

Federal Parks & Recreation

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In this issue. . .

Dems playing risky stimulus hand.
Congressional leaders are writing \$800 billion bills with park and rec projects unvetted. NPS and FS say they are prepared ... Page 1

Salazar nomination on fast track.
Energy committee said ready to approve him. Sen. Murkowski is positive. Agendas asked ... Page 3

Appropriators finish up '09 bills.
Reach agreement on most issues. Disposition unclear. Expected to look like '08 measures .. Page 5

Rec and park panels revving up.
Parks commission may outline recommendations this month. Rec panel also to meet Page 6

Senate sets omnibus bill vote.
Reid wants to act immediately. But Sen. Coburn objected on floor. Huge lands bill Page 7

Dems beat drums for wetlands law.
Committee heads allege weaknesses in EPA, Corps regs .. Page 9

Utah oil and gas sale proceeds.
Near national parks. But BLM will sit on leases awhile .. Page 10

NPS retirees present agenda.
Includes Centennial Initiative but also goes well beyond .. Page 11

IBLA bars Death Valley access way.
Admin board rejects application to cross BLM land to park .. Page 12

Notes Page 13

Conference calendar Page 14

Stimulus projects mostly unvetted; are agencies ready?

Congressional Democrats are playing high stakes political poker now as they attempt to write an \$800 billion (and climbing) economic stimulus bill. By definition the bill is expected to include huge amounts of money for park and rec programs.

For one thing Congressional committees are not providing detailed previews of projects. The Senate Energy Committee held one hearing last month to listen to a handful of recommendations, but will hold no mark-ups.

Instead in the Senate, said an energy committee staff member, the Democratic leadership will simply assemble a bill and present it on the Senate floor. "The status is our recommendations will be dealt with on the floor. There will be no further committee action," said the staff member.

By some accounts Senate Majority Leader Harry Reid (D-Nev.) and Speaker of the House Nancy Pelosi (D-Calif.) intend to assemble a brief stimulus bill of some 15 pages. It will simply give broad instructions to agencies to spend the \$800 billion-plus.

Indeed, on January 6 Reid and other leading Senate Democrats introduced two bare-boned bills (S 1 and S 2) that they intend to be the vehicle to implement the stimulus legislation. S 1 has only six lines such as "modernize the nation's infrastructure" and "provide tax relief."

That approach may work for the Park Service because it appears to have a leg up in the natural resources money competition. The agency has already laid the groundwork for more than \$2 billion in projects as part of a Centennial Challenge program. Friends groups

would match the federal money with an additional \$1 billion.

Said a Park Service spokesman, "Yes, having gone through the Centennial Challenge process of identifying projects does give us a leg up. The bottom line is we will do what the President tells us to do. . . If we are required to go above and beyond the Centennial Challenge, we will make it happen."

The Forest Service is not far behind. Chief Abigail Kimbell told *FPR* this week that the agency has identified for Congress a load of stimulus projects that have cleared all paperwork, including for recreation areas.

"Never in our wildest dreams do we expect to get everything we have asked for," said Kimbell, "but we're posed to put projects in place right off. We have identified \$330 million in engineering projects that are ready to go that would also benefit the land. We have identified 1.5 million acres in fuel reduction projects that are ready to go. All we need is the funding."

Kimbell said the Forest Service has identified projects in such categories as infrastructure, hazardous fuels reduction, watershed restoration, conversion of wood to energy, Job Corps work and reforestation of land hit by insects and fire.

President-elect Barack Obama had until this week been calling on Congress to complete stimulus legislation so he could sign it as soon as he took office January 20. But the combination of Republican concerns and the difficulty of putting together such complex legislation may delay things until next month.

Still, House and Senate committees are preparing recommendations for Reid and Pelosi that will not be subjected to committee mark-ups; committee leaders will simply submit general outlines to leadership.

House and Senate Republican leaders said this week they are becoming

uneasy about spending so much unvetted money. After all, annual appropriations bills are subjected to a year of scrutiny. The bills also identify the vast majority of specific projects to receive money. Under the Democrats plan agencies could have nearly *carte blanche* to spend on projects of their own choosing.

At the same time Republican leaders are worried about too many designated projects, i.e. earmarks. At any rate, said House Republican Leader John Boehner (R-Ohio), "(I) would ask the Democratic Leadership to guarantee that such a bill will not be brought to the floor of the House unless there have been public hearings in the appropriate committees, the entire text has been available online for the American people to review for at least one week, and it includes no special-interest earmarks."

Said Senate Minority Leader Mitch McConnell in a statement January 2, "We hope that Democrats in Congress don't attempt to shut the American taxpayer out of this process by trying to pass a bill that hasn't been the subject of bipartisan review and that hasn't been available for public inspection."

Republican concerns aside, Reid and Pelosi have established a rough schedule for putting together a six-part stimulus bill: health care, energy saving projects, public works, school construction, assistance for the jobless and tax reductions.

Numerous interest groups have promoted the Park Service Centennial Challenge as the perfect natural resources economic stimulus program. Former NPS Deputy Director Denis Galvin made that case last month to the Senate Energy Committee on behalf of the National Parks Conservation Association. NPS has already identified hundreds of millions of dollars in matching projects designed to upgrade the national parks for the system's 2016 centennial.

Sen. Reid has promised Secretary of Interior Dirk Kempthorne that the Centennial Challenge program will be part of a Senate stimulus bill. Whether the House will accept it or not is an-

other question. A more modest Senate stimulus bill that failed late last year (S 3688) included the Centennial Challenge.

But 31 conservation and sportsmen groups are also pitching for money for broader conservation programs. The groups, representing five million sportsmen and conservationists, last month submitted broad stimulus recommendations affecting Interior Department agencies, the Forest Service, the Department of Commerce, EPA, the Army Corps of Engineers and the Department of Transportation.

Said the 31 groups in a December 18 letter to Hill leaders, "The attached recommendations represent a unique consensus among a wide range of organizations specifically aimed at habitat-oriented projects that benefit fish and wildlife while stimulating local economies, particularly through job creation."

At the Senate hearing last month Cassandra Moseley, a professor in the Ecosystem Workforce Program at the University of Oregon, said that with \$8.5 billion the Forest Service and the Bureau of Land Management could create 127,000 direct jobs over the next three years.

Interest groups are also looking for stimulus assistance for transportation programs. For instance, trails advocates have presented Congressional leaders with 10,000 signatures on a petition to ask for stimulus assistance to trails, biking and walking programs. The Rails-to-Trails Conservancy in partnership with Thunderhead Alliance and America Bikes has identified hundreds of projects for trails, bike lanes, and sidewalks.

In addition a broad range of 25 interest groups last month asked House and Senate leaders and Obama to provide \$300 million for recreational trail projects financed by the surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

Indeed, the House Transportation Committee has identified more than \$17 billion in transportation infrastructure work, including rec projects such as trails. It includes \$12.8 billion just in highway and bridge money. California would be the big winner with some \$1.2 billion in highway and bridge money.

Salazar confirmation seen likely; interests weigh in

The Senate Energy Committee has put on the fast track the confirmation of one of its own members as secretary of Interior, Sen. Ken Salazar (D-Colo.) The committee will hold a hearing on Salazar's nomination January 15 and a committee vote is expected shortly after that.

"It should be smooth sailing," said a committee spokesman. "I haven't heard anyone raise any concerns. Chairman Bingaman is a big supporter of Sen. Salazar. He has a strong reputation as a bipartisan centrist. It should be very cordial." Bingaman is Sen. Jeff Bingaman (D-N.M.)

It helps Salazar that ranking committee Republican, Sen. Lisa Murkowski (R-Alaska), who served with Salazar for the last four years on the panel, said she was "pleased" by his nomination. "We've always got along well," Murkowski said of her relationship with Salazar. "We've always been able to talk about the issues and he is thoughtful and reasonable in his approach to so many different issues, whether it be over public lands, energy or native issues."

Thus far, some environmental groups that are normally allies of Salazar have offered a bit of criticism, while industry groups that Salazar has often criticized have praised him.

For instance, the environmental group Public Employees for Environmental Responsibility (PEER) complained that commodity industries issued a "huge sigh of relief" when Salazar was nominated. PEER said in a release that Salazar's statement on receiving the nomination

"made only passing reference to protecting natural resources . . ."

To keep Salazar on the straight-and-narrow PEER recommended these Interior Department nominees: John Donahue, superintendent of Big Cypress National Preserve, as director of the National Park Service; Martha Hahn, former director of the Bureau of Land Management (BLM) Idaho State Office, as director of BLM; Phil Doe, former Bureau of Reclamation employee, as director of the bureau; and Robert McCarthy, former field solicitor for the Department of Interior, as Solicitor.

PEER also recommended that the Park Service hire Teresa Chambers, former U.S. Park Police chief, to that position again. She was fired by the Bush administration for telling the press that the Park Police needed a larger appropriation. However, the Bush administration may have headed PEER off December 24 by naming former Park Service police official Salvatore "Sal" R. Lauro as chief of the 600-member force.

Separately, the Center for Biological Diversity, Western Watershed Project and WildEarth Guardians objected to Salazar's Endangered Species Act record. They have compared him unfavorably to Bush administration secretaries of Interior Gale Norton and Dirk Kempthorne.

But more typical was the reaction of William H. Meadows, president of The Wilderness Society. "Because he has been a leader in negotiations on several Colorado wilderness bills that are poised to be passed by Congress, including Dominguez Canyon and Rocky Mountain National Park, we are confident that, in his new role, he will continue his work to protect the West's most beautiful and ecologically significant landscapes," said Meadows.

From the other side of the fence Secretary Of Interior Dirk Kempthorne said, "Ken Salazar is an excellent selection for Secretary of the Interior. As a lifelong Westerner and rancher who has led Colorado's Department of Natural Resources and is a member of the Senate

Energy Committee, Senator Salazar already understands many of Interior's diverse and complex issues."

Similarly, Independent Petroleum Association Of Mountain States (IPAMS) Executive Director Marc Smith said, "IPAMS has worked with Senator Salazar for many years and we are confident that he views natural gas development in the Intermountain West as an important long-term element in national and regional energy supply."

In announcing the selection of Salazar December 17 Obama said, "I want a more proactive Interior Department. I also want an Interior Department that very frankly cleans up its act. There have been too many problems and too much emphasis on big time lobbyists in Washington. That's going to change under Ken Salazar."

As we reported in the last issue Salazar has been an activist on park and recreation issues. He has been the main sponsor or a leading cosponsor of legislation to: establish a \$2 billion Park Service Centennial Challenge program (lead sponsor), provide full funding for the state side of the Land and Water Conservation Fund (one of two sponsors), repeal the federal entrance fee law called the Federal Lands Recreation Enhancement Act, designate most of Rocky Mountain National Park as wilderness (lead sponsor), and designate two national heritage areas in Colorado (lead sponsor.)

As the Obama administration begins to take shape much attention is being given to policy recommendations of 29 environmental groups, *Transition to Green*. One organization that is very much not a party to the report, the American Land Rights Association, views it as a mandate for the Obama administration. "This plan is the Environmental Group outline for the next four to eight years of the Obama administration for the natural resources part of the government," the association warned its members last month.

To recap, the *Transition to Green* calls for a fiscal year 2010 appropria-

tion for the federal side of the Land and Water Conservation Fund of \$325 million and state side grants of \$100 million.

For the national parks *Transition to Green* recommends that Obama work with Congress to designate new parks and additions to old parks to reverse a near moratorium on expansion during the Bush administration; transfer leadership for the Everglades restoration project from the Corps of Engineers to a new Everglades Czar in the Council on Environmental Quality; follow through on a House Natural Resources Committee order and withdraw 1 million acres of national forest land from uranium mining near Grand Canyon National Park; and more.

Other interest groups are making pleas of their own to the Obama administration, such as sportsmen marching under the banner of the Theodore Roosevelt Conservation Partnership (TRCP.) Among other things the partnership said it will promote programs crucial to sportsmen in a 2008 farm bill.

One initiative, the Conservation Reserve Program, has been around for a while. Although the farm bill extended the program, it also dropped a ceiling on acreage. At the same time farmers are finding more profit in farming because of high commodity prices and to produce methane. TRCP said it will attempt to reverse those trends. The other initiative, an Open Fields program, will provide \$50 million over the next four years to encourage states to work with landowners to open their properties to hunting and fishing. TRCP said it will keep the heat on the Department of Agriculture.

Appropriators put together FY '09 package; work to do

House and Senate appropriators have all but completed fiscal year 2009 appropriations bills, including an Interior and related agencies measure that would govern park and rec programs.

"We have a package negotiated with one or two items open," said one appro-

priations committee staff member last week. "We negotiated between the House and the Senate and majority and the minority and put together a package." The staff member would not say what the open items are but in the past in the committee offshore oil and gas development has been the most contentious issue.

It is understood that for most park and rec programs the fiscal 2009 Interior bill will look much like a fiscal 2008 bill, with modest increases for individual programs.

The staff member said that House subcommittee on Interior Appropriations Chairman Norman Dicks (D-Wash.) and Senate subcommittee on Interior Appropriations Chairman Dianne Feinstein (D-Calif.) agreed to the Interior bill.

But the deal is not done yet. "We don't know what will happen next," said the staff member. "The plan is to address it (this month.) When people come back we will see what happens. The minority may have things they want to take up."

The Democrats hope to have the bills ready for President-elect Barack Obama to sign sometime this month. That would clear the deck for the new administration to concentrate on fiscal 2010 appropriations. Obama's team is reportedly involved in the fiscal 2009 appropriations discussions.

In addition to the Interior bill appropriators are closing in on final bills for all subcommittees. That could lead to the packaging of the bills into one big money bill or a continuing resolution.

Despite the apparent progress in writing fiscal 2009 money bills some staffers are betting that Congress will end up simply extending a fiscal 2008 money bill through fiscal 2009.

This last Congress (the 110th) put off consideration of fiscal 2009 money bills in late September by approving an extension of fiscal 2008 bills until March 6 (PL 110-329 of September 30.)

Now appropriators hope to wrap up the fiscal 2009 bills first thing in the 111th Congress.

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 subcommittee on Interior recommendations of last June:

* STATE LWCF: \$25 million; the same as the House subcommittee on Interior; \$25 million more than the administration request of no money,

* 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. However, the fiscal 2008 appropriations law did allocate \$25 million to launch the program and would presumably be carried forward into fiscal 2009,

* NPS WASHINGTON, D.C. MALL: The House subcommittee approved \$100 million

to upgrade the National Mall even though it wasn't requested. New program,

* NATIONAL FOREST SYSTEM: \$1.506 billion; House subcommittee, \$1.508 billion; administration, \$1.349 billion,

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

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

* TOTAL FOR INTERIOR SUBCOMMITTEE BILL: \$26,555 billion; House subcommittee, \$27.867 billion; administration, \$25.764 billion.

Commissions on recreation and national parks set meetings

Two blue ribbon commissions on national parks and outdoor recreation are on track, they hope, to complete reports by late spring.

A National Parks Centennial Commission intends to begin to close in on "tentative recommendations" at its third meeting January 27-29 in Yellowstone National Park, said Mike Bento, a spokesman for the commission. The commission would like to sign off on a report at its last scheduled meeting in June in Great Smoky Mountains National Park, he said.

A separate Outdoor Resources Review Group (ORRG) is scheduled to meet next on January 30 in Washington, D.C. The ORRG has begun to identify issues that it will address in a final report but has not nailed the issues down yet. The ORRG would like to complete a report in "late spring," said a staff member.

Both commissions are laying the groundwork for an increased emphasis on parks and recreation in President-elect Barack Obama's administration. Both commissions include current and former Congressmen as key advisors. While the parks commission expects to finish its work with a report, the possibility remains that the ORRG will be followed by a formal commission designated by Congress. But that lies in the future.

For now the parks commission is

broken down into six subcommittees that pretty much identify where the panel is going:

* Natural Resources and Science: Rita Colwell - Chair. Colwell is the Distinguished Professor (Microbiology and Biotechnology) of the Johns Hopkins School of Public Health.

* Cultural Resources and Heritage Preservation: Jerry Rogers - Chair. Rogers is Former Associate Director for Cultural Resources for the National Park Service.

* Education and Learning: Milton Chen - Chair. Chen is Executive Director of the George Lucas Educational Foundation.

* Visitation and Public Engagement: Sally Jewell - Chair. Jewell is Chief Executive Officer of the Recreational Equipment, Inc.

* Future Shape of the National Park System: Deny Galvin - Chair. Galvin is a Former Deputy Director of the National Park Service.

* Funding and Budget: Linda Bilmes - Chair. Bilmes is Professor of Public Policy of the Harvard University's Kennedy School of Government.

The National Parks Centennial Commission is chaired by former Senate Majority Leader Howard H. Baker, Jr. (R-Tenn.) and former Senate Energy Committee Chairman J. Bennett Johnston, Jr. (D-La.) The National Parks Conservation Association is paying the estimated \$1 million cost for the commission.

The 30-member commission includes such national figures as former Supreme Court member Susan Day O'Connor and such national parks advocates as former deputy director Denis Galvin.

The 18-member Outdoor Resources Review Group is led by Henry Diamond, a partner with the law firm Beveridge & Diamond, and Patrick Noonan, chairman emeritus of The Conservation Fund. Sens. Jeff Bingaman (D-N.M.) and Lamar Alexander (R-Tenn.) are honorary co-chairs.

The ORRG commission includes two governors, other state officials, local officials, National Geographic Society Chairman Gilbert Grosvenor, Diamond, and

representatives of the recreation industry and conservation.

Money for the ORRG is coming from foundations associated with the Rockefellers, Mellons and Packards. The Conservation Foundation and National Geographic, major players in the new group, would not finance it.

The commissions are not without their critics. The private property group the American Lands Rights Association views them as a pretext for asking Congress for more money for land acquisition.

Sen. Reid schedules omnibus bill vote, but Coburn objects

Senate Majority Leader Harry Reid (D-Nev.) has scheduled a vote on a huge omnibus lands bill for Sunday, January 11.

However, Reid's nemesis, Sen. Tom Coburn (R-Okla.), who has blocked the bill before, is threatening to resist. Coburn may insist on a vote to block a filibuster, requiring 60 votes.

Coburn won the first round on January 6 when Reid and Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) attempted to bring the omnibus bill up. Said Coburn, "I would raise objection to the filing of the bill at the desk, the Bingaman land package."

That prompted Reid to say January 7 "I have notified a number of Members - I had a meeting with them at 9 o'clock this morning - that because of a Senator (Coburn) not allowing us to move forward on this legislation last night and throwing every procedural hurdle in the way of these bills, which is now in the form of one bill, we are going to have a vote Sunday morning in the Senate. So everyone should understand, Sunday morning we are going to have a vote in the Senate."

The bill, newly number to S 22 and sponsored by Bingaman, contains 161 individual measures.

Coburn indicated January 7 he will

continue to fight the measure. "The decision by Senate leaders to kick off the new Congress with an earmark-laden omnibus lands bill makes a mockery of voters' hopes for change," he said. "This package represents some of the worst aspects of congressional incompetence and parochialism."

The omnibus bill was tripped up in the last Congress on November 17 after Coburn said he would insist on a reading of the bill that could take more than 24 hours. The Senate's time was limited because it was working on a short week.

Among others Sen. Ken Salazar (D-Colo.), the Obama administration's choice for Secretary of Interior, wants to approve the omnibus lands bill before he leaves the Senate.

"While there is great anticipation for the new beginning on January 20 (when President-elect Barack Obama is sworn in), there is still work that must be done for the State of Colorado in the coming days in the U.S. Senate," said Salazar. He then listed among his top priorities nine Colorado-centric bills that are in the 161-bill measure, such as designation of most of Rocky Mountain National Park as wilderness.

The omnibus bill was opposed in 2008 by hostility from a wide range of interests, beginning with western House Republicans and including the U.S. Chamber of Commerce, private property rights advocates, powered recreation advocates, and conservative think tanks.

The Heritage Foundation led the campaign against the bill with a widely distributed position paper. "The lands bill removes public land that would be available for recreational, commercial, and private ownership use by designating such land as wilderness areas, heritage areas, conservation areas and wild and scenic rivers," said author Nicolas Loris. "Furthermore, the bill places restrictions on existing federal property."

The most controversial single item in the bill would give Congressional certification to the 26 million-acre National Landscape Conservation System

(NLCS) managed by the Bureau of Land Management. The House approved its version of the NLCS bill (HR 2016) on April 9.

In a quite different possible snag involving the NLCS Sen. Dianne Feinstein (D-Calif.) has talked about adding 6 million acres to it from the California Desert Conservation Area (CDCA.) The NLCS already includes 4 million acres of CDCA land. However, Feinstein didn't mention the CDCA January 7 in commenting on the new S 22.

The Senate Energy Committee developed the omnibus lands package based on committee-passed bills. Not all committee-passed bills made the cut because both Democratic and Republican committee leaders enjoyed a veto. The idea was to produce a bill that provides something for everyone on both sides of the aisle. However, one key senator, Coburn, has objected to the cost of the bill and possible land use restrictions.

There is considerable support for S 22. Twenty-four Democratic House members wrote Speaker of the House Nancy Pelosi (D-Calif.) October 30 and asked her to schedule a vote on the bill, if the Senate acted on it.

In addition to the NLCS measure, S 22, as amended by chairman Bingaman and other members from committee passed bills, would:

- * NEW NATIONAL PARKS: Establish a Paterson Great Falls National Historical Park in New Jersey, a William Jefferson Clinton Birthplace Home National Historic Site in Arkansas, and a River Raisin National Battlefield Park in Michigan.

- * ADDITIONS TO NATIONAL PARKS: Authorize additions to 17 existing national parks.

- * STUDIES OF NATIONAL PARKS: Authorize studies of 12 sites, most as possible additions to the National Park System.

- * NATIONAL HERITAGE AREAS: 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,

* **PALEONTOLOGICAL:** Establish stiff new penalties for disturbance of paleontological resources on federal lands.

* **NATIONAL TRAILS:** Designate an Arizona National Scenic Trail; a New England National Scenic Trail; an Ice Age Floods National Geologic Trail in Montana, Idaho, Washington and Oregon; a Washington-Rochambeau Revolutionary Route National Historic Trail between Newport, Rhode Island, and Yorktown, Virginia; a Pacific Northwest National Scenic Trail from Glacier National Park, Mont., to the Pacific Ocean Coast in Olympic National Park, Wash.; and a Trail of Tears National Historic Trail in Alabama, Arkansas, Oklahoma, and Tennessee.

* **TRAILS - WILLING SELLER:** Extend willing seller authority to the Oregon National Historic Trail; The Mormon Pioneer National Historic Trail; the Continental Divide National Scenic Trail; the Lewis And Clark National Historic Trail; the Iditarod National Historic Trail; the North Country National Scenic Trail; And the Ice Age National Scenic Trail.

* **WILD AND SCENIC RIVERS:** Designate the following three, plus several in wilderness bills: Fossil Creek, Ariz.; Snake River Headwaters, Wyo.; and Taunton River, Mass.

* **WILDERNESS:** Designate wilderness proposed in 14 different wilderness bills, including wilderness in Sequoia and Kings Canyon National Park and in Rocky Mountain National Park.

* **BATTLEFIELD PROTECTION:** Extend an existing American Battlefield Protection program through 2013 (it is about to expire.)

* **PRESERVE AMERICA:** Formally establish a Preserve America program to provide grants to communities and his-

toric preservation for "soft" preservation activities.

* **SAVE AMERICA:** Formally establish a Save America's Treasures program to provide grants to federal, state and local governments as well as nonprofits to physically preserve historic facilities and items.

Dems say EPA records show a need for new wetlands law

Leading House Democrats last month laid the groundwork for major changes in a definition of wetlands that must receive permits from the Corps of Engineers.

The Democrats dismissed a last-minute attempt by the Corps and EPA in early December to define wetlands that are susceptible to Section 404 permits under the Clean Water Act. The administration said those wetlands are for the most part navigable waters and adjacent water bodies. But the Democrats want to subject all wetlands to permit.

House Transportation Committee Chairman James Oberstar (D-Minn.) and House Energy Committee Chairman Henry A. Waxman (D-Calif.) released internal agency documents that purport to demonstrate that the Bush administration has allowed destructive activities on numerous wetlands.

The documents "show that hundreds of cases have been adversely affected, that the entire program faces critical deficiencies that threaten its primary mission, and that EPA field staff across the country have repeatedly warned about the lack of enforcement," said Oberstar and Waxman in a letter to President-elect Barack Obama.

Oberstar said it was time for Congress to act. "By withholding relevant information and misleading Congress our nation's waters have gone unprotected for too long," he said. "Only through Congressional action can we restore necessary Clean Water Act protections to our nation's waters."

Oberstar and Waxman didn't petition Obama for any specific action. They simply said, "(W)e would like to

work with you in a cooperative manner to restore the effectiveness and integrity of a program that is vital to the health and environment of the American people."

Coincidentally, just as the Democrats were gearing up to address the dispute over wetland regulation, the originator of the fuss, developer John Rapanos, settled with the government. It was Rapanos's lawsuit that led to a June 19, 2006, Supreme Court decision, *Rapanos v. U.S. Nos. 04-1034 and 04-1384*, that muddied the regulatory waters.

In the settlement Rapanos agreed to pay a \$150,000 civil penalty and to spend \$750,000 to mitigate 54 acres of wetlands that were filled without Corps approval under Section 404 of the Clean Water Act.

In its decision the Supreme Court left no doubt that only water bodies related to navigable waters should be regulated. Conservationists, particularly duck hunters, say the decision is crucial because it left small breeding wetlands unprotected.

Oberstar and other House and Senate members introduced legislation in the last Congress (HR 2421, S 1870) that would have expanded Section 404 permitting to all wetlands.

In June 2007 EPA and the Corps issued guidance that interpreted the Supreme Court Rapanos as to what wetlands required permits. After considerable criticism the agencies on December 4 issued revised guidance. This guidance says a permit will be required only for:

- " * Traditional navigable waters
- " * Wetlands adjacent to traditional navigable waters
- " * Non-Navigable tributaries of traditional navigable waters that are relatively permanent and
- " * Wetlands that directly abut such tributaries."

Oberstar criticized the agencies' new guidance: "This revised guidance document, issued by (EPA) and the U.S. Army Corps of Engineers, further erodes

Clean Water Act protections and creates a new and extremist test for determining which waters are protected." He added, "The only way to restore protections over our waters is through a legislative solution to the problems created by President Bush and the Supreme Court."

Scott Yaich, director of conservation operations for Ducks Unlimited, said the direction does not clarify the standing of potholes and playa lakes that are crucial breeding grounds to ducks. "The confusion that stemmed from the original guidance and that will continue to hamper landowners and local officials reinforces the need to accomplish protection for the nation's waters through Congressional action," he said.

The Waxman and Oberstar documents are based on their staffs' review of information provided to the committees by EPA and the Corps. The documents cite complaints that the combination of the Supreme Court Rapanos decision and the federal agencies' guidance have reduced enforcement of the Clean Water Act. Waxman and Oberstar quoted warnings from EPA regional offices in Atlanta, Dallas, Denver, Kansas City, San Francisco and Seattle.

As introduced, HR 2421 and S 1870 would define waters of the United States that are subject to permitting this way: "The term 'waters of the United States' means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution."

Utah oil and gas lease sale near national parks proceeds

The Bureau of Land Management (BLM) held a disputed oil and gas lease sale in Utah last month, but it's open to question whether the 116 parcels

sold, some near national parks, will ever be formally leased.

Three outside factors are in play. One, an admitted nuisance bidder "bought" 10 tracts. The U.S. Attorney is investigating his bids. BLM may have to reoffer the 10 tracts at the next Utah sale in February, the new administration willing.

Two, environmentalists filed a major lawsuit just before the sale and BLM has agreed to delay issuing any leases until January 19 while a judge considers the case. January 19 is of course the day before President-elect Barack Obama takes office, and the Obama team has criticized the sale.

Three, 56 House members asked Obama's transition team to reverse the sale of many of the tracts. "We strongly urge that the Obama-Biden Administration take decisive action and either halt the leasing process for wild public lands in Utah proposed for wilderness designation in Congress, or, if the leases have already been issued, cancel these improperly issued leases and refund the high bidders' monies," said the House members led by Reps. Rush Holt (D-N.J.), Maurice Hinchey (D-N.Y.) and Brian Baird (D-Wash.)

The sale turned into a national controversy in November when BLM said it would offer 241 parcels for lease totaling 359,000 acres, many of them near Arches National Park, Dinosaur National Monument, Canyonlands National Park, Nine Mile Canyon and Desolate Canyon. BLM manages the latter two areas.

In the face of protests from an array of interests BLM pulled more than 110 tracts from the sale. It did offer 131 parcels extending over 163,714 acres. BLM sold 89 percent of the 131 parcels covering 148,598 acres and received \$7,473,768.50.

The take includes \$1.8 million that the nuisance bidder, Tim DeChristopher, bid on 10 tracts. The Salt Lake Tribune said Christopher was a student at the University of Utah and an ardent environmentalist. BLM and the U.S. Attorney in Utah are attempting to

determine options for resolving DeChristopher's nuisance bids. BLM can attempt to make him pay the \$1.8 million he bid, but DeChristopher told the press he has no intention of doing so.

If the leases near Arches National Park and Canyonlands National Park are forfeited, BLM may put the tracts up for sale again in February, the Obama administration willing.

For now BLM has agreed to hold off temporarily the issuance of 80 of the 131 sold leases until a federal judge considers an environmentalist lawsuit against the sale. BLM will sit on the leases until Judge Ricardo M. Urbina in U.S. District Court for the District of Columbia holds a hearing in the case, probably next week. The suit was filed by the Southern Utah Wilderness Alliance and five national conservation groups, including the National Parks Conservation Association.

NPS retirees lay out agenda beyond Centennial Challenge

An influential association of retired Park Service employees is recommending the incoming Obama administration provide soup-to-nuts assistance to the National Park System.

In addition to a recommendation that Congress fully fund a \$2 billion Park Service Centennial Challenge programs the Coalition of National Park Service Retirees (CNPSR) is calling for full funding for everyday line programs.

The retirees seek more money for operations, greater protection for resources, limits on off-highway vehicle users, acquisition of additional lands, protection of the nation's cultural heritage, and much more.

"All is not well with the national parks and specific attention is needed by the next President of the United States," said Bill Wade, chair of the CNPSR Executive Council. "There is no question that most, if not all, of the national parks are underfunded and these deficits are leaving park managers with little choice but to cut funding to

critical visitor and resource protection programs."

The retirees once again endorsed the Centennial Challenge program that would match \$100 million per year of guaranteed federal money with \$100 million of non-federal matching grants to upgrade the system for its 100th anniversary in 2016.

There is a good chance the Centennial Challenge program will be wrapped into a giant economic stimulus bill over the next month or so that Congress is now developing (*see separate article page one.*) The National Parks Conservation Association, which often works hand-in-hand with the park retirees, is recommending Congress approve \$2.5 billion for the Park Service, with \$1 billion allocated the first year.

But the 690-member CNPSR is taking a broader perspective in recommending policy changes to the Obama administration for the National Park System that go beyond the Centennial Challenge. In a December 30 statement, available at <http://www.npsretirees.org>, the retirees laid out 11 management areas that need attention. Here are four, selected arbitrarily:

Protection of park wildlife: The CNPSR would have the Obama administration use sound science to work closely with neighboring landowners. For one thing the retirees recommend legislation to protect migratory routes.

Off-highway vehicles (OHVs): The CNPSR says parks are under increasing pressure from both OHV users and local governments to increase the use of snowmobiles and other kinds of OHVs, particularly in the West. The retirees would have Congress and the administration provide authority for park superintendents to "stipulate" the kind and location of vehicles in parks.

Buy lands: The CNPSR would take the cuffs off the federal side of the Land and Water Conservation Fund, which has been reduced to near zero at times in the last few years. The retirees would have Congress and the administration target "lands critical to resource

protection and visitor enjoyment."

Protect heritage areas: The CNPSR would have Congress and the administration not only provide money for National Heritage Areas but also have Congress formally authorize a heritage area program. Presently, Congress designates heritage areas on an ad hoc basis that relies on the influence of individual Congressmen and senators.

Interior board denies access to Death Valley inholdings

An Interior Department administrative board last month denied a right-of-way (ROW) across Bureau of Land Management (BLM) property to a private inholding within Death Valley National Park.

Area environmental groups jumped on the decision of the Interior Board of Land Appeals (IBLA) and called it a major defeat for off-highway vehicle (OHV) users. The Center for Biological Diversity said the applicants for the ROW were attempting to gain access to the park via the BLM-managed Surprise Valley Road.

"Death Valley is a national park – not a playground for off-road vehicles. The Board's decision once again supports that fact," said Chris Kassar, associate public lands director with the Center for Biological Diversity. "Surprise Canyon's unique natural values should not be allowed to be destroyed by a handful of off-road vehicle users, especially when there are so many other off-road opportunities available elsewhere in the Mojave Desert."

The applicant for the ROW, Bryan Lollich, and 27 co-owners of a former mining site in the park have been trying to obtain a ROW to their inholding since 2003. The inholders have argued that their desired ROW, Surprise Canyon Road, constitutes an RS 2477 ROW that grandfathered access to the local community.

Lollich says the ROW has nothing to do with OHVs and everything to do with a right to use private property, i.e. the inholding in Death Valley. He

argues that the Surprise Canyon Road has been used by local citizens and governments to access private property for 135 years.

In an E-mail to *FPR*, applicant Lollich said of the BLM decision not to grant a ROW, "The denial really means nothing. All it really does is complicate the issue more by having a denied ROW application for the BLM portion of the road, and a pending ROW application for the Park Service portion of the road. Further it shows the complete unwillingness of the BLM and the NPS to cooperate with landowners."

The lower part of Surprise Canyon Road managed by BLM is neither a part of the national park nor is it included in an adjacent Surprise Canyon Wilderness. The upper portion of the road is managed by NPS and is closed to OHV use. The instant case requests a ROW just for the BLM-managed lower portion of the road.

BLM, with the assistance of NPS, has consistently denied the applicants' access to Surprise Canyon Road. The agencies have claimed that the applicants have failed to provide information they have requested. The IBLA decision does not say what kind of information the agencies requested, other than to refer to maps and deeds.

In the IBLA decision, Administrative Judge James F. Roberts affirmed a March 25, 2008, decision of 'the Ridgefield Field Office of BLM (Calif.) which denied the application from Lollich and friends. BLM told IBLA, "During that four year period of time, instead of providing the information requested by the agencies, Appellant Lollich questioned the agencies' request, filed litigation against the BLM seeking to hold it in contempt for failure to comply with a previously entered consent decree, filed separate litigation seeking 'unfettered access' to his property pursuant to an RS 2477 claimed right-of-way, and, in response to the last notification of incomplete information, did nothing."

Indeed, the appellant lost lawsuits filed in federal court and State of California court. The U.S. District

Court for the District of Columbia threw out a claim from Lollich and others that the ROW constituted an RS 2477 ROW that granted them access to the old road. The court said simply the appellants didn't have a right to assert the RS 2477 ROW claim under the Quiet Title Act.

Environmentalists have been busy with their own litigation. They sued BLM in 2000, charging the bureau with a failure to evaluate the harmful effects of OHV use on the road. Subsequently, BLM closed the lower portion of the road it controlled and NPS closed the upper portion it controlled.

Lollich told us he will continue to work with BLM on obtaining access to his inholding.

The IBLA decision is titled, *Bryan Lollich, 176 IBLA 239*. It is dated Dec. 17, 2008.

Notes

BLM lands designated a system. Secretary of Interior Dirk Kempthorne last month designated the nation's public lands managed by the Bureau of Land Management (BLM) as a National System of Public Lands, providing an extra layer of significance to the lands. BLM Director James Caswell unveiled signage for the system January 8 at a ceremony in Lorton, Va. The Public Lands System now joins the National Parks System, the National Forest System and the Fish and wildlife Refuge System as major federal lands systems. George Lea, president of the Public Lands Foundation and a retired BLM employee, told Kempthorne, "Your action here today has helped bring to the attention of the American public and many members of Congress, the point that the public lands managed by BLM have integrity; and are worthy of being protected, sustained and professionally managed for the benefit of all the American public. And no longer just the old 'Public Domain' but are a National System of Public Lands." The designation of the National System of Public Lands does not affect the legal status of the 258 million acres BLM manages. The bureau will continue to manage the system under existing laws and regula-

tions. The designation also is not directly related to legislation that Congress may consider this month to designate a National Landscape Conservation System managed by BLM. BLM Director James Caswell said the designation will help identify the public lands in the public's eye. "This official designation will ultimately make it easier for the public to identify these lands and more readily understand the multiple-use mission that Congress has given to the BLM," he said. Caswell said the costs of the designation in publications, signage and the like will be institutionalized over time.

NLCS gets new boss. BLM Director James Caswell named Carl Rountree, a bureau veteran, to head up the National Landscape Conservation System (NLCS) managed by the bureau. Rountree, most recently BLM's budget director, will oversee the 26 million-acre system that includes National Monuments, National Conservations Areas, Wilderness Areas, Wilderness Study Areas, Wild and Scenic Rivers, and National Scenic and Historic Trails. Congress is now considering legislation to give its imprimatur to the NLCS system (*see related article page 7.*)

Huge Hawaii ocean monument final. Two federal agencies and the State of Hawaii jointly posted notice January 5 that they have completed a plan for management of the nation's largest marine protected area. The Papahānaumokuākea Marine National Monument is 100 nautical miles wide and 1,200 miles long, and extends around coral islands, seamounts, banks, and shoals. President Bush, in one of his most praised environmental initiatives, designated the monument in June 2006. Since then the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (FWS), and the State of Hawaii have been developing a master plan that will allow for joint management of the area. NOAA will have primary responsibility for marine areas, FWS will have primary responsibility for refuge lands within the monument (including two wildlife refuges) and the state will have primary responsibility for state lands and waters within the monument. The plan and ac-

companying environmental assessment are available at <http://papahanaumokuakea.gov> and <http://www.fws.gov/pacific/planning/>.

Conference Calendar

JANUARY

13-14. **National Ski Areas Association** eastern conference at Mount Snow, Vt. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

17-19. **U.S. Conference of Mayors** winter meeting in Washington, D.C. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, DC 20006. (202) 293-7330. <http://www.usmayors.org>.

22-25. **Outdoor Retailer Winter Market** in Salt Lake City. Contact: Outdoor Retailer, 310 Broadway, Laguna Beach, CA 92651. (949) 376-8155. <http://www.outdoorretailer.com>.

FEBRUARY

1-5. **National Association of Conservation Districts** annual meeting in New Orleans. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, DC 20002. (202) 547-6233. <http://www.nacdnet.org>.

2-4. **National Ski Areas Association** western conference at Keystone, Colo. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

MARCH

1-5. **Association of Partners for Public Lands** annual convention in Baltimore. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>.

7-11. **National Association of Counties** legislative conference in Washington, D.C. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.