

# Federal Parks & Recreation

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## Obama administration moves to protect FS roadless areas

The Obama administration May 28 took a first tentative step towards restoring a 2001 Clinton administration national forest roadless area policy.

Secretary of Agriculture Tom Vilsack issued a directive that gives him authority to review all proposed projects in 49 million acres of roadless areas for the next year. Nine million acres of roadless areas in Idaho are not affected by the directive, although environmentalists believe they should be.

The key provision of the directive removes authority from the Under Secretary of Agriculture and the Forest Service chief to make final decisions regarding projects in roadless areas. The directive is renewable for another year.

The Obama administration did not take a second step recommended by roadless area advocates, i.e. cancel a Bush administration appeal of a 2006 lower court decision that upheld the Clinton rule. Dropping the appeal would leave in place the Clinton rule, the advocates believe. "We thought they might say something (when Vilsack made his announcement,)" said one advocate.

The Department of Agriculture did not respond to our request for information about a possible dropping of that appeal.

In an important development California Attorney General Edmund G. Brown May 19 asked Vilsack to simply withdraw the appeal of the 2006 court decision by Magistrate Judge Elizabeth Laporte in northern California. Her reinstatement of the Clinton rule restored substantial restrictions on uses of national forests in the far West.

"We believe that the most direct route to continued protection of roadless areas is the withdrawal of your agency's Ninth Circuit appeal," Brown wrote Vilsack May 19. "Once that is done, Judge Laporte's injunction will become final."

Brown is a major player because the State of California was a plaintiff in the original litigation before judge Laporte.

Withdrawal of the appeal wouldn't solve all the Forest Service's legal problems because the Laporte injunction only applies to forests in the Ninth Circuit and New Mexico. Roadless areas in the rest of the national forests are effectively being managed under old forest plans and not the Clinton rule because a separate judge in Wyoming, Clarence Brimmer, has issued an injunction against the Clinton rule.

Still, the one-year time-out gives the Obama administration and Congress time to prepare a new policy. And it gives federal appellate courts time to resolve the competing district court decisions, if they are of a mind to.

Congressmen, governors, environmentalists and recreationists this spring all asked Vilsack to do something about the seeming legal impasse over land uses on national forest roadless areas. Said 25 senators in a recent letter to Vilsack, "We urge you to direct the Forest Service to not propose or implement any projects that would be inconsistent with the Roadless Rule without prior approval from your office." More than 120 House members sent a counterpart letter.

Vilsack's May 28 orders follows the lead of former Forest Service Chief Dale Bosworth. In 2001 when Judge Edward Lodge of the Idaho District Court issued an injunction against the Clinton rule, Bosworth posted a memo akin to Vilsack's that gave him authority to review all proposed roadless area projects.

The Wilderness Society's Michael Anderson, a veteran in roadless area

policy and litigation, counts three longer-term options. "A new roadless rule or Congressional action are both viable," he said. "The third option is to persuade the courts to reinstate the 2001 rule." But he said that may not resolve the Idaho situation where the state designed its own rule for national forests within its borders.

For the national forests not within the Ninth Circuit, New Mexico or Idaho where old forest plans govern, the forests are occasionally approving projects in roadless areas.

For instance, the White Mountain National Forest in New Hampshire said May 15 it has approved a vegetation management project on 369 acres. However, the forest notes that the roadless area involved in the Stevens Brook project was not part of the 2001 Clinton roadless inventory but was identified in a 2005 forest plan inventory.

"There is no legal requirement or agency policy requiring that the portion of the South Carr (roadless area) in the Stevens Brook Project area be managed in accordance with requirements of the (Clinton roadless rule,)" said Molly Fuller, Pemigewasset District Ranger of the forest in a record of decision.

While the battle continues in the courts, Sen. Maria Cantwell (D-Wash) and Rep. Jay Inslee (D-Wash.) reportedly are preparing to reintroduce their legislation that would permanently protect roadless forests and render the court decisions moot.

The Vilsack directive says, "The delegations of authority to the Under Secretary for Natural Resources and Environment (7 CFR 2.20(a)(2)) and from the Under Secretary to the Chief of the Forest Service (7 CFR 2.60(a)) for the management and administration of the national forests, national forest purchase units, national grasslands and other lands and interests administered by the Forest Service are revised to reserve to the Secretary the authority to approve or disapprove road construction or reconstruction and the cutting, sale, or removal of timber in those

areas identified in the set of inventoried roadless area maps contained in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000."

Here is a summary of the legal situation:

**NINTH U.S. CIRCUIT COURT OF APPEALS:** The Ninth Circuit is currently considering an appeal of a Sept. 20, 2006, decision of U.S. District Court Magistrate Judge Laporte that reinstated the Clinton rule and tossed out a 2005 Bush administration rule that authorized states to design roadless rules for forests within their borders.

The Bush administration appealed the Laporte decision to the Ninth Circuit. Oregon Gov. Chris Gregoire (D), Jerry Brown and others are asking the Obama administration to now support the Laporte decision. A three-judge panel held a hearing in October and Anderson said such panels usually render a decision within six months of the hearing. So a decision is considered imminent, if the Obama administration doesn't act on attorney general Brown's request and withdraw the appeal.

**TENTH U.S. CIRCUIT COURT OF APPEALS:** The Tenth Circuit is currently considering an appeal of an Aug. 13, 2008, decision of U.S. District Court Judge Clarence Brimmer that tossed out the Clinton rule and effectively upheld the Bush rule.

The environmental law firm Earthjustice has appealed Brimmer's decision to the Tenth Circuit, but the case is still open before Brimmer because the Forest Service asked him for relief from his decision in that it conflicted with judge Laporte's decision.

**IDAHO STATE RULE:** Despite Judge Laporte's decision invalidating the Bush rule, the Bush administration continued to process state requests for their own rules under the Administrative Procedures Act. The Forest Service issued a final rule for the State of Idaho on Oct. 16, 2008. On January 16

Earthjustice on behalf of environmental groups and individual environmentalists filed a lawsuit against the Idaho rule in the U.S. District Court in Idaho.

## **Law gives DoI nine months to allow guns in parks, refuges**

That Congress has ordered the Park Service to expand the use of concealed weapons in national parks and refuges does not mean the Park Service will immediately allow visitors to carry weapons.

For one thing the law gives the Interior Department nine months from the effective date of the law - that is, until Feb. 22, 2010, to begin implementing the provision, said Phillip Selleck, Park Service chief of regulations.

For now, "We're still looking at it," he said. "It directs us to follow state law, so we have to find out what the state laws are."

Meantime the old law restricting gun use in the parks will continue, said Department of the Interior spokeswoman Kendra Barkoff. "Under the current regulation, firearms are generally prohibited, but citizens may transport unloaded and dismantled or cased firearms and carry firearms while participating in approved hunting programs and under certain other circumstances," she said.

The Congressional provision, included in a law designed to curb credit card abuse (PL 111-24 of May 22), does not require any new regulations, said Selleck. It simply requires NPS and the Fish and Wildlife Service to allow visitors to carry concealed weapons by February 22 of next year, if state law allows concealed weapons.

Bill language says the agencies may not "enforce any regulation that prohibits an individual from possessing a firearm including an assembled or functional firearm in any unit of the National Park System or the National Wildlife Refuge System," unless state law forbids it.

According to the Coalition of National Park Service Retirees the provision authorizes guns in 388 of 391 park sites.

Critics of the Congressional action included the Obama administration in their condemnation for not standing up to Congress. "We are disappointed in the members of the House and Senate who allowed this amendment to pass, as well as in President Obama," said Theresa Pierno, executive vice president, National Parks Conservation Association (NPCA.)

"We feel the outcome could have been prevented," Bryan Faehner, associate NPCA director for park use, told us. "The administration didn't weigh in in support of the park rangers. It is unfortunate."

Both critics and supporters of the provision painted it as a safety issue. "Legislators who voted for this amendment now have to live with the fact that they have, in fact, increased the risk to visitors and employees, as well as the risk to wildlife and some cultural resources," said Bill Wade, chair of the executive council of the Coalition of National Park Service Retirees.

Rep. Norman Dicks (D-Wash.), chairman of the House subcommittee on Interior appropriations, agreed, "It will make our parks less safe," he said on the House floor May 20. "According to the FBI our national parks are currently among the safest places in the country and what they want to do here is change that and I think it is a big mistake. There were only 1.65 violent crimes per 100,000 visitors in 200, compared to nearly 470 violent crimes per 100,000 for a nationwide average."

But the National Rifle Association (NRA) described a far greater danger for park visitors if they could NOT carry concealed weapons. In a press release praising Congress for passing the law the association said, "The National Park Service's recent report revealed that 11 murders, 35 rapes, 61 robberies and 261 aggravated assaults occurred on parklands in 2006. Our parks also con-

tain hidden methamphetamine labs, marijuana fields and illegal drug and illegal alien smuggling routes."

The NRA continued, "In addition to these dangers and potential attacks from human predators, park visitors have to consider attacks from animal predators. Between April and December 2007 there were at least a dozen grizzly bear attacks reported by park visitors."

The House May 20 gave final Congressional approval to the legislation by a 279-to-147 vote, with 105 Democrats joining 174 Republicans in favor. The rider was attached to a bill (HR 627) that would protect credit card holders. The Senate, under the lead of Sen. Tom Coburn (R-Okla.), initiated the amendment May 12 and approved it by a 67-to-29 vote, with 27 Democrats in support.

Congress acted in order to overcome a March 19 injunction of U.S. District Court Judge Colleen Kollar-Kotelly in the District of Columbia that blocked implementation of a Dec. 10, 2008, rule that allowed visitors to national parks to carry guns, if state laws allow concealed weapons in state parks and refuges. Kollar-Kotelly said the Bush administration had failed to write an EIS and the Interior Department must do so now. She did not address the substance of the rule.

On April 17 the Obama administration said it would write an EIS, giving it an opportunity to reverse the Bush rule. That's when Congress stepped in to prevent the Obama administration from reversing the rule.

The law is specific about when all provisions of the bill would become law. It says, "This Act and the amendments made by this Act shall become effective 9 months after the date of enactment of this Act, except as otherwise specifically provided in this Act."

## **Salazar says feds will do their part to fix Everglades**

The Obama administration is committed to redressing the imbalance in

federal-state contributions to the restoration of the Everglades ecosystem, at least on paper.

Secretary of Interior Ken Salazar, during a tour of the Everglades last week, said, "This administration is firmly committed to the federal-state partnership working to achieve this goal and has already proposed more than \$600 million to fund ongoing projects and to generate good jobs in design, engineering, construction and rehabilitation work."

That \$600 million is spread over three appropriations bills - a fiscal year 2009 money bill with \$241 million for the ecosystem project, an economic stimulus bill with \$119.2 million and a fiscal 2010 budget request of \$278 million.

Still, the federal government has a lot of catching up to do. Heretofore the Government Accountability Office said the state has spent six times as much as the federal government in what is supposed to be a 50-50 proposition. Florida Gov. Charlie Crist (R) said the state has spent \$2.4 billion.

The massive recovery project, originally expected to cost \$8 billion, has now grown to \$22.5 billion, according to the *Miami Herald*. So, assuming the federal share is a little over \$11 billion, \$600 million over three years is but a down payment.

And the National Research Council said last September that eight years after Congress approved the \$8 billion Comprehensive Everglades Restoration Project (CERP), no tasks anticipated by CERP had been completed.

Further, said the scientists in a biennial report, planning for the project is so complex it delays progress even more than a lack of money.

There may a silver lining. The state has agreed to acquire 72,500 acres of sugar farms between Lake Okeechobee, a main source of water for Everglades National Park, and the park. That's down from 187,000 acres in an original

agreement of last year. But the U.S. Sugar Corp. would lease back to the state another 40,500 acres for \$150 per acre for seven years. And Florida would have an option of acquiring 107,500 acres within 10 years.

The National Research Council said the acquisition would help by providing "additional surface storage, stormwater treatment areas and by preventing land use conversions that might negatively impact the restoration."

Congress approved CERP in 2000 in a water resources development law. But Congress must still approve - and pay for - projects that the Corps of Engineers and the state identify as they implement CERP.

Congress and the State of Florida have approved a number of other Everglades restoration projects besides CERP, including Modified Water Deliveries to Everglades National Park and a Kissimmee River Restoration.

With Florida fully committed the big question now is, will the Obama administration carry its share of the load? The Bush administration promised to do so, but even with President Bush's brother Jeb Bush (R) as Florida governor, did not.

Crist greeted Salazar with a letter that asked for federal help in executing CERP. "We are appreciative of the recent actions of the federal government, and would request that the partnership continue. . . I look forward to working with you in supporting these critical federal dollars in the United States Congress," he wrote. "I would also ask that the Department of the Interior take a fresh look at expectations and long-term goals with regard to Everglades restoration. Our success depends on a strong State-Federal partnership."

On the federal side of the equation Interior Department agencies such as the Park Service are responsible for operation of federal and tribal lands in South Florida. The Corps of Engineers is responsible for construction.

Salazar said the fiscal 2009 money law allocates about an even amount of money between the department and the Corps - \$118 million for the department and \$123 million for the Corps.

The economic stimulus law favors the Corps, providing it with \$100.6 million to Interior's \$18.6 million. In the fiscal 2010 budget request the administration would provide \$64 million to the Interior Department and \$214 million for the Corps.

## **Senators worry that highway money is running out again**

Sen. Barbara Boxer (D-Calif.) said June 2 the federal government will run out of money for surface transportation projects in the next two months, as gasoline tax collections continue to wane.

She put the shortfall at between \$5 billion and \$7 billion.

Further, said Boxer, chairman of the Senate Environment and Public Works (EPW) Committee, the Obama administration projects that gasoline taxes that fuel the Highway Trust Fund will come up \$10 billion short in fiscal year 2010.

Projects may have to be axed, said Sen. James Inhofe (R-Okla.), ranking minority member of the committee. "As a result (of the budget shortfall), my state will be forced to deprogram between \$50 and \$80 million in projects," he said at a confirmation hearing for Victor M. Mendez as administrator of the Federal Highway Administration. "This will be done by canceling new projects and existing contracts that have already been signed, in addition to slowing down projects that have already broken ground."

That's not all, said Boxer. Congress will really be up against it later this summer when it attempts to write a new multi-year surface transportation law to replace the existing surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-

LU). Boxer said the new bill will be called MAP-21, as in Moving Ahead for Progress in the 21st Century.

"Additional revenue will be needed to merely maintain existing programs," she said. "And much more revenue will be needed if Congress wants to provide additional resources to states struggling to improve existing infrastructure."

Just as happened last year at this time, Americans are not driving as much as Congress expected when it wrote SAFETEA-LU in 2005 because of high gas prices and a recessed economy. Thus the gasoline taxes that fuel the Highway Trust Fund and SAFETEA-LU are coming up short.

Last year Congress approved an emergency, \$8 billion transfusion from general revenues to the Highway Trust Fund (PL 110-318 of Sept. 15, 2008.) So the Obama administration and Congress can be expected to attempt to put another patch on highway funding this summer.

The new shortfall developed even though Congress plugged \$47 billion into transportation programs in a giant economic stimulus law (PL 111-5 of February 17.) The money for the stimulus law came from general revenues, and not from the Highway Trust Fund.

The House Transportation Committee is expected to take the lead in Congress in writing a new five-year surface transportation law in the next couple of months, with the Senate following later. Normally, the Senate EPW committee under Boxer would take the Senate lead, but Boxer has been consumed with writing a climate change law.

She did say at the Mendez hearing, "This Committee is working on a new bill which will be called MAP-21, Moving Ahead for Progress in the 21st Century. This bill gives us the opportunity to take a fresh look at the current program and make the transformational changes necessary to ensure our nation's transportation system will meet our needs in the coming years."

Her counterpart as chairman of the House Transportation Committee, Rep. James Oberstar (D-Minn.), has already circulated a two-page outline of a prospective multi-year bill. In main the Oberstar outline would consolidate the 108 existing surface transportation programs into four subheads: critical asset preservation, highway safety improvement, surface transportation program, and congestion mitigation and air quality improvement.

On May 12 Senate Commerce Committee Chairman John D. Rockefeller (D-W.Va.) outlined his own recommendations for goals for legislation. Rockefeller's committee only has a small piece of the game - highway safety and mass transit - but the senator wanted to lock in his piece of the action.

The Rockefeller bill (S 1036) doesn't address the guts of legislation, but the senator has long been a major champion of a scenic byways program and all bicycling programs. In the 1980s Rockefeller repeatedly attempted to persuade the Senate to provide more assets to bicycle programs.

Still another surface transportation bill (S 575, HR 1329) called CLEAN TEA was introduced in April by two senators and five House members. That measures emphasize "livability," which could boost park and recreation initiatives. The bills would allocate ten percent of revenues from a climate change bill to cleaner transportation, including such things as encouraging bike and pedestrian use.

One of the three major allocations in the bills is for "sidewalks, crosswalks, bicycle paths, greenways, pedestrian signals, pavement marking, traffic calming techniques, modification of public sidewalks (including projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)), and other strategies to encourage pedestrian and bike travel." The other two allocations are transit and intercity rail.

The sponsors of CLEAN TEA include Sens. Thomas Carper (D-Del.) and Arlen Specter (R-Penn.) and Reps. Earl

Blumenauer (D-Ore.), Ellen Tauscher (D-Calif.), Steven La Tourette (R-Ohio), Melissa Bean (D-Ill.), and Mark Kirk (R-Ill.)

Mendez is a former director of the Arizona Department of Transportation and a former president of the American Association of State Highway and Transportation Officials (AASHTO.) AASHTO has traditionally favored highway construction projects over park and recreation programs, such as transportation enhancements.

### **NWF: Americans may back use of climate money on outdoors**

The American people would rather spend fees charged carbon producers that degrade the climate on natural resources programs than on a tax refund, says a new poll chartered by the National Wildlife Federation (NWF.) Albeit by a narrow margin.

Fifty-four percent of voters said that spending revenues from the fees (called taxes by critics) on natural resources was "deemed personally important" to them, said NWF. Almost as many, 52 percent, said that returning revenues as a tax credit was personally important.

More decisively, 46 percent of voters said they were willing to pay at least \$25 per month to pay for renewable energy resources and another 14 percent said they were willing to pay more than \$15, or a combined majority of 60 percent. However, NWF did not say if it asked voters directly if they were willing to pay more because a climate change law forced them to.

Still and all, said Jennifer Jones, vice president of strategic communications for NWF, "The findings show that Americans aren't interested in the status quo and want to move the clean energy economy forward to create jobs, revitalize the economy and reduce global warming pollution."

The poll surfaces just as the House is about to take up a landmark climate change bill (HR 2454) approved

by the House Energy and Commerce Committee May 21 in a partisan 33-to-25 vote. House Democratic leaders at press time were working on a schedule that anticipates a final House vote by the end of June.

House Republicans are giving no indication they will back off their opposition to the bill. Said Rep. Joe Barton (D-Texas), ranking minority member of the House Energy Committee, after the committee approved its bill, "A third of the world's GDP is based on the United States economy and that economy for over 150 years has been based on a free market allocation of resources in the energy sector. This bill makes fundamental changes in that basic philosophy."

As approved by the House committee under chairman Henry Waxman (D-Calif.), HR 2454 would allocate a substantial amount of pollution fees to park and recreation programs. While the bill would allocate significantly less money to the programs than the \$7 billion per year conservationists have recommended, it would still provide a significant boost.

Meanwhile, in the course of considering HR 2454 the House Energy Committee incorporated in the bill much of a natural resources policy developed by House leaders as a stand-alone bill, HR 2192.

Both committees would establish a Natural Resources Climate Adaptation Fund and would allocate 38.5 percent to states for climate adaptation activities, 25 percent to the Interior Department for a raft of programs run by land management agencies, 12 percent to the Land and Water Conservation Fund, one percent to a state wildlife conservation grant program, five percent to the Forest Service, five percent to EPA, 7.5 percent to the Corps of Engineers and 7 percent to the Department of Commerce.

The Senate will probably be an even tougher sell than the House because of the 60 votes needed to take up a bill there. For instance, on June 6, 2008, the Senate refused to take up a prede-

cessor climate bill in a 48-to-36 vote, well short of the 60 votes needed.

Waxman and other House Energy Committee Democrats this week briefed their Senate Environment and Public Works Committee counterparts on HR 2454. Sen. Boxer was reportedly enthusiastic about the bill but other Democrats from energy-producing states such as Sen. Kent Conrad (N.D.) weren't.

One other wild card related to climate control that may affect park and rec programs is floating around - comprehensive new energy legislation. The Senate Energy Committee has been drafting such a bill (S 949) for the last couple of months and hopes to complete it next month. The measure could end up attached to any Senate climate bill.

S 949 at the moment contains no park and rec provisions but Sen. Lamar Alexander (R-Tenn.) and others are believed to be considering amendments that would allocate revenues from any new offshore oil and gas development to the Land and Water Conservation Fund. (See *following article*.)

Meanwhile, the Democratic staff of the House Natural Resources Committee is circulating a draft energy bill that does address natural resources uses of new offshore royalties. But that draft would not allocate the revenues to LWCF. Instead it would spend the money to address the impacts of energy development on oceans and coastal ecosystems.

The National Wildlife Federation survey was conducted April 7-to-9 of 800 voters around the country. The margin of error was plus or minus 3.46 percent.

## **Draft House OCS energy bill includes no state LWCF aid**

The majority staff of the House Natural Resources Committee is circulating an ambitious draft energy bill that would authorize significant new offshore oil and gas development.

But the bill would not allocate any of those revenues to the Land and

Water Conservation Fund (LWCF), as Secretary of Interior Ken Salazar has frequently recommended.

The draft bill is but an opening gambit and has a long way to go. The Democratic staff members made clear their draft is for discussion purposes only and would likely be revised before it was introduced as legislation by committee chairman Nick Joe Rahall (D-W.Va.)

Meanwhile, the Senate Energy Committee in the next fortnight is expected to address energy production issues in a comprehensive energy bill (S 949) it is working on, offering a second opportunity for Salazar sympathizers.

A prime Senate sponsor of past legislation to allocate offshore oil and gas royalty money to LWCF, Sen. Lamar Alexander (R-Tenn.), will be watching the legislation closely as it approaches the Senate floor, it is understood. Although Alexander no longer sits on the Senate Energy Committee, he is ranking Republican on the Senate subcommittee on Interior appropriations. So he will have a major say on the Senate floor.

From its beginning the Obama administration has promised to fully fund LWCF, by 2014. It launched that commitment with a May 7 request for a \$420 million appropriation for LWCF in fiscal year 2010, but with only \$30 million for the state side of LWCF.

Some LWCF advocates don't say so publicly but they are less than enthused about the Obama administration's fiscal 2010 proposal because it would spend barely half of the \$420 million for LWCF on LWCF, just \$229 million. The other \$191 million would be used for Endangered Species Act grants and Forest Service Forest Legacy grants.

The Bush administration sought virtually no money for LWCF the last few years, asking for a survival appropriation of \$42.5 million in fiscal 2009. Congress provided \$160 million in fiscal 2009 for LWCF in total.

Salazar has promoted a new na-

tional program to use offshore oil and gas revenues to beef up LWCF at least a half-dozen times this year. His source of money for a revived LWCF is the same that has been financing LWCF since 1964 (on paper) - offshore oil and gas revenues. Under existing law royalties are put into a fund in the U.S. Treasury, but are not spent on LWCF until Congress approves an appropriations bill.

Salazar would guarantee the money is spent on LWCF in a dedicated trust. As he told the Senate Appropriations Committee June 3, "I will work very hard to create a treasured landscape agenda for the United States of America. . .I look forward to working with (the Senate), working with the White House and working with your House colleagues to take a moonshot at investing in the great landscapes of America."

According to the Congressional Research Service, offshore oil and gas drilling companies have deposited almost \$31 billion into LWCF over the last 43 years, yet less than half that has been appropriated, or \$15 billion. And under the Bush administration much of the appropriated money was diverted to non-LWCF programs, such as protection of endangered species habitat.

Salazar has frequently cited the Gulf of Mexico Energy Security Act of 2006 as a model for legislation that allocates oil and gas royalties to bulk up LWCF. That law directs the Minerals Management Service to distribute to the state side of LWCF 12.5 percent of royalties from oil and gas lease sales from the 181 Area and the 181 South Area of the Gulf of Mexico. In fiscal 2008 state LWCF revenues from the sales amounted to \$8.3 million. Sen. Alexander was the prime sponsor of that provision.

Salazar has said he would model conservation spending on a Great Outdoors Colorado (GOCO) program, established by constitutional amendment that uses a portion of state lottery money for conservation purposes.

In fiscal year 2008 the program received \$114.3 million, including 40

percent for parks, recreation and open space distributed on a per capita basis. Another 10 percent went to Colorado State Parks for state park and rec projects. Finally, a remaining 50 percent was allocated to a GOCO trust fund. Salazar said he drafted the constitutional amendment that created GOCO.

In its fiscal 2010 budget request the Obama administration asked for an increase of \$11 million for the state side of LWCF, or \$30 million compared to a fiscal 2009 appropriation of \$19 million. For the federal side it asked for an increase of \$38.6 million, or \$199 million compared to a fiscal 2009 appropriation of \$160 million.

## **Obama team describes a bit of a wetlands permit position**

Five top Obama administration aides May 20 submitted to the Senate recommendations for wetlands protection legislation.

The recommendations were sent to Senate Environment and Public Works Committee Chairman Barbara Boxer (D-Calif.) in anticipation of committee action on a contentious wetlands bill (S 787.) As written the measure would require wetlands permits for most water bodies.

The Obama letter, with the lead signature from Council on Environmental Quality Chair Nancy Sutley, doesn't endorse that legislation. It does set out this principle: "It is essential that the Clean Water Act provide broad protection of the Nation's waters, consistent with full Congressional authority under the Constitution."

That, of course, could mean anything. The letter describes general principles that, in essence, say it would be a good idea if Congress addressed the issue. For instance the letter recommends, "The definition of waters protected by the Clean Water Act should be clear, understandable, well-supported, and transparent to the public. Legislation and supporting guidance concerning waters covered by the

Act should promote prompt actions and avoid time-consuming and costly technical analyses."

Also signing the letter were EPA Administrator Lisa Jackson, Acting Assistant Secretary of the Army for Civil Works Terrence Salt, Secretary of Agriculture Tom Vilsack and Secretary of Interior Ken Salazar.

Boxer and conservation groups welcomed the Obama letter, even though the letter did not specifically endorse S 787. Boxer said, "The Obama Administration has provided a clear call for legislation to ensure that the Clean Water Act continues to be an effective tool to keep America's waters clean and our families healthy."

And Ducks Unlimited (DU), which is playing a lead role among conservation groups in supporting S 787, said about the same thing. "Ducks Unlimited is pleased to see this support for cleaner water from the President's Administration," said DU Director of Conservation Operations Dr. Scott Yaich. "We applaud their strong clear stance on this issue, which is a top policy priority for American sportsmen."

A House bill from House Transportation Committee James Oberstar (D-Minn.) is believed imminent, but an aide to Oberstar would not hint at a date for introduction. An Oberstar bill in the last Congress had 176 cosponsors.

The legislation targets a critical June 2006 Rapanos Supreme Court decision that, while confusing, left no doubt that only water bodies related to navigable waters should be regulated. The legislation would effectively reverse the Rapanos decision.

S 787 is simple. It says that the Corps of Engineers, working with EPA, must approve Section 404 permits under the Clean Water Act for all projects on waters of the United States. Those waters are defined in S 787 as "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, . . ."

The Supreme Court was evenly divided in its June 19, 2006, decision, *Rapanos v. U.S.* Nos. 04-1034 and 04-1384, that muddied the regulatory waters. While the court upheld the authority of the Corps and EPA to regulate water bodies, it also limited the definition of a water body to navigable water.

### **Consolidated DoI appraisal system said not working**

Thus far, the major complaints about the Interior Department's land appraisal system have been aimed at the Bureau of Land Management (BLM.)

The lead complainant, Rep. Mike Simpson (R-Wyo.), has publicly objected to slow work by the department's appraisal team.

But Secretary of Interior Ken Salazar made it clear at a House Appropriations subcommittee hearing last month he thinks the problem is department-wide. That includes the Park Service and the Fish and Wildlife Service.

Referring to two complaints forwarded by Simpson's office, Salazar said, "I think it is a systemic issue that needs to be looked at. It's symptomatic of a much larger problem."

Simpson's office told us the main hang-ups in Idaho are two proposed BLM land acquisitions called Henry's Lake and the South Fork easements.

BLM spokesman Tom Gorey told us last week the bureau is working with the department. "We have been in discussions on the appraisal issue with the department and are working to improve the appraisal process," he said. "I don't want to go into particulars because we are still in discussions."

Simpson's office said that Simpson

and Salazar are concerned that a Bush administration reorganization that consolidated agency appraisal work in the department "has not worked," in the words of a Simpson staff member. In that consolidation in the fall of 2003 former Secretary of Interior Gale Norton established a new departmental office to supervise appraisals in all agencies she oversees - the Park Service, the Fish and Wildlife Service, the Bureau of Reclamation and BLM.

Norton's action followed a departmental task force recommendation that oversight of all departmental appraisal work be removed from the agencies and given to the Interior Department. The task force was in turn established in reaction to a critical report from The Appraisal Foundation of Oct. 9, 2002, that alleged political interference with BLM appraisers.

Agency appraisal offices contained about 100 employees before the reorganization.

The Appraisal Foundation report at the time offended some western Republican Congressmen by criticizing an appraisal that backed a San Rafael (Utah) land exchange bill. The measure was written by the Utah Congressional delegation. It would have transferred 108,284 acres from Utah to the federal government and 133,000 acres from the federal government to Utah. The bill foundered after the foundation issued its report.

At the time Rep. George Radanovich (R-Calif.), then chairman of the House subcommittee on National Parks and Public Lands, charged that the foundation was attempting to tell Congress how to do its business. Specifically, Radanovich complained that the foundation implied that Congress must apply BLM administrative exchange standards to legislation.

The foundation responded that it was simply asserting that BLM should follow its own appraisal standards to evaluate land, whether that land was involved in a Congressional exchange or not.

## Parks commission holds crucial meeting in Smokies

Two blue ribbon national commissions on park and rec policy may be closing in on final recommendations.

A National Parks Second Century Commission met most of this week at Great Smoky Mountain National Park to firm up final recommendations. The commission says it will submit the recommendations to Congress and President Obama in September.

The other commission, the Outdoor Resources Review Group (ORRG), expects to release its report in early summer.

The parks commission met with its chairmen - former Sens. J. Bennett Johnston, Jr. (D-La.) and Howard H. Baker, Jr. (R-Tenn.) - to iron out final recommendations.

It is understood the commission is considering a broad range of recommendations, including (1) a greater emphasis on education in the parks with, perhaps, a proposal to amend the Park Service Organic Act to include education in the agency's mission; (2) options for providing money and resources for the parks; (3) guarantees that park policy would be based on independent science; (4) a greater emphasis on cultural resources to the level of 10-to-12 years ago.

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 National Parks Conservation Association is paying the estimated \$1 million cost for the commission.

The six parks commission's subcommittees indicate where members' interests lie: education and interpretation; science and natural resources; cultural resources and heritage protection; the future shape of the system; funding and budget; and visitation and public engagement.

The parks commission website is

at: <http://www.visionfortheparks.org/>.

Sens. Jeff Bingaman (D-N.M.) and Lamar Alexander (R-Tenn.) are the honorary chairmen of the outdoor recreation commission. They reportedly gave group members the go-ahead to draft recommendations in March.

While the development of a report is still in the works, we are hearing that the commission may extend its focus beyond the traditional open space concerns of most such commissions and include such things as old block grants from the Department of Housing and Urban Development. Those grants can influence how people configure their communities, i.e. whether development includes trails and recreation areas or not.

The 18-member ORRG is led by Henry Diamond, a partner with the law firm Beveridge & Diamond, and Patrick Noonan, chairman emeritus of The Conservation Fund. For more information go to <http://www.rff.org/orrg/>.

## Notes

**Calif. may close parks.** Faced with an intractable budget situation, California Gov. Arnold Schwarzenegger (R) late last month proposed massive state parks closures. His two-step proposal would, first, on July 1 cut core funding for the state's 279 parks. That would save \$70 million. Second, over the next fiscal year he would gradually eliminate all funding for the parks system. That could force the closure of more than 200 park units. Schwarzenegger and the state legislature seemingly go through this budget battle every year. But this time it's different because the state faces an enormous \$24 billion budget shortfall, and state law forbids major tax increases. The California State Parks Foundation is fighting back with petitions and an Internet campaign. It argues that the California state park system actually makes money for the state. Said the foundation, "For every dollar that funds the parks, \$2.35 is returned to the state's General Fund through economic activities in the communities surrounding the parks. That means eliminating

all funding for state parks could actually result in the state losing over \$350 million dollars in revenue." More information is available at the foundation's website, <http://www.calparks.org>.

#### **Feinstein hits solar plans again.**

Sen. Dianne Feinstein (D-Calif.) June 3 resumed her campaign to protect the California Desert from huge solar energy development projects. At a hearing on the fiscal year 2010 Interior Department budget with Secretary of Interior Ken Salazar she complained early and often about both the number of proposed solar facilities in the West, about 240 by her count, and their size. "I spoke with you about it (in private,)" she said. "I want to raise it in public because we are about ready to introduce a monument bill to protect the land. I think this planning process has to be looked at and the science must be looked at because you would have a 20-mile wide corridor just filled with this stuff. That would be way more than the 33 percent clean fuels requirement that California has." As he has before Salazar told Feinstein that the department has launched a major planning exercise to identify areas suitable for solar facilities. "As we move forward we have to do this in a way that is thoughtful and not helter-skelter and protect treasured landscapes of America," he said. "Right now there are about 240 applications but there is no significant planning process. We are moving forward with a land use planning process." One estimate puts the size of the monument that Feinstein will propose at more than 800,000 acres. Most of the action involves lands managed by the Bureau of Land Management (BLM.) Much of the land is composed of property known as the Catellus lands that the government was given or acquired from 1999 to 2004. BLM has as yet approved no rights-of-way for solar projects on public lands. However, it has received 226 applications covering some 2.3 million acres. The bureau may approve some of the applications where BLM has completed environmental documentation before the bureau completes the programmatic EIS.

#### **NPS will offer no-fee weekends.**

As we forecast in the May issue of *FPR*, the Park Service will offer one entrance fee free weekend each month in June, July and August to help entice visitors into the national parks. NPS also is not expected to charge a fee one day in September for Public Lands Day. That would set up at least one fee-free day for four months in a row. The no fee weekends will fall on June 20-21, July 18-19, and August 15-16. Entrance fees to 147 National Park System units range from \$3 to \$25. The 244 other parks don't charge entrance fees. On entrance fee free weekends all other fees will be assessed, such as for camping. Two things are at work here: First, visitation to the national parks has been pretty much stagnant over the last decade, much to the chagrin of concessioners and gateway communities. Second, the national economy is struggling and eliminating the fee could help lure visitors to the national parks.

**Are approps mark-ups nearing?** No guarantees, but House appropriators may begin writing a fiscal year 2010 money bill for the Interior Department and related agency in mid-June. The Interior bill is usually among the first of the dozen appropriations bills to go. A separate Transportation bill and a separate Energy and Water bill usually follow. Even though the Obama administration didn't submit details of its fiscal 2010 budget request until May 7 (three months later than normal), it did submit an outline in late February. So the House subcommittees have been able to catch up somewhat on their hearings and research.

#### **Active transportation bid made.**

The Rails-to-Trails Conservancy this week concluded a campaign to have Congress invest substantially in active transportation in the next iteration of a surface transportation law. The conservation program, 2010 Campaign for Active Transportation, asks Congress to save money in the long run by increased spending now for trails, walking and biking. The conservancy submitted petitions for investments to Congress. Now it's up to the House Transportation Committee to decide how much emphasis to put on non-motorized transportation as

it writes a multi-year law to replace the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU.) The law is scheduled to expire September 30. On behalf of trail interests Rep. Dan Lipinski (D-Ill.), is asking his fellow members to sign a letter to the House Transportation Committee seeking support. The House Transportation Committee is expected to do the spadework on a new law to replace SAFETEA-LU.

#### **Historic preservation bid made.**

Senators allied with the historic preservation community are urging their colleagues to support the Obama administration's fiscal year 2010 budget request for preservation programs. That is Sens. Richard Durbin (D-Ill.) and Olympia Snowe (R-Me.) are calling for an appropriation for historic preservation grants of \$46.5 million, or \$4 million more than in fiscal 2009. For the Save America's Treasures program the senators also requested the same amount of money that Obama requested, \$20 million. That also matches the fiscal 2009 appropriation. For a Preserve America's program the senators and Obama requested \$3.15 million, substantially less than the \$10 million fiscal 2009 appropriation.

#### **Salazar recognizes new rec trails.**

Secretary of Interior Ken Salazar last week announced the designation of 22 trails in 13 states as additions to the National Trails System. All the new ways are recreational trails. The designations were timed to coincide with the June 6 celebration of National Trails Day. The designations acknowledge existing trails managed by federal agencies and local governments. There are more than 1,050 designated trails totaling more than 12,500 miles. Of the new trails six extend from Pittsburgh to Harrisburg, Pa., over a distance of 231 miles. The Park Service and the Forest Service administer the National Recreational Trails program.

## **Conference Calendar**

### JUNE

10-13. **International Snowmobile Congress** Summerside, Prince Edward Island, Canada. Contact: <http://www.snowiasa.org/events.php>.

[www.snowiasa.org/events.php](http://www.snowiasa.org/events.php).

12-16. **U.S. Conference of Mayors** annual meeting in Providence, R.I. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, DC 20006. (202) 293-7330. <http://www.usmayors.org>.

14-16. **Western Governors' Association** annual meeting in Park City, Utah. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>.

### JULY

15-17. **The International Convention of Allied Sportfishing Trades** in Orlando, Fla. Contact: American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314. (703) 519-9691. <http://www.asafishing.org>.

19-26. **National Speleological Society** annual meeting in Kerrville, Texas. Contact: National Speleological Society, 2813 Cave Ave., Huntsville, AL 35810-4331. (256) 852-1300. <http://www.caves.org>.

21-24. **Outdoor Retailer Summer Market 2008** in Salt Lake City. Contact: Outdoor Industry Association, 4909 Pearl East Circle, Suite 200, Boulder, CO 80301. (303) 444-3353. <http://www.outdoorindustry.org>.

24-29. **National Association of Counties** annual conference in Nashville, Tenn. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. <http://www.naco.org>.

### AUGUST

30-Sept. 3. **American Fisheries Society** annual meeting in Nashville, Tenn. Contact: American Fisheries Society, 5410 Grosvenor Lane, Suite 110, Bethesda, MD 20814-2199. (301) 897-8616. <http://www.fisheries.org>.

### SEPTEMBER

20-24. **The Wildlife Society** annual meeting in Monterey, Calif. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.