first the administration went along, prompting a federal judge on July 10 to issue a temporary restraining order against the program. But on July 24 U.S. District Judge John C. Coughenour in Western Washington lifted the order.

## **Administration bucks GOP, backs NPS on Hatteras OHVs**

The Bush administration last month broke ranks with the North Carolina Republican Congressional delegation and endorsed a court-approved agreement to limit off-highway vehicle (OHV) use in Cape Hatteras National Seashore.

The administration was backed somewhat by the chairman of the Senate subcommittee on National Parks, Sen. Daniel Akaka (D-Hawaii), at a July 20 hearing. The subcommittee held the hearing on a bill (S 3113) from the North Carolina Republican delegation that would replace an April consent agreement that limits OHV use in the seashore.

"This bill would overturn a consent decree negotiated by the affected parties and approved by a federal judge," said Akaka. "It is not our normal procedure."

On behalf of the Bush administration NPS Deputy Director Daniel N. Wenk sided with Akaka and disagreed with the North Carolina Republicans. "Because we believe that the April 30, 2008, consent decree will accomplish this objective better than the original 2007 Interim Management Strategy for the period until a final ORV plan and rule are adopted, the Department cannot support S. 3113," said Wenk.

Sen. Elizabeth Dole (R-N.C.) and Sen. Richard Burr (R-N.C.), who in a rare occurrence both showed up at the hearing, disagreed. "Our legislation would allow time for all parties to work

together to write a management plan without fear of litigation," Dole said. Completion of the plan may take as long as three years.

Meanwhile, said Dole, "We have heard from hundreds and hundreds of residents and visitors on this. The local economy should not have to suffer in the meantime."

Five North Carolina House members led by Rep. Walter Jones (R-N.C.) introduced a House version of the bill (HR 6223) that would undo a court-approved agreement between the Park Service and environmentalists designed to minimize OHV damage to beaches and species.

The legislation would effectively restore a Park Service Interim Management Strategy of June 13, 2007, that the agreement superceded. The agreement was signed off on by U.S. District Court Judge Terrence Boyle in North Carolina April 30.

The consent decree essentially forbids OHV use at night during the peak summer and shoulder seasons. And it bars OHV access within breeding zones. The decree would last until NPS completed a travel management plan.

The Defenders of Wildlife, lead plaintiff in the litigation that led to the consent decree, said school is still out on economic impacts. "It is too early to assess the economic effects, if any, of the additional restrictions on beach driving," said a Defenders fact sheet. "Previous surveys have found some visitors to the Seashore may visit less often if beach driving is restricted while others may visit more often if beach driving is restricted."

The decree settled a lawsuit brought on behalf of Defenders and the National Audubon Society against the Park Service and Dare and Hyde Counties in North Carolina. The case is cited as *Defenders of Wildlife et al. v. NPS, No. 2:07-CV-45-BO*.

The environmentalists filed suit in October 2007 to protest Park Service and Fish and Wildlife Service management

policies that they argue endanger the plovers, turtles and other species. One of their first demands was a ban on beach driving on 12 miles of the 67-mile shoreline.

Under the decree, OHV use is banned at night from May to November, except for educational purposes.

The decree requires NPS to complete an OHV management plan and to begin implementing it by April 1, 2011. At that time the consent decree would expire.

## Notes

**FS roadless policy in limbo.** A federal judge in Wyoming August 12 blocked implementation of a Clinton administration rule that bars road construction on 58.5 million acres of national forest. The order by Judge Clarence Brimmer holds the 2001 Clinton rule violated the Wilderness Act by establishing de facto wilderness areas. Only Congress has the authority to designate wilderness. Brimmer's decision overrules a Sept. 19, 2006, injunction from U.S. District Court Judge Elizabeth D. Laporte in Northern California that effectively reinstated the Clinton rule. In her decision Laporte held invalid a 2005 Bush administration rule. Now the Forest Service is faced with court decisions that hold invalid both the Clinton and Bush roadless area rules. That may leave standing only old forest land management plans. The Forest Service and its attorneys are still reviewing their options. "We're still reading the ruling and consulting our attorneys about the implications and the next steps," said an agency spokesman. In his decision Brimmer said, "In this case, the Forest Service's designation of 58.5 million acres as 'roadless areas' was a thinly veiled attempt to designate 'wilderness areas' in violation of the clear and unambiguous process established by the Wilderness Act for such designation." The State of Wyoming filed the lawsuit before Brimmer. Environmental groups led by The Wilderness Society said they would appeal to the Tenth U.S. Circuit Court of Appeals.

**Hoffman departs Interior.** The reputed architect of a plan to loosen Park Service restrictions on commercial uses in parks, Paul Hoffman, resigned from the Interior Department August 12. Hoffman most recently was serving as deputy assistant Secretary of Interior. On Oct. 18, 2005, when Hoffman served as deputy assistant secretary of Interior for Fish and Wildlife and Parks, the Bush administration proposed a new management policy for NPS that critics charged put the natural resources of the parks at risk. Hoffman hails from Wyoming where he had close ties to Vice President Richard Cheney. On leaving Interior Hoffman sent out an E-mail obtained by Public Employees for Environmental Responsibility that said, "In everything I have done, I have been committed to the team, fair play, conservative principles, and cooperative conservation."

**Landrieu asks parish park study.** Sen. Mary Landrieu (D-La.) introduced legislation (S 3449) August 1 that would authorize the study by the National Park Service of a possible Lower Mississippi River National Park. The park would be carved out of that portion of Louisiana that lies below New Orleans in Plaquemines Parish. Landrieu said the area contains natural, cultural and historic attributes that are worthy of at least a study for national park designation. Of its natural setting S 3449 says that the area "is split down the middle by the Mississippi River, surrounded on three sides by the Gulf of Mexico, and crossed by numerous bayous, canals, and ditches." Plaquemines Parish marks the beginning of the Mississippi River flyway and is the site of two national wildlife refuges. Of the area's cultural importance the bill says that Creoles, Europeans, Indians, Yugoslav, African-Americans, and Vietnamese all helped build the community. Finally, the area's history is marked by Fort St. Philip, famous for its role in the Battle of New Orleans, and Fort Jackson, famous for its role in the Civil War. "I think it is easy to see why this area would make an excellent addition to the National Park Service," said Landrieu.

## Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
<b>Appropriations 2009 (DOI and FS)</b> No bill number yet.	House subcommittee approved June 11.	Would provide modest increases for most park and rec programs.
<b>Appropriations 2009 (Energy &amp; Water)</b> No House bill number yet S 3258 (Dorgan)	House subcommittee approved June 25, Senate committee July 10.	Would increase Corp of Engineers and Bureau of Reclamation spending.
<b>Appropriations 2009 (Transportation)</b> No House bill number yet S 3261 (Murray)	House subcommittee approved June 20, Senate committee July 9.	Would provide funding for park and rec programs, as called for by SAFETEA-LU.
<b>Congressional Budget 2009</b> H Con Res 312 (Spratt) S Con Res 70 (Conrad)	House gave final okay June 5. Senate gave final approval June 4.	Would increase natural resources spending but mostly for Hurricane Katrina.
<b>NPS Centennial Challenge</b> S 1253 (Bingaman) HR 2959 (Rod Bishop) HR 3094 (Rahall) S 2817 (Salazar)	House committee approved HR 3094 May 7. Senate hearing Aug. 2, 2007.	All bills would establish \$2 billion program to help the parks.
<b>Omnibus Bill One</b> S 2739 (Bingaman)	President Bush signed into law May as as PL 110-229.	Included 60 individual bills, including three new NHAs.
<b>Omnibus Bill Two</b> S 3213 (Bingaman)	Bingman introduced June 26.	Includes 90 individual bills, including NLCS, two new national parks.
<b>NPS tax assistance</b> HR 1731 (Baird)	Baird introduced March 28, 2007.	Would authorize NPS improvement fund financed by income tax check-off.
<b>FLREA repeal</b> S 2438 (Baucus)	Baucus introduced Dec. 10, 2007. House hearing June 18.	Would repeal most of 2004 federal agency recreation fee law.
<b>Heritage areas national</b> S 278 (Thomas) HR 1483 (Regula)	Senate committee approved July 25, 2007. House approved Oct. 25, 2007.	Would establish national standards for new NHA designations. HR 1483 Would designate six new NHAs.
<b>Farm bill</b> HR 2419 (Peterson)	Enacted May 23 as PL 110-2334 over President's veto.	Authorizes major conservation programs for five years, including new Open Fields program.
<b>Conservation tax credits</b> S 469 (Baucus) HR 1576 (Thompson)	Senate committee approved Sept. 20, 2007. Thompson introduced March 19, 2007.	Would make semi-permanent conservation tax credits Congress approved last year.
<b>Wildlife conservation grants</b> HR 3221 (Pelosi) HR 2338 (Dicks)	House approved August 4, 2007. Dicks introduced May 16, 2007.	Both would make grant program permanent, open way for new source(s) of money.
<b>American Discovery Trail/National Discovery Trails</b> HR 74 (Bartlett)	Bartlett introduced Jan. 4, 2007.	Would designate an American Discovery Trail and discovery trail system.
<b>Trail acquisition authority</b> S 169 (Allard) HR 1847 (M Udall)	Allard introduced Jan. 4, 2007. Udall introduced March 29, 2007.	Would authorize land acquisition authority for nine national trails.
<b>Trail expansion authority</b> S 580 (Hatch)	Senate committee approved June 26, 2007.	Would authorize route variations for four national historic trails.