

# Federal Parks & Recreation

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Volume 26 Number 17, September 12, 2008

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## **FALL AGENDA: Approps strategy depends on energy fight**

With only three, maybe four, weeks left before Congress closes down for an election recess appropriators will almost certainly pass a continuing resolution (CR) to keep the government in money.

Beyond that the crystal ball is cloudy, according to House and Senate Appropriations Committee staff members. Congress may just use a CR to extend appropriations a couple months into the fall after fiscal year 2009 begins October 1 and then return in a lame-duck session to finish up. Or they may extend a fiscal year 2008 appropriations bill into the spring.

But there will be no predictable course of action as long as the enormous gulf remains between Democrats and Republicans over energy policy. That gulf has paralyzed appropriations bills as Republicans threaten to offer amendments to encourage drilling and Democrats hold the bills for fear the Republicans will succeed.

One appropriator suggested the smart thing for Congress to do (but not necessarily the likely thing) would be to extend a CR into February or March of next year AND come back this fall for a lame duck session to refine money bills in committee. "Whether Obama or McCain wins the election, I think they would be better off if we moved bills through committee this year," the staff member said. "That would make them more conferenceable and they could wrap up (fiscal 2009 bills) quickly next year. Congress can do two years of appropriations bills at once but it gets messy."

This theory assumes that either Sen. Barack Obama (D-Ill.) or Sen. John McCain (R-Ariz.) will be easier for the next Congress to deal with than Presi-

dent Bush. Bush has promised to veto virtually all domestic money bills.

McCain and Obama should want Congress to get as much fiscal 2009 appropriations work completed now to avoid excessive discord early next year, the theory goes. The fiscal 2010 administration budget (now being prepared by the Bush team) will land on the first Monday in February. And the new administration could be trying to put their fingerprints both on the fiscal 2009 and 2010 appropriations bills at the same time. "By the time they get organized and get their Cabinets in place it's going to be summer," warned one insider.

The ongoing energy dispute not only affects the timing of park and rec appropriations, but it could also have major consequences for the substance of programs. Advocates of everything from a Park Service Centennial Initiative to the Land and Water Conservation Fund to wildlife protection hope to obtain a slice of royalties from new energy production. For now energy policy is being fought out both in appropriations bills and in a half-dozen authorizing bills.

Senators and House members haven't divulged plans for sharing royalties. "We have no good reliable info on what may happen," said Rich Dolesh, director of public policy for the National Recreation and Park Association. "We have put out feelers."

Also on the Congressional agenda for possible action this fall:

**OMNIBUS:** Senate Energy Committee Democrats have prepared an omnibus lands bill (S 3213) that includes 90 individual bills. It is now nearing the Senate floor. Among other things the measure would give Congressional certification to the 26 million-acre National Landscape Conservation System (NLCS) managed by the Bureau of Land Management (BLM), designate two new National Park System units (Paterson National Historical Park in New Jersey and Thomas Edison National Historical Park in New Jersey), and authorize additions to nine existing National Park System units. However, the NLCS provision has generated opposition from conservatives.

**WETLANDS:** The House Transportation Committee has before it a bill (HR 2421) that would make clear all waters in the country are subject to Corps of Engineers/EPA permitting, not just navigable waters. The bill is designed to clarify national wetlands policy that some says was confused by the famous *Rapanos* Supreme Court decision. (See separate article page 7.)

**NPS CENTENNIAL CHALLENGE:** The House Natural Resources Committee has approved a \$2 billion Park Service Centennial Challenge bill (HR 3094.) And, although the committee in late July filed a formal report on the bill in preparation for House consideration, the committee failed to identify offsets to pay the \$1 billion federal share. The lack of offsets has stalled the legislation for the last year-and-a-half. It is now unlikely that Congress will produce a bill under normal procedures, but HR 3094 could end up as an amendment to an appropriations CR. Sen. Ken Salazar (D-Colo.), has introduced a Senate version of the bill (S 2817), which has not moved.

**FIRE BILLS:** The House July 9 approved legislation (HR 5541) that would provide about \$500 million per year for emergency fire fighting by federal agencies. However, the bill, sponsored chiefly by committee chairman Nick Joe Rahall (D-W.Va.), would not guarantee the emergency appropriations money, as previous versions would. (See related article page 10.)

**OTHER UNLIKELY BILLS:** Congress probably won't act this fall on several other important park and rec bills, such as a measure (S 3113, HR 6223) to open up Cape Hatteras National Seashore to off-highway vehicle (OHV) use. The bill is designed to reverse a court-approved agreement to limit OHV use in the seashore.

**NO CHANCE BILLS:** Secretary of Transportation Mary Peters this summer proposed a complete restructuring of the multi-year surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU.) SAFETEA

expires next fall. Peters would reduce the federal dependence on gasoline taxes that fuel that Highway Trust Fund. Senate Environment and Public Works Committee Chairman Barbara Boxer said in July that SAFETEA-LU costs \$286 billion and the next one could come to \$586 billion bill just to maintain the status quo. (See related article page 5.)

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

The Senate Appropriations Committee did approve a TRANSPORTATION appropriations bill (S 3261) July 9. Among other things it would patch a shortfall in surface transportation spending for fiscal 2009. The bill calls for an \$8 billion transfer from general funds to ensure federal highway programs receive full funding of \$41.2 billion. The House Appropriations subcommittee on Transportation marked up a counterpart bill June 20 but did not authorize the \$8 billion transfer, leaving the bill short of full funding.

The Senate committee approved an ENERGY AND WATER money bill (S 3258) July 10 that would provide \$559 million more than the Bush administration requested for the Corps of Engineers in fiscal 2009 and \$333 million more than the administration requested for the Bureau of Reclamation. The House Appropriations Committee approved a similar bill June 25 that would increase Corps spending by \$590 million and Bureau of Reclamation spending by \$163 million over administration requests.

## **NPS commission gathers for the first time; are critics**

NPS Director Mary Bomar last month promised a blue ribbon commission on the

future of the National Park System her agency's full support, just as the commission got underway.

"As National Park Service Director, I pledge the support of the National Park Service for the commission's work, and look forward to working with you toward making 'America's best idea' truly worthy of that title," said Bomar.

The commission held a first meeting August 25-27 near Santa Monica Mountains National Recreation Area in Calif. Two former senators announced August 12 the establishment of the year-long commission formed to recommend policies for the National Park System in the next century. The system will turn 100 in 2016. Former Senate Majority Leader Howard H. Baker, Jr. (R-Tenn.) and former Senate Energy Committee Chairman J. Bennett Johnston, Jr. (D-La.) are cochairs of the 30-member panel.

The National Parks Conservation Association will finance the commission's work. It will cost about \$1 million, said a spokesman for the commission. The commission anticipates completing a final report in the fall of 2009.

Future meetings will be held in Yellowstone National Park in Wyo.; Gettysburg National Military Park in Pa.; Lowell National Historical Park in Mass.; and Great Smoky Mountains National Park in Tenn.

Not everyone is as enthusiastic as Bomar, the National Parks Conservation Association and Sens. Johnston and Baker. Chuck Cushman, president of the American Land Rights Association (ALRA), said, "The commission members are playing inside baseball. There are no critics there."

"We're going to have to fill in the gap and bring in people to show Sens. Baker and Johnston where the Park Service can do a better job," he said, while acknowledging many individuals in the agency now do "great work."

ALRA and Cushman are concerned about private property, i.e. the possibility that the commission could per-

suade Congress to greatly expand the federal domain. "I had some people at the first meeting," said Cushman. "My concerns about whether this would be another land acquisition trust fund commission have been validated so far. That's where we're headed."

Bomar said the commission's work would dovetail with the recommendations emanating from a Superintendents Summit July 16-17 in Utah. "After holding our first all-superintendents meeting in 20 years, it is clear there is a groundswell of support among the men and women of the National Park Service to roll up our sleeves and get to work building a better system of parks and special places for Americans today – and for the Americans of tomorrow," she said.

The parks commission is not connected to an 18-member Outdoor Resources Review Group (ORRG) that is studying outdoor recreation policy around the country. Honorary Cochairs of ORRG are Sens. Jeff Bingaman (D-N.M.) and Lamar Alexander (R-Tenn.)

Henry Diamond, a partner with the law firm Beveridge & Diamond, and Patrick Noonan, chairman emeritus of The Conservation Fund, are leading the ORRG. That panel plans to hold a second meeting on September 29 in Washington, D.C., followed by three other meetings in November, January and March. The ORRG anticipates submitting its recommendations to Congress in May.

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

### **Some state park budgets pounded; other doing okay**

State park directors heard discouraging tales about harsh state government budget reductions at their annual meeting last week in Boise, Idaho. But not all states are facing major setbacks.

"It's kind of a mixed bag," said Philip K. McKnelly, executive director of the National Association of State Park Directors. "The states that are in the worst shape are the ones you hear a lot about. But a few are doing reasonably well."

Some state park directors did not even show up for the conference because their out-of-state transportation budgets had been cut off by their legislatures, McKnelly said. That included Illinois, Virginia, Michigan and Washington. Other state park officials attended on their own dime.

State park agencies are facing the same budget problem facing all state agencies in these difficult economic times. But, said Rich Dolesh, public policy director for the National Recreation and Park Association, state parks are often the first to be asked to walk the plank.

"Parks are in the front lines in economic slowdowns," he said. "That's the first place states look. Among the strategies they employ is to close the parks. Several governors have had to back off because of public concerns about closing parks."

Exhibits A and B are California and New Jersey, as we reported in the June 6 issue of *FPR*. In his original January budget California Gov. Arnold Schwarzenegger (R) would have closed in whole or in part 48 parks. But after a public outcry Schwarzenegger in a May revision of his proposed fiscal year 2008-2009 budget recommended that the budget for California State Parks not be cut.

Meanwhile the California State Assembly is considering a new law to guarantee parks with sufficient money to stay open for the next several years. It would impose a flat \$10 per vehicle license fee surcharge. Assemblymember John Laird (D) is the lead sponsor of the proposal.

In New Jersey Gov. Jon Corzine (D) said the state could make up its budget deficit without closing parks.

Corzine's fiscal year 2009 New Jersey budget had originally projected a 25 percent reduction in spending for state parks, forcing at least a partial closure of major parks, forests and recreation areas. The budget would have chopped \$8.8 million out of a \$34 million fiscal 2008 budget, according to the National Trust for Historic Preservation.

Meanwhile, the State of Arizona has increased annual recreation permits for individual access to 8 million acres of state trust lands from \$15 to \$50. Family permits jumped from \$20 to \$75. The new fees went into effect August 1.

The Arizona Land Department acted on order from the state legislature. It cut more than \$3.1 million from the Land Department budget and ordered the department to offset some of that with \$600,000 in fees.

Of interest Arizona hunters and fishermen don't have to pay the rec fees if they obtain hunting licenses for \$32.25 and fishing licenses for \$23.50. How state land officials can determine if a person is hunting or just recreating with a gun in hand is not clear.

Dolesh said such fee increases "are not a sustainable strategy. Parks are supposed to be affordable for all citizens. To balance the budget on the backs of fees is impossible." He said reliance on such fees means states would be unable to plan for maintenance or to replenish their capital needs. A secure revenue stream is required, he said.

McKnelly and Dolesh acknowledge that not all state park agencies are suffering. McKnelly said, "In terms of general budgets a few state are doing better," in part because cash-starved citizens are choosing to recreate close to home.

Said Dolesh, "States that are ill-equipped to handle economic swings with structural deficits are most at risk. Other states have adopted strategies of proving to the public and the state legislature that they deserve support because they provide a net economic

benefit. Some of them actually got an increase."

McKnelly said a new Outdoor Resources Review Group (ORRG) may identify more closely state park agency problems. The 18-member commission, which includes two governors (Phil Bredesen, D-Tenn., and Mark Sanford, R-S.C.) and other state officials hopes to present recommendations to the new President and new Congress in May of next year. Sens. Jeff Bingaman (D-N.M.) and Lamar Alexander (R-Tenn.) are the honorary co-chairs of ORRG.

## **Hill approves highway money, White House changes course**

Congress gave final approval September 10 to legislation (HR 6532) that would approve an \$8 billion transfer from the general fund to surface transportation projects. President Bush is expected to sign the bill and insure full funding for rec programs over the next year.

The House approved HR 6532 July 23 and the Senate followed suit September 10. Congress acted fast because the Department of Transportation has already begun reducing allocations to states.

Sen. James Inhofe (R-Okla.) gave his reluctant support to the measure: "Although I agree with some of my colleagues that the highway program has grown to include things that are not in the federal interest and do nothing to save lives or reduce congestion (code for rec initiatives), these issues are more appropriately dealt with in the upcoming highway reauthorization in 2009."

Secretary of Transportation Mary Peters laid out the hard news September 5: "Effective next week, the Highway Administration will begin making reimbursements to States on a weekly basis, instead of the twice daily cash reimbursements we make today. The Department will make those weekly reimbursements on a pro-rated basis. If, for example, the Highway Administration only has funds available in the Highway Ac-

count to cover 80 percent of the requests we receive, they will pay only 80 percent of each."

American Association of State Highway Transportation Officials Executive Director John Horsley ratcheted up the pressure. "It will worsen the financial crises many states are already facing, and it will delay or halt needed transportation projects and leave contractors and suppliers with IOUs instead of cash to pay their workers," he said.

The implications for recreation are profound, in the near and long terms. Near term, for example, the transportations enhancements program that finances many trails around the country is due for about \$780 million in fiscal 2008. A straight 20 percent reduction, as Peters mentioned, would have cut \$156 million from the program.

Longer term Peters and the Bush administration proposed this summer a complete restructuring of the multi-year surface transportation law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) when it expires next year. Peters would reduce the federal dependence on gasoline taxes that fuel that Highway Trust Fund. A sharp reduction in driving by the American people has reduced revenues flowing into the fund, causing the \$8 billion shortfall.

As part of the restructuring Peters drew a bead on enhancements in particular and single purpose recreation programs in general, calling for their elimination as federal set-asides.

As always, Congressional Democrats and the White House played a political blame game before the Senate vote. Said Peters, "Time and again, the President has warned Congress of the pending shortfall and submitted fiscally prudent budgets to close the gap. Americans cannot afford to have Congress play 'kick the can' with highway funding for another year, another month, or frankly, another week."

But Senate Democrats immediately noted that the Bush administration has opposed until now all attempts to re-

store full funding to SAFETEA-LU from general funds. And most opposition was coming from Republican senators.

Indeed when HR 6532 reached the House floor the Office of Management and Budget promised a veto, arguing, "It is a longstanding principle that highway construction and maintenance should be funded by those who use the highway system. Instead, this bill is both a gimmick and a dangerous precedent that shifts costs from users to taxpayers at large. Moreover, the measure would unnecessarily increase the deficit and would place any hope of future, responsible constraints on highway spending in jeopardy."

The department reversed course last week and said, "However, the recent decline in federal gas tax revenue requires immediate action on legislation that has already passed the House to ensure states are not adversely affected."

The department had originally said reduced allocations to states would kick in next summer. But the sharp decrease in miles driven by Americans has accelerated. The department said, "In September alone, the Highway Account will take in \$2.7 billion but have reimbursement requests totaling \$4.4 billion." So now reductions are anticipated to begin this month.

In a related development the senator who may well be in charge of writing a new surface transportation next year said last week she intends to maintain the "national character" of SAFETEA-LU.

That suggests Sen. Barbara Boxer (D-Calif.), chairman of the Senate Environment and Public Works Committee, will retain the existing Highway Trust Fund based primarily on the gasoline tax. But Boxer did not specifically commit to the trust fund in a September 4 field briefing in Los Angeles.

In previous statements she has acknowledged the mountain Congress must climb. She said Congress, which put up \$286 billion for SAFETEA-LU in 2005 now needs to come up with "\$586 billion just to maintain what we have now."

Boxer last week did dub the next law as MAP 21, as in Moving Ahead for Progress in the 21st Century.

As *FPR* reported last month, an aide to House Transportation Committee Chairman James Oberstar (D-Minn.) said his boss considers the Peters proposal irrelevant. Rather than shrinking programs, Oberstar will look to increase highway and other surface transportation spending next year, his aide said.

The Peters proposal would retain the gasoline tax to pay most of the freight for federal programs, such as federal land highways, but replace state and local funding with a number of initiatives, such as toll roads, fees for vehicle miles driven and partnerships.

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

The shift of the \$8 billion from the general fund to SAFETEA-LU would insure surface transportation programs get their full allocation of \$41.2 billion in fiscal 2009. Congress rationalized the shift because 10 years ago it transferred \$8 billion from the Highway Trust Fund to general revenues.

## **Bill to regulate wetlands faces uncertain fall fate**

Chances are becoming dim that House Transportation Committee Chairman James Oberstar (D-Minn.) will be able to bring to the House this month legislation (HR 2421) to expand federal permitting of projects in wetlands.

"There are only a few weeks left," said an aide to Oberstar. "Floor time is very limited and leadership has a number of bills it wants to move. There is a possibility we'll come back after the elections."

Asked what the outlook would be

for the bill if it did reach the House floor, the Oberstar aide said, "I'm not going to speculate."

Interest groups and their allies have taken sides, with industry and their Republican allies opposing HR 2421 and a counterpart Senate bill, S 1870. However, 176 House members have signed on in support of Oberstar's bill.

Neither the House nor the Senate bill has moved in committee yet. However, opposition to the legislation was voiced at an April 16 House Transportation Committee hearing by Carl Shaffer, president of the Pennsylvania Farm Bureau on behalf of the American Farm Bureau Federation. "Expanding jurisdiction will sweep many agricultural and forestry activities into the scope of CWA regulation simply because such activities are conducted near some isolated ditch, swale, wash, erosion feature or ephemeral stream that would be deemed a 'water of the United States,'" he said.

Conservationists are in full support of HR 2421 and S 1870. "This legislation is of utmost importance to the future of clean water in the United States and demands our full support," said Alex Matthiessen, president of Hudson Riverkeeper.

Oberstar may have trouble finding an opportunity to move his bill this fall. Congress only three weeks left at best before it wraps up for elections in early October. The press of other business - energy legislation and appropriations bill - may leave no time for legislation as controversial as HR 2421 and S 1870.

The leading Republicans on the House committee, Rep. John Mica (R-Fla.), and on the counterpart Senate Environment and Public Works Committee, Sen. James Inhofe (R-Okla.), are not on board. As Mica said, "This bill could lead to the regulation of virtually every wet area in the country. I do not consider ditches, retention ponds, storm water runoff, a puddle in a field, or a pool in a backyard to be a body of water in need of federal regulation."

HR 2421 and S 1870 are designed to redress a June 19, 2006, Supreme Court decision, *Rapanos v. U.S. Nos. 04-1034 and 04-1384*. Sen. Russ Feingold (D-Minn.) is the lead sponsor of the Senate bill. Feingold has 20 cosponsors.

The Supreme Court decision effectively directed the Sixth U.S. Circuit Court of Appeals to determine when the Corps and EPA should require permits for activities on navigable waters. While the decision was foggy at best about what constitutes navigable waters, the court left no doubt that only water bodies related to navigable waters should be regulated.

HR 2421 would make clear the Corps of Engineers must require a permit for dredging activities in all waters of the United States.

At the House committee hearing John Paul Woodle, Jr., assistant secretary of the Army for Civil Works, said the administration was concerned that HR 2421 would disrupt "a careful balance between the legitimate and important federal interests in protecting water quality and the equally important and long-standing interests of states in managing and allocating land and water resources within their boundaries."

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."

## **OHV trail designations by FS and BLM draw complaints**

Off-highway vehicle (OHV) users are increasingly critical of national

forest travel management plans, faulting the Forest Service for closing down existing trails. For very different reasons environmentalists are also up in arms about Bureau of Land Management (BLM) travel plans.

Recreational OHV groups are objecting to plans in the Lewis and Clark National Forest in Montana, the El Dorado National Forest in California and the Santa Fe National Forest in New Mexico, to name a few. In each instance users complain the service has closed, or is in the process of closing, half of existing roads used by OHVs.

Their objections culminated in the filing of a lawsuit against a travel plan prepared by the Lewis and Clark National Forest. The plaintiffs, including local OHV users as well as national groups such as the Motorcycle Industry Council, announced September 2 they have filed the lawsuit.

The plaintiffs argued to the U.S. District Court in Montana that the Forest Service is not just barring access to OHV joy riders but to long-term backcountry recreationists as well. "If this decision is allowed to stand, it will eliminate long-honored practices like using vehicles for camping and big-game retrieval, and could force property owners to ride expert-level ATV trails to gain access to their backcountry cabins," said John Borgreen of the Russell Country Sportsmen, one of the plaintiffs.

In the substance of the lawsuit the plaintiffs argue the Forest Service violated the National Environmental Policy Act by not selecting a preferred alternative early in the process and then choosing a final policy that closed more roads and trails than any proposed alternative.

Both the Forest Service and the BLM are conducting ambitious nationwide exercises to designate OHV routes. The Forest Service issued regulations covering its travel management program on Nov. 9, 2005. The rule requires each of the 155 national forests and 20 grasslands to map areas open to OHVs.

The Forest Service has established a complex classification system with four categories - open, existing routes, system routes and cross-country routes. The Forest Service anticipates completing 36 percent of its use maps by the end of fiscal 2009, 79 percent by the end of fiscal 2009 and 100 percent at the end of 2010. More information is available at the Forest Service website: <http://www.fs.fed.us/recreation/programs/ohv/index.shtml>.

OHV user groups led by the BlueRibbon Coalition have mounted a campaign among their members against a proposed Santa Fe National Forest plan of July 10. The coalition says the proposed plan would halve the number of miles of OHV roads, likely in response to environmentalist complaints. "New Mexico is a hotbed of politically active wilderness groups and the agency is under tremendous political pressure," said the coalition in a bulletin to its members. Indeed the forest says the proposed plan would reduce miles available for OHV use from 4,477 now to 2,309, a 53 percent reduction.

The BlueRibbon Coalition says the same situation pertains in the El Dorado National Forest in California.

Americans for Responsible Recreational Access (ARRA), an umbrella interest group in Washington, D.C., has great sympathy for the Forest Service, particularly in these times of severe budget reductions, said Larry E. Smith, ARRA executive director. But the bottom line on plans released so far is not good for OHV users, he said.

Speaking of the overall Forest Service effort he said, "It's a mixed bag. We recognize that we are going to a designated trail system and we accept that. Some forests are doing a good job, some are in between. But most recreation interests are not pleased."

Smith is particularly concerned about a Forest Service budget crisis spurred by the diversion of \$400 million from line service programs to fire fighting. "That's a big concern," he said, "but the agency has no choice."

BLM launched its travel management program on Jan. 21, 2001, with the publication of a National Management Strategy on motorized OHV use. It directed BLM to develop a strategy and regulations. BLM issued regulations to carryout the strategy on Oct. 1, 2001.

OHV users and their critics in the environmental community have focused much of their attention in Utah on the revision of BLM management plans in the Kanab, Moab, Monticello, Price, Richfield and Vernal districts. Final plans, all issued this summer, will govern 11 million acres of the 23 million acres BLM manages in the state.

The Southern Utah Wilderness Association (SUWA) and the Sierra Club object to each and every Utah plan. "BLM is proposing to designate a dense network of ORV routes across Utah's spectacularly scenic and archaeologically rich public lands with little consideration for archaeological artifacts, roadless and wilderness values, and the growing conflict between ORV use and other uses of Utah's iconic landscape," said SUWA and the Sierra Club in a recent blanket condemnation.

BLM in the last month published three new resource management plans for the Vernal, Price and Monticello field offices in Utah that would limit OHV use. On August 22 the Vernal office completed a plan and an accompanying final EIS that covers 5.5 million surface acres managed by BLM. The Vernal plan would designate 4,860 miles of OHV routes, but close 76,000 acres and limit access to 1.6 million acres.

On August 29 BLM published a similar plan for the Price Field Office in Utah. The Price plan and final EIS cover about 2.5 million surface acres BLM manages in the area. The Price plan would set aside 2,820 miles for OHV use, close 394,000 acres and allow limited use on 1.4 million acres. And on September 5 BLM published a final plan for the Monticello Field Office. The Monticello plan and final EIS cover about 1.8 million acres of surface estate. The Monticello plan would designate 1,276 miles for OHV use, close

557,000 acres and allow limited use on 1.9 million acres.

BLM completed a plan for the Moab area August 1, the Richfield area August 8 and the Kanab area June 23. Interest groups around the country have focused on the plans because of implications for energy development, off-highway vehicle use and wilderness designation. The plans and EISs will become final when BLM completes a record of decision based on them.

The Vernal documents are available at <http://www.blm.gov/ut/st/en/fo/vernal/planning.html>. The Price documents are available at <http://www.blm.gov/ut/st/en/fo/price/planning.html>. The Monticello documents are available at <http://www.blm.gov/ut/st/en/fo/monticello/planning.html>.

BLM travel management plans identify areas that are open to OHV use, areas where OHVs are limited to certain times or certain kinds of vehicles, and areas that are closed. BLM's travel management website says that of BLM's 258 million acres, 32 percent are presently open to OHV use, 48 percent are open to limited use, 16 percent are undesignated and four percent are closed.

## **Fire spending crisis deepens in Forest Service**

The Forest Service formally told its partners last month what most partners already knew - the agency will have to remove at least \$400 million from line operations for fire fighting this year.

And, unlike in previous years, the service expects no refunds. "The situation this year is significantly different," said Associate Deputy Chief of the Forest Service Sally D. Collins, in a letter to partners. "The Forest Service has been able to use Transfer Authority in the past, including in 2006 and 2007. However, in 2008, most of the large balances in trust funds have been depleted to the point that they can no

longer provide the emergency funding needed."

"Therefore," continued Collins, "the Forest Service has had to reach deep into other accounts to avoid running out of funds to cover fire suppression. Thus, to meet our firefighting mandate, the Forest Service has initiated a recall of \$400 MM from agency programs throughout the nation."

In a memo to the field Chief Abigail Kimbell said the following deductions are "expected" from line items: \$65 million from the National Forest System which includes recreation management, \$80 million from Capital Improvement and Maintenance which includes trail construction and maintenance, and \$10 million from land acquisition (out of an appropriation of \$42 million.)

Separately, The Wilderness Society said in a recent bulletin the \$400 million is a low estimate, putting the shortfall at "close to \$700 million." But a Forest Service spokesman last week took issue with the \$700 million figure. "We're at \$400 million in terms of transferring funds," he said. "That \$700 (million), I think, came from an outside group. We're not anywhere near that high and I don't know if we'll need to go that high either."

Recreationists are increasingly concerned. "This fire thing is killing the Forest Service," said Derrick Crandall, president of the American Recreation Coalition, an industry group. "They are beginning to cancel contracts. There's a little bit of the 'we're going to close the Washington Monument' syndrome at work here, but the Forest Service risks long-term problems when it cancels agreements with partners."

Said Larry Smith executive director of the Americans for Responsible Recreational Access of the \$400 billion diversion, "That's a big concern, but the agency has no choice." Smith is concerned that individual forests will divert money for preparing travel management plans, thus either delaying the plans or reducing the quality of the plans. (See previous article.)

Senate appropriators in July had contemplated providing \$450 million in suppression money to the service and the Interior Department in an emergency fiscal 2008 domestic spending bill. But the Senate Appropriations Committee canceled a scheduled July 22 mark-up for fear Republican senators would add amendments that would open up public lands for energy development.

Sen. Dianne Feinstein (D-Calif.) started the campaign for more fiscal year 2008 emergency fire-fighting money with a request to the Senate Appropriations Committee for \$910 million. Of that \$610 million would go to fire suppression.

Separately, the House July 9 approved legislation (HR 5541) that would provide about \$500 million per year for emergency fire fighting by federal agencies. However, the bill, sponsored chiefly by committee chairman Nick Joe Rahall (D-W.Va.), would not guarantee the emergency appropriations money, as previous versions would. The bill is called FLAME, as in Federal Land Assistance Management and Enhancement Act.

In an August 4 letter to the field, chief Abigail R. Kimbell laid out the situation this way: "Total suppression costs are projected to reach \$1.6 billion in FY 2008. Appropriated suppression funds total \$1.2 billion. At this time, the only option for financing the shortfall is to use the agency's transfer authority."

Kimbell called for \$100 million in transfers in Phase I by mid-August, with \$20 million coming from the National Forest System and \$30 million from capital improvement and maintenance.

## **Administration asks two courts for FS roadless relief**

The Bush administration has asked two federal courts to effectively lift competing injunctions affecting a beleaguered Forest Service roadless area policy.

One court in California in 2006 ordered the Forest Service to follow a

Clinton administration policy that bars most road construction and timber sales in 58.5 million acres of national forest. The other court in Wyoming in August held the Clinton policy illegal.

The administration told Judge Clarence Brimmer in Wyoming that the clashing decisions raise "the spectre of contempt allegations in one Court or the other."

Meanwhile, the Forest Service last month told the field to do nothing that would violate either court injunction. "Right now, please defer taking action that would have the potential to create a conflict with either court's order," said a letter signed by associate deputy chief Gloria Manning for Joel D. Holtrop, deputy chief for the National Forest System. "Where action cannot be deferred, please contact the Washington Office for instructions."

Under Secretary of Agriculture Mark Rey told us compliance with the California court bar on road construction and timber sales is straightforward. But, he said, "In the case of the Brimmer court decision it is not clear what is a conflict."

Rey hopes the courts will settle the dispute soon. "The courts are going to have to do something," he said. "The question is whether we are going to be give a clear path forward or the conflict is going to be carried to the U.S. Supreme Court."

Separately, environmental groups would like their friends in Congress to move legislation that would have Congress force the Forest Service to put the Clinton rule into law, but they fear time is running out for this year.

Said Cecilia Clavet, national forest program assistant for The Wilderness Society, "There is very little time left this fall, so we don't expect a big push behind it."

Bills to certify the Clinton regulations were introduced in both the House (HR 2516) and Senate (S 1478) May 24, 2007, by Rep. Jay Inslee (D-Wash.) and Sen. Maria Cantwell (D-Wash.)

The legal impasse over roadless policy was joined August 12 when Brimmer held the 2001 Clinton rule violated the Wilderness Act by establishing de facto wilderness areas. Only Congress has the authority to designate wilderness, he said, and not the President.

In his decision Brimmer said, "In this case, the Forest Service's designation of 58.5 million acres as 'roadless areas' was a thinly veiled attempt to designate 'wilderness areas' in violation of the clear and unambiguous process established by the Wilderness Act for such designation." The State of Wyoming filed the case before Brimmer.

On August 20 the Bush administration asked Brimmer to stay his injunction, pending a formal request for him to reconsider his decision. If Brimmer does not stay his injunction, "both the Forest Service and the public are harmed," said the administration request filed by Ronald J. Tenpas, assistant Attorney General for the Environment in the Justice Department.

Brimmer's decision counters a Sept. 19, 2006, injunction from U.S. District Court Judge Elizabeth D. Laporte in Northern California that effectively reinstated the Clinton rule. In her decision Laporte held invalid a 2005 Bush administration rule.

Also on August 20 the administration asked Judge Laporte to stay her 2006 decision reinstating the Clinton rule until the Ninth U.S. Circuit Court of Appeals resolves an administration appeal. That appeal is scheduled for argument before the Ninth Circuit on October 20.

Interest groups took predictable sides in response to the two administration filings. In Wyoming the plaintiff in Brimmer's decision, the State of Wyoming, opposed the motion, as did the Colorado Mining Association. They demand that the Clinton rule be stopped, period.

In the California decision, The Wilderness Society said it "will strongly oppose any effort to lift Judge Laporte's injunction requiring the For-

est Service to comply with the Roadless Rule." The Wilderness Society and the Earthjustice law firm said they would appeal the Brimmer decision to the Tenth U.S. Circuit Court of Appeals.

## Notes

### **Centennial Challenge on hold.**

Although reports circulate of negotiations between the Bush administration and Congress on a \$2 billion NPS Centennial Challenge bill, no breakthrough is believed imminent. We hear the Office of Management and Budget is still talking with House leaders about possible offsets to pay the \$1 billion federal side of the program to match \$1 billion in matching gifts. The House Natural Resources Committee approved its Challenge bill (HR 3094), but did not identify offsets. The Senate Energy Committee has not addressed a counterpart bill (S 2817) but it may become a part of an omnibus energy package leaders are now working on. S 2817 would use as an offset royalties from new offshore oil and gas drilling. Said one source close to the negotiations, "Whether anything will happen this year, Lord only knows. There may be a better chance of action in the lame-duck session after the elections."

**FWS closes in on duck regs.** The Fish and Wildlife Service (FWS) August 29 proposed frameworks for late season migratory bird hunting that are about the same as liberal prescriptions of recent years. States are expected to accept the FWS prescriptions and set bag limits and hunting season lengths for the fall-winter hunting season. The one exception is canvasbacks. Due to an unexpected drop in an annual count FWS would forbid canvasback hunting everywhere but the Central Flyway, where a Hunter's Choice experiment would continue. FWS's proposal translates into a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and an 107-day season in the Pacific Flyway. FWS released a preliminary report July 11 that estimates an annual breeding count of ducks nine percent lower than last year. That is still 11 percent above the 1955-2007 average. FWS also reported that its

survey of 2 million square miles in the United States and Canada indicated a 37 percent decrease in the number of ponds, which are essential to breeding success. FWS counted 4.4 million ponds compared to seven million last year and a long-term average of 4.9 million.

#### **Reclamation workers fight**

**downsize.** An unidentified group of Bureau of Reclamation employees in the Denver service center complained to Congress last month about mass "voluntary" retirements. The employees said they were urged to retire to prevent the firing of new employees. They contend that the Bush administration is eliminating their positions as a pretext to contract bureau work to private industry. They asked appropriations committees, authorizing committees and their local Congressmen to block the reorganization. "We request that Congress direct the DOI and Reclamation to cease all reorganization activities until the next administration takes office," they wrote in an August 15 letter. The employees didn't sign their names for fear of retaliation, they said. The environmental group Public Employees for Environmental Responsibility (PEER) circulated the letter. PEER said that 100 of the 500 employees in the Denver Technical Service Center retired in 2006 and 2007 and that the bureau wants another 65 to take early retirement now. Some of the employees are recreation planners and cultural resource experts, the complainants said. Finally, the employees argue that the retirements are a roundabout way of avoiding Congressional limits on outsourcing.

**SNPLMA still paying off.** Secretary of Interior Dirk Kempthorne announced last month the distribution of \$140 million to conservation purposes in the latest round of allocations from southern Nevada land sale revenues. The Southern Nevada Public Land Management Act of 1998 (SNPLMA) has now led to the distribution of more than \$3 billion to conservation purposes in the state from BLM land sales around Las Vegas. Under SNPLMA 85 percent of revenues is allocated to conservation projects in the state, 10 percent of the Southern Nevada Water Authority and five percent to a

State of Nevada education fund. Not surprisingly, the Bush administration has tried unsuccessfully over the years to transfer SNPLMA revenues to the U.S. Treasury for federal debt repayment.

## **Conference calendar**

### SEPTEMBER

18-21. **Land Trust Alliance** rally in Pittsburgh, Pa. Contact: Land Trust Alliance, 1331 H St., N.W., Suite 400, Washington, DC 20005-4711. (202) 638-4725. <http://www.lta.org>.

30-Oct.2. **Outdoor Industry Association Rendezvous** in Boston. Contact: Outdoor Industry Association, 4909 Pearl East Circle, Suite 200, Boulder, CO 80301. (303) 444-3353. <http://www.outdoorindustry.org>.

### OCTOBER

7-9. **Watchable Wildlife** annual conference in Orange Beach, Alabama. Contact: Watchable Wildlife, Inc., PO Box 319, Marine on St. Croix, MN 55047. 651-433-4100. <http://www.watchablewildlife.org>.

14-15. **National Recreation and Park Association** congress and exposition in Baltimore, MD. Contact: National Recreation and Park Association, 22377 Belmont Ridge Road, Ashburn, VA 20148. (703) 858-2158. <http://www.nrpa.org>.

21-25. **The National Trust for Historic Preservation** annual conference in Tulsa, Okla. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, D.C. 20036. (202) 588-6100. <http://www.nationaltrust.org>.

29-31. **Sportfishing Summit** in Galveston, Texas. Contact: American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314. (703) 519-9691. <http://www.asafishing.org>.

### NOVEMBER

8-12. **The Wildlife Society** annual meeting in Miami, Fla. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.