

Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Celina Richardson

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Senators introduce new NPS Centennial bill; OCS to power

Congress is moving fairly rapidly on two fronts to produce a \$2 billion Centennial Challenge Fund to upgrade the National Park System over the next decade.

Five senators teamed up to introduce a Senate bill (S 2817) April 3. In a possible major breakthrough the bill would rely primarily on Outer Continental Shelf oil and gas revenues to establish a \$100 million per year fund (to be matched by \$100 million in nonfederal matching grants.) Sen. Ken Salazar (D-Colo.) is the lead sponsor. Two Democrats and two Republicans joined him.

Separately, the House Natural Resources Committee may mark up as soon as next week a counterpart bill (HR 3094), but without a source of revenue. Supporters believe the Congressional budget will allow the committee to avoid a House rule that would require an offset of \$100 million per year from committee programs. The House-passed budget (H Res 312) would authorize the committee to use any revenues or cost-savings they could find, not just from the committee's jurisdiction.

Program supporters hope the Senate and House will move their bills concurrently, rather than wait for the other to go first, as is often the case. "We're trying to get both to move," said Derrick Crandall, president of the American Recreation Coalition, and a major supporter of the Centennial Challenge.

Conservationists and state and local officials have been down the offshore oil and gas royalty road before with the Land and Water Conservation Fund (LWCF.) OCS royalties are supposed to provide a guaranteed \$900 million per year to the program, but LWCF is lucky

to receive more than \$100 million.

How will the legislation ensure that the federal funds are guaranteed each year? A Senate staff member told *FPR*, "The answer is pretty simple. LWCF is considered authorized funding and Congress must appropriate the money each year, up to \$900 million. The difference here is the bill contains direct spending that is not subject to annual appropriations. What determines the allocation is if there is money in the fund (from OCS royalties) and if matching grants are available."

Senate sponsors of S 2817 include Sens. Susan Collins (R-Me.), Max Baucus (D-Mont), Norm Coleman (R-Minn.) and John Tester (D-Mont.) The Senate Energy Committee hearing schedule is set for April so a hearing on S 2817 couldn't be held until May. However, the committee did hold an introductory hearing on Aug. 2, 2007.

The Senate measure follows a draft bill that has been circulating for several months in the House Natural Resources Committee. Based on a House Democratic bill (HR 3094) and the recommendations of interest groups, S 2817 would:

- broadly define partnerships that could participate in projects,
- set limits on how much money could be allocated to specific activities such as capital improvements (with a 30 percent cap on construction),
- authorize multi-park and national projects,
- encourage recreation use in parks within limits,
- authorize use of the money for land acquisition,
- allow concessioners to serve as partners, and
- insure that trails are eligible for Challenge money.

S 2837 would kick in during this fiscal year 2008, but revenues would not be available for allocation until after fiscal 2009 begins October 1. Congress has already appropriated \$25 million for Challenge projects for fiscal year 2008

to jump-start the program. Promises of nonfederal contributions top \$300 million, according to Secretary of Interior Dirk Kempthorne, the putative father of the Centennial Challenge idea.

Salazar opened the way for grants to small National Park System units from the fund when he said, "Non-federal philanthropic participation is encouraged, but not required, for a project to be executed with federal money from the Centennial Fund." Thus small parks without well-heeled friends to provide matches could still obtain project money.

Salazar explained how OCS royalties for the Centennial would be derived from "unanticipated" revenues. "In 2008, off-shore oil and gas lease sales have already generated more than \$4 billion in revenue above Department of Interior projections," he said. "Rather than returning all these revenues - which were generated from the depletion of a natural resource - to the federal treasury, the National Park Centennial Fund Act reinvests up to \$1 billion in the Centennial Fund and the permanent protection of our national treasures."

Some 90 percent of the federal Centennial Challenge contribution would come from OCS royalties. A special postal stamp that would cost more than a conventional stamp would bring in as much as \$10 million per year.

National Parks Conservation Association President Tom Kiernan lauded the five senators, saying, "Future generations will remember the leadership and foresight of this bipartisan group of senators, who so clearly share the love affair that the American people have with the national parks. Everyone whose park experiences in the future are made better than they might have been will have these Senators to thank."

The Bush administration came up with the idea of the Challenge program, led by Kempthorne. It is part of a \$3 billion, \$300 million per year Centennial Initiative designed to upgrade the National Park System for its Centennial in 2016.

In addition to the \$200 million per year in Centennial Challenge money for noncore operations the program calls on Congress to appropriate \$100 million per year to improve core operations. In the current fiscal year, 2008, Congress complied. The administration has requested another bonus appropriation for NPS operations in fiscal 2009.

Senate nears action on omnibus park and rec bill

The Senate was scheduled to take a crucial vote April 10 after press time on a far-reaching bill (S 2739) that includes dozens of park and recreation measures.

The key vote would come on a motion to break a "hold" that has blocked the individual bills for a year.

Because the House has already approved the more than 60 individual bills that make up S 2739, Senate passage would virtually insure final passage, subject to some last-second tinkering.

Senate approval of S 2739 could also open the way for a second package of committee-passed measures that the House has NOT acted on. No timetable has been set for the second package, but it could come up in the next month.

That could open the way for Senate consideration in the second package of a major bill (S 1139) to certify the 26 million-acre National Landscape Conservation System (NLCS) managed by the Bureau of Land Management. The committee approved S 1139 May 23, 2007, but the bill has not moved since.

The House approved a counterpart NLCS bill (HR 2016) April 9. However, it does carry some baggage. (*See following article.*)

The first omnibus bill (S 2739) has been held up for most of a year by "holds" placed by Sen. Tom Coburn (R-Okla.) He reportedly objected to any legislation that would come with a price tag and require additional spending.

But Senate Majority Leader Harry Reid (D-Nev.) and Democratic leaders decided to proceed with S 2739 and to break Coburn's holds by summoning the needed 60 votes to end a filibuster. That is the first key vote due on the Senate floor at press time.

Reid did agree to allow Coburn to offer five amendments that would do such things as require federal agencies to obtain the concurrence of private property owners in land acquisitions and order agencies to identify how much land the federal government owns.

Private property rights advocates who have the ear of powerful western senators are up in arms. They are particularly annoyed that committee leaders this month added to S 2739 a bill they despise that was not in previous omnibus measures - legislation to authorize a Rim of the Valley study in California. Although the committee has not approved the Rim of the Valley bill (S 1053) this year, it has approved the measure the last three years.

The Rim of the Valley bill would authorize a study of the possible addition of 500,000 acres to the Santa Monica Mountains National Recreation Area (SMMNRA.)

Critics contend that the launch of a study almost guarantees a positive recommendation for additions by the Park Service followed by Congressional approval of an SMMNRA expansion. And that could cost billions of dollars, the critics maintain.

The Bush administration generally supports the Rim of the Valley legislation. And Democrats in the California Congressional delegation, led by Sen. Dianne Feinstein and Rep. Adam Schiff, solidly back it. The House approved Schiff's bill Dec. 4, 2007, as part of an omnibus House bill, HR 3998.

SMMNRA is the largest urban park in the National Park System with 153,750 acres within its boundaries. NPS says the area provides recreational opportunities for approximately 530,000 visitors annually. The study area extends

over 491,518 acres and includes considerable private property.

Here are some of the individual bills included in the Senate omnibus measure:

* **HERITAGE AREAS:** S 2739 includes measures dealing with a number of national heritage areas (NHAs.) S 2739 would designate a Journey Through Hallowed Ground NHA in Pennsylvania, Maryland, West Virginia and Virginia; an Abraham Lincoln NHA in Illinois; and a Niagara Falls NHA in New York.

The House approved a multi-faceted national heritage areas bill (HR 1483) Oct. 25, 2007, that would designate six new NHAs including Journey Through Hallowed Ground, Abraham Lincoln and Niagara Falls.

Like the House, S 2739 would increase a spending ceiling on these nine NHAs from \$10 million to \$15 million: National Coal Heritage Area in West Virginia, the Tennessee Civil War Heritage Area, the Augusta Canal NHA in Georgia, the Steel Industry American Heritage Area in Pennsylvania, the Essex NHA in Massachusetts, the South Carolina National Heritage Corridor, America's Agricultural Heritage Partnership in Iowa, the Ohio & Erie Canal National Heritage Corridor in Ohio, and the Hudson River Valley NHA in New York.

Not included in S 2739 are at least four NHAs that the Senate committee has approved but the House has not acted on. They are candidates for the next committee package. They are a Quinebaug and Shetucket Rivers Valley National Heritage Corridor in Massachusetts and Connecticut; Sangre de Cristo NHA in Colorado; South Park NHA in Colorado; and Chattahoochee Trace National Heritage Corridor in Georgia and Alabama.

Also not included in S 2739 are at least three NHA bills approved by the House that would designate a Muscle Shoals NHA in Alabama; a Freedom's Way NHA in Massachusetts and New Hampshire; and a Santa Cruz Valley NHA in Arizona.

* **TRAILS:** S 2739 would designate a Star Spangled Banner National Historic Trail in Maryland, Virginia and the District of Columbia. The House approved its bill (HR 1388) July 23, 2007.

* **RIVERS:** S 2739 would designate the Eightmile River in Connecticut as a wild and scenic river. The House approved its bill (HR 986) July 31, 2007.

* **MISCELLANEOUS:** S 2739 includes 21 other bills dealing with the Park Service, including boundary adjustments, studies, designation of commissions, and land conveyances. In addition the bill includes a Wild Sky wilderness bill for national forests in Washington, two land bills for the Bureau of Land Management, 14 water resources bills, two Department of Energy bills and two territories bills.

House approves NLCS bill; Senate action is in wings

The House approved legislation (HR 2016) April 9 to establish a 26 million-acre National Landscape Conservation System (NLCS) managed by the Bureau of Land Management (BLM.) The vote was 278-to-140.

Chief bill sponsor Rep. Raúl Grijalva (D-Ariz.) said the measure would simply codify the existing NLCS into law. "This is not a policy bill," he said on the House floor. "It simply provides the NLCS the recognition it deserves. . . . Enactment of this legislation will not change the management of these areas but it will change the perception and it will upgrade their stature as well."

But Rep. Rob Bishop (R-Utah) said the bill does not address existing problems in multiple use management of lands now in the system, i.e. providing sure access for energy development, grazing and other uses.

"Unless this bill is changed it will do significant harm to people," he said. "We have problems with the management of this system now. While this bill doesn't solve any of these prob-

lems, it provides vague and fluffy language that make the situation worse."

Just before the vote, private property rights advocates and their environmentalist counterparts sent out red alerts opposing and supporting the bill respectively.

The American Land Rights Association (ALRA), advocates of property rights, complained that the legislation would produce Park Service like regulation on BLM lands. "HR 2016 will essentially place a National Park like regulatory overlay over the top of 26 million BLM acres," said the association.

The Wilderness Society posted an alert April 4 to its members in favor of the bill. "Your help will insure that these culturally and biologically diverse landscapes receive the attention they deserve and become our newest legacy to future generations," the society said.

Meanwhile, a Senate counterpart NLCS bill (S 1139) is waiting action on the floor, but with one big difference - Sen. Dianne Feinstein (D-Calif.) is preparing an amendment to expand the system to 32 million acres. Feinstein intends to add the entire California Desert Conservation Area (CDCA) to the bill and make it a unit of the NLCS. Some four million acres of the CDCA are in the bill but Feinstein would add another six million acres, as FPR reported in the last issue.

The Senate Energy Committee approved the NLCS bill (S 1139) on May 23, 2007. Like all committee bills it has been subject to a "hold" by an unidentified Republican senator, assumed to be Sen. Tom Coburn (R-Okla.)

The entire California Desert Conservation Area was not included in S 1139 and HR 2016 because portions of it don't come under the definition of a "national" system, such as a monument or a wilderness study area.

However, units of the CDCA that make up about 3.7 million acres of the 11 million-acre area - the King Range

National Conservation Area, the Headwaters Forest Reserve and the Santa Rosa and San Jacinto Mountains National Monument - are included in the NLCS bill.

In June 2000 the Interior Department under then Secretary of Interior Bruce Babbitt established the 26 million-acre NLCS in BLM to protect special areas. The NLCS consists of major conservation areas in 12 western states, including 15 national monuments, 13 national conservation areas, a Steens Mountain management area in Oregon, a Headwaters Forest Reserve in northern California, 36 wild and scenic rivers, 148 wilderness areas, 4,264 miles of national trails, and more than 600 wilderness study areas.

FHWA's Section 4(f) park and rec rule may go to court

The Federal Highway Administration (FHWA) is scheduled to implement new regulations today (April 11) that would help highway builders gain access to land crossing parks and recreation areas.

But local officials said the regulations go overboard in helping highway builders to the point they violate a 1971 Supreme Court decision. The local officials argued the court demanded broad protections for park and recreation areas not in the regs.

Rick Dolesh, public policy director for the National Recreation and Park Association (NRPA), said, "We believe there is a statutory conflict in the language. The rule just requires *de minimis* impacts (to gain project approval.) But Congress directed FHWA to do all possible planning to minimize harm. In the rule the planning is subordinated to the *de minimis* standard."

NRPA has not decided if and when to file a lawsuit. State and local park and historic preservation officials and their sponsors are still evaluating the legal pluses and minuses.

At issue are regulations issued March 12 by FHWA that implement a provi-

sion in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) designed to ease somewhat Section 4(f) of transportation law. The Section 4(f) law, written in 1966, requires agencies building highways and transit facilities with federal money to find a "feasible and prudent" alternative to damaging parkland.

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

Conservationists and state and local park interests subsequently used Section 4(f) to prevent the routing of highways through parks, recreation areas and historical properties. Road construction advocates in turn persuaded Congress to modify the law.

That Congress did in SAFETEA-LU. It made two major changes in Section 4(f.) First, it said that when a project would have a "minimal" effect, Section 4(f) could be waived. Second, it said that a transportation department may use parkland only if there are no reasonable alternatives. Those changes are carried out in the March 12 FHWA regulations.

State highway departments praised FHWA. "These reforms have had a huge impact all across the country," said Doug Horsley, executive director of the American Association of State Highway Transportation Officials. "It's the kind of win-win approach legislation should take, ensuring environmental protection while balancing other impacts."

House Transportation Committee Chairman James Oberstar (D-Minn.), a friend of both transportation officials and parks, is watching the situation. "We are aware of it," said a spokesman for Oberstar.

SAFETEA-LU also required an independent review of the implementation of the Section 4(f) regulations. That will be conducted by a committee established by the Transportation Research Board of the National Academy of Sciences. The review is to be completed by August 10.

Committee members include: Michael D. Meyer, Georgia Institute of Technology, chairman; Allyson Brooks, Washington State Historic Preservation Officer; Sarah C. Campbell, D.C. City Council Budget Office; William R. Hauser, New Hampshire Department of Transportation; Mary E. Ivey, New York State Department of Transportation; James C. Kozlowski, George Mason University; Jeffrey Lerner, Defenders of Wildlife; Gina McAfee, Jacobs Carter Burgess; William Michaud, SRA International, Inc.; Joe Trnka, HDR, Inc.; Paul Tufts, Independent Consultant; and Jonathan Upchurch, National Park Foundation.

Appropriations gridlock likely; DoI bill may begin

A stalemated Congress is expected to simply extend a fiscal year 2008 appropriations bill through fiscal 2009, with modifications. Still, House Appropriations Committee leaders intend to write an Interior and related agencies bill, just in case.

"Mr. Dicks is committed to be one of the first to mark up a bill and to do it in early May," an appropriations committee staff member told us. Dicks is Rep. Norman Dicks (D-Wash.), chairman of the House subcommittee on Interior and related agencies.

Dicks's office confirmed that the Congressman intends to prepare a bill shortly. "Anytime in early May would be his preference," said a Dicks spokesman. But the spokesman said appropriators must first translate the Congressional budget into a spending cap for the Interior subcommittee.

After the cap is set Dicks and committee chairman David Obey (D-Wis.) are expected to make an all-out effort to push a bill through the House.

Dicks and Obey are also expected to fight to obtain a spending cap for the Interior bill that approximates a fiscal 2008 bill, rather than accept the \$1 billion reduction sought by the Bush administration.

Even if Dicks and Obey managed to move a fiscal 2009 money bill through the House, it might not make any difference. The real hurdle in Congress is the Senate where the filibuster requires the majority to line up 60 votes, a near impossibility.

So in the end Congress may end up doing what more and more observers are predicting: It will simply extend a fiscal 2008 appropriations bill through fiscal 2009. "I'm pretty sure they are just going to extend the fiscal 2008 bill to fiscal 2009," said one veteran lobbyist. "What programs received this year they will probably get next year."

That would undoubtedly help most programs in the Interior bill because they are fighting a Bush administration request for \$1 billion less than a final fiscal 2008 appropriation of \$26.6 billion.

If Congress does extend a fiscal 2008 appropriations law into fiscal 2009 (with minor modifications), compared to the Bush administration budget request, it would reduce spending substantially for Park Service operations and maintenance but would provide a boon to most other programs.

The following identify Bush administration fiscal 2009 requests for individual programs, followed by the fiscal 2008 appropriation. Most park and rec programs would do better under the fiscal 2008 law. Also, Congress usually does some tinkering when it extends a past fiscal year appropriation, so it could be expected to beef up favored programs, such as NPS spending.

* NPS OPERATIONS: \$2.132 billion, a \$161 million increase over a fiscal 2008 appropriation of \$1.971 billion.

* NPS OPERATIONS MAINTENANCE: \$712.2 million, a \$31.4 million increase over a fiscal 2008 appropriation of

\$680.8 million.

* NPS CONSTRUCTION: \$172.5 million, a \$45.9 million decrease from a fiscal 2008 appropriation of \$218.4 million, and

* NPS REC & PRES: \$45.4 million, a \$22 million decrease from a fiscal 2008 appropriation of \$67.4 million.

* NATIONAL FOREST SYSTEM: \$1.345 billion, a big \$161 million decrease from a fiscal 2008 appropriation of \$1.506 billion.

* NATIONAL FOREST RECREATION: \$237 million, a substantial \$25.6 million decrease from a fiscal 2008 appropriation of \$262.6 million.

* NATIONAL FOREST TRAILS: \$50 million, a \$26.3 million decrease from a fiscal 2008 appropriation of \$76.365 million.

* NATIONAL WILDLIFE REFUGE OPERATIONS: \$434.1 million, or the same as a fiscal 2008 appropriation of \$434.1 million.

* BLM RECREATION: \$59.1 million, a decrease of \$8.8 million from a fiscal 2008 appropriation of \$67.9 million.

* NATIONAL LANDSCAPE CONSERVATION SYSTEM: \$21.8 million, an increase of \$3 million over a fiscal 2008 appropriation of \$18.8 million.

* CORPS OF ENGINEERS OPERATIONS AND MAINTENANCE: \$2.475 billion, or \$31 million more than a fiscal 2008 appropriation of \$2.244 billion.

* CORPS OF ENGINEERS CONSTRUCTION: \$1.4 billion, or \$900 million less than a fiscal 2008 appropriation of \$2.3 billion.

* FIRE FIGHTING FOREST SERVICE: \$1.880 billion, or \$378 million less than a fiscal 2008 appropriation of \$2.258 billion (counting a fiscal 2008 emergency supplemental).

* FIRE FIGHTING INTERIOR: \$850.1 million, or \$206.9 million less than a fiscal 2008 appropriation of \$1.057 billion (counting a fiscal 2008 emergency supplemental).

* STATE SIDE OF LWCF: no grant money, or \$24.6 million less than a fiscal 2008 appropriation of \$24.6 million, but \$6.3 million in automatic allocations for grants from OCS oil and gas revenues.

* STATE AND TRIBAL WILDLIFE GRANTS: \$73.8 million, the same as a fiscal 2008 appropriation of \$73.8 mil-

lion for this program administered by the Fish and Wildlife Service.

* UPAR: no money requested, compared to the same appropriation in fiscal 2008.

* FED SIDE OF LWCF: \$42.5 million, compared to a fiscal 2008 appropriation of \$129.7 million. For individual agencies: NPS would receive \$21.8 million, compared to a fiscal 2008 appropriation of \$44.4 million; the Fish and Wildlife Service would receive \$10.2 million, compared to a fiscal 2008 appropriation of \$34.6 million; the Bureau of Land Management would receive \$4.5 million, compared to a fiscal 2008 appropriation of \$8.9 million; and the Forest Service would receive \$6 million, compared to a fiscal 2008 appropriation of \$41.8 million.

* HISTORIC PRESERVATION FUND grants: \$41.7 million, or \$4.1 million less than a fiscal 2008 appropriation of \$45.8 million.

* SAVE AMERICA'S TREASURES (money comes from the Historic Preservation line item): \$15 million, or \$9.4 million less than a fiscal 2008 appropriation of \$24.6 million.

* NEW PRESERVE AMERICA GRANTS (money comes from the Historic Preservation line item): \$10 million, or \$2.6 million more than a fiscal 2008 appropriation of \$7.4 million.

* NATIONAL HERITAGE AREA GRANTS (money comes from a Recreation and Preservation line item): \$7 million, or \$8.3 million less than a fiscal 2008 appropriation of \$15.3 million.

NPCA calls for \$2 billion to buy out NPS inholdings

The National Parks Conservation Association (NPCA) said April 8 the Park Service should purchase almost \$2 billion in inholdings within the National Park System. And should complete the purchases by the NPS Centennial in 2016.

In releasing a report on the acquisition backlog NPCA said, "At Valley Forge, one out of every ten acres inside the park's boundary is privately owned. At Gettysburg National Military Park the number is one in five. At Zion National Park in Utah, the acquisition of ten

acres of land from willing sellers would help stem the tide of commercial and residential development. . ."

NPCA said Congress should provide the money via appropriations to the federal side of the Land and Water Conservation Fund (LWCF), beginning with a fiscal year 2009 appropriation of \$100 million. If Congress met NPCA's demands, it would have to appropriate more than \$200 million for NPS acquisitions each fiscal year after that.

NPCA's request comes less than a week after state and local agencies and conservation groups made their annual pitches to Congress for increased appropriations. (See following article.)

NPCA said all the NPS acquisition money need not come from the federal side of LWCF. It cited the example of a partnership that teams Acadia National Park and two nonprofits - Friends of Acadia and the Maine Coast Heritage Trust - to purchase 140 parcels within Acadia at \$40 million.

In addition Congress is working on legislation to establish a \$2 billion Centennial Challenge Fund to prepare the National Park System for its Centennial. And some of that money could be used for land acquisition.

Ron Tipton, a senior vice president for NPCA, said at an April 8 press conference, "Congress may in the end pass this legislation which may provide \$100 million a year for 10 years for needed park Service projects. They may decide to say specifically that land acquisition is eligible. It could help us with the funding needs. In that case we'd be talking about a public-private match. We know of some significant major potential donors who'd be willing to help purchase Park Service land."

But NPCA said those partnerships can only do so much. Eventually, Congress is going to have to put up the money through the federal side of LWCF. And on that count Congress has failed, said the association.

"In the 43-year history of the

program, lawmakers have traditionally approved just a fraction of the LWCF funds available, though many members of Congress have supported the program. For example, between fiscal years 1965 and 2006, roughly \$29 billion was credited to the LWCF account, but only \$14.3 billion of that total was appropriated for use," said the report.

The NPCA report, *America's Heritage for Sale*, analyzes land acquisition needs for these ten parks:

- * Big Thicket National Preserve
- * Congaree National Park in South Carolina
- * Gettysburg National Military Park
- * Golden Gate National Recreational Area
- * Harpers Ferry National Historical Park
- * Mount Rainier National Park
- * Obed Wild and Scenic River in Tennessee
- * Petrified Forest National Park near Phoenix
- * Sleeping Bear Dunes National Lakeshore in Michigan
- * Virgin Islands National Park in St. John

The report is available from NPCA at its website, <http://www.npca.orglandsforsale>.

Fifty senators endorse \$125M for state LWCF appropriation

Half of all U.S. senators - 50 of them - last week signed a letter to appropriators requesting an appropriation of \$125 million for the state side of the Land and Water Conservation Fund (LWCF.) The Bush administration has requested no grant money for the program in fiscal year 2009.

The April 2 letter, sponsored chiefly by Sens. Ken Salazar (D-Colo.) and Susan Collins (R-Me.), pitched the importance of recreation facilities to health. "Each dollar invested in building a convenient trail or park is an investment in public health and improved quality of life," they wrote.

The friends of LWCF sent the letter to Sen. Diane Feinstein (D-

Calif.), chairman of the Senate subcommittee on Interior appropriations, and Sen. Wayne Allard (R-Colo.), ranking subcommittee Republican. The letter did not mention any other programs.

In the end all the requests of special interests may not matter much because Congress is reportedly considering simply extending a fiscal 2008 appropriations law into 2009, with minor adjustments.

Separate from the state LWCF letter on April 3 an alliance of conservation groups marching as the Land and Water Conservation Task Force, made a separate plea for \$125 million for the state side of LWCF, but twinned it with a request for other programs.

The coalition also asked for \$278 million for the federal side of LWCF (the administration requested \$51 million), \$120 million for the Forest Legacy program administered by the Forest Service (the administration requested \$12.5 million), \$85 million for state and tribal wildlife grants administered by the Fish and Wildlife Service (the administration requested \$74 million.)

Speaking for the alliance, Allan Front, senior vice president for the Trust for Public Land, told the House subcommittee on Interior appropriations that the programs "make a real difference in the lives of countless Americans. Whether we walk in a local park, cross-country ski through a national forest, or canoe across a lake or a bayou, our daily lives are healthier and reinvigorated by the public land experiences these programs foster."

Although the administration requested no money for state LWCF grants, it did insert a request for \$1.4 million in fiscal 2009 for administration of the state LWCF grant program in a Recreation and Preservation line item, thus keeping it alive.

In addition a new program to refer some Outer Continental Shelf oil and gas leasing revenues to state LWCF grants will begin in fiscal 2009. The program

will provide an estimated \$6.3 million of automatic money outside the appropriations process.

State wildlife conservation grants did better in the budget request. The administration recommended \$74 million, the same as Congress appropriated in fiscal 2008.

The administration has also been tough on the federal side of LWCF at Interior. For fiscal 2009 NPS would receive \$21.8 million, compared to a fiscal 2008 appropriation of \$44.4 million; the Fish and Wildlife Service would receive \$10.2 million, compared to a fiscal 2008 appropriation of \$34.6 million; and the Bureau of Land Management would receive \$4.5 million, compared to a fiscal 2008 appropriation of \$8.9 million.

The Senate Energy Committee is also calling for increased appropriations for the federal and state sides of LWCF. In annual recommendations to the Senate Budget Committee, the energy panel said, "(M)any of us oppose the Administration's proposed cut in the (LWCF) spending."

Said the committee, "Last year, the Administration requested only \$59 million for the federal side of the program, the smallest amount in the program's forty-two year history. This year, the Administration requests even less - only \$51 million - for the federal program, and nothing for the state program."

Senate appropriators promise to keep FS spending whole

Influential Democratic and Republican senators last week said they will attempt to provide the Forest Service with solid financial assistance in fiscal year 2009.

Sen. Dianne Feinstein (D-Calif.), chairman of the Senate subcommittee on Interior Appropriations, deplored what she said was a proposed Bush administration reduction of 15 percent for the agency.

She said at a subcommittee hearing on the Forest Service's fiscal 2009 budget, "So rather than take time here today to go through the budget line-by-line, let me just say for the record that I plan to work with Sen. (Wayne) Allard (R-Colo.) and Sen. (Pete) Domenici (R-N.M.) and other members of our subcommittee to undo these proposed cuts and restore the Forest Service budget to a reasonable level."

Ranking subcommittee Republican Allard chimed in that the "proposed reductions for the Forest Service are not justified." He tore into the Office of Management and Budget (OMB) for treating the Forest Service like a poor cousin compared to Interior Department agencies.

"There is a fundamental difference in the way OMB treats the Forest Service compared to other agencies in the Department of Interior, like the National Park Service and the Bureau of Land Management," he said. "Those agencies aren't singled out for reductions each year. I believe OMB is making deep cuts in the Forest Service because of increased costs in fire fighting. I fundamentally disagree with this approach."

Allard said an upcoming Government Accountability Office study of a possible transfer of the Forest Service to Interior may not be a bad way to go. "While I haven't considered the idea in depth," he said, "when I look at the unequal treatment of the Forest Service compared to Interior agencies it makes me wonder if a transfer doesn't make sense."

Sen. Lamar Alexander (R-Tenn.) suggested Congress consider establishing a separate agency for emergency fire fighting to take the pressure off the Forest Service budget.

Undersecretary of Agriculture Mark Rey cast doubt on the suggestion. "We have considered whether it makes sense to establish a separate forest fire agency," he said. "We concluded it doesn't buy you very much. The issue of fire fighting costs still remains."

For fiscal 2009 the administration recommended \$1.345 billion for management of the National Forest System, or \$161 million less than a fiscal 2008 appropriation of \$1.506 billion. In addition the administration has requested \$545 million more for national forest fire programs in fiscal 2009 than for the operation of the National Forest System.

For recreation in fiscal 2009 the administration requested \$237 million, a substantial \$25.6 million decrease from a fiscal 2008 appropriation of \$262.6 million. For national forest trails the administration requested \$50 million, a \$26.3 million decrease from a fiscal 2008 appropriation of \$76.365 million.

In the end all the talk about Congress redoing the Forest Service budget may not matter because Congress is reportedly considering simply extending a fiscal 2008 appropriations law into 2009, with minor adjustments.

Senators, rec boaters try to head off waste permits

Six Senate Democrats and eight Republicans have teamed up to introduce legislation to ward off an impending federal order that all recreational boats obtain water discharge permits, beginning October 1.

The legislation (S 2766) is designed to overcome a court order that requires a permit for 13 million recreation vessels in the country. The bill says simply that no permit is needed for the discharge of gray water, bilge water, engine oil, etc, "if the discharge is from a recreational vessel."

Recreational boaters are urging sportsmen to contact their senators to move the legislation. "It's not an exaggeration to say that it will take an act of Congress to fix this problem before boaters across the country will be required to wait in DMV-style lines for multiple, complex, costly permits," said Boat Blue, an alliance of the National Marine Manufacturers Association and Boat Owners Association of the United States.

It matters that Sen. Barbara Boxer (D-Calif.) is an original cosponsor of S 2766 because she chairs the Senate Environment and Public Works Committee, which oversees the legislation. Besides, she is one of the strongest environmentalists in the Senate and the demand for permits came from an environmentalist lawsuit.

The U.S. District Court in Northern California issued the permit mandate in a Sept. 18, 2006, decision. It told EPA that under the Clean Water Act (CWA) the agency must require a permit for the discharge of water for all vessels. EPA had issued regulations in May 1973 that exempted "discharges incidental to the normal operation of a vessel." The court vacated that exemption.

EPA subsequently on June 21, 2007, notified the public that it would require permits after September 2008 and would develop a "permitting framework," i.e. identify the price of permits and a method for 13 million owners of recreational boats to obtain permits.

So Boxer, principal bill sponsor Bill Nelson (D-Fla.) and the other senators are trying to head off the permitting, as they say in their bill, "if the discharge is from a recreational vessel."

Fifteen sport fishing and environmental groups brought the original lawsuit against EPA's 1973 regulation because they were concerned about the spread of non-native species around the country via wastewater. They argued that the CWA does not provide an exemption from the requirement.

"Nowhere does the statute exempt 'discharges incidental to the normal operation of a vessel' from the requirement to obtain a permit," said the plaintiffs led by the Pacific Environmental Advocacy Center. "To the contrary, the Act specifies that vessels are point sources under the CWA."

Judge Susan Illston agreed. She also rejected EPA's argument that permitting 13 million vessels would be burdensome. "The Court is confident,

however, that EPA has both the expertise and discretion to find an adequate solution to the problem at hand," she said.

"Moreover," the judge held, "EPA, the industry, and the regulatory agencies all have more than two years to prepare for any behavioral change that results from EPA's action. The Court believes this is a sufficient amount of time to soften the suddenness of the regulatory change."

Blue Boat and its allies argued that the judge erroneously wrapped recreational vehicles into a regulation targeted at larger ships that expel ballast water.

"Unfortunately, the court's decision to overturn the entire exemption unintentionally tossed recreational boats into the same category as commercial ships," said Thom Dammrich, president of the National Marine Manufacturing Association. "While minimizing the exchange of ballast water from one international port to another is very important in reducing the spread of aquatic invasive species, it is equally important not to sweep small recreational boats into the same regulatory scheme."

The 1973 regulation exempts from a permit, "Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel."

Senate committee schedules (then cancels) FLREA hearing

The odds that Congress will move legislation this year to eliminate the meat of a controversial federal recreation fee law increased last week when the Senate Energy Committee scheduled a hearing on a repeal bill.

Although the committee subsequently canceled the hearing on the bill (S 2438), energy committee chairman Jeff Bingaman (D-N.M.) is clearly interested in the legislation.

Bingaman has made no commitment on S 2438 yet, said a committee spokesman. "I suspect we'll know more of his views on this after he's chaired a hearing and heard from all the witnesses," said the staff member. But Bingaman did open the way for consideration of the bill by scheduling the hearing.

The staff member claimed jurisdiction for the Bingaman committee, even though rumor has it that the likely place for implementation is a fiscal year 2009 omnibus appropriations law. The targeted legislation, the Federal Lands Recreation Enhancement Act (FLREA) was enacted (PL 108-447) on Dec. 8, 2004, in an appropriations bill, an omnibus fiscal 2005 bill.

Senate Finance Committee Chairman Max Baucus (D-Mont.) is the lead sponsor of S 2438. He was joined as cosponsors by Sens. Ken Salazar (D-Colo.), Mike Crapo (R-Idaho) and Jon Tester (D-Mont.)

The energy committee said the hearing was cancelled because of a scheduling conflict. The administration was expected to send up high-powered witnesses including Under Secretary of Agriculture Mark Rey and Deputy Secretary of Interior Lynn Scarlett.

Critics maintain that federal land management agencies, the Forest Service in particular, went overboard in collecting fees, particularly entrance fees to areas that include developed sites.

S 2438 would leave in place only Park Service entrance fees (as established in a previous law), with 80 percent of revenues still retained by collecting NPS units. In other areas S 2438 would:

- * eliminate collection of "standard amenity fees" at developed sites that the 2004 law authorized for the Forest Service, the Bureau of Land Management, and the Bureau of Reclamation,

- * eliminate retention of recreation fees by the agencies and return use fees to the U.S. Treasury,

- * cap entrance fees charged by NPS at \$25 for a single visit by car, \$12 by foot or bicycle, and \$40 for an annual

pass (instead of \$15),

- * eliminate a multi-agency American Passport and reinstate the old Golden Eagle and Golden Age Passports charged by the Park Service, and

- * increase the Golden Eagle passport fee from \$25 to \$65.

FLREA established a permanent program that included authority for federal land management agencies to collect user fees; the Park Service and the Fish and Wildlife Service to collect entrance fees; the Forest Service, the Bureau of Land Management and the Bureau of Reclamation to collect access fees to developed recreation sites; and all agencies to sell and honor the new All-American Passport.

For the most part the law allowed collecting offices to retain 80 percent of revenues for infrastructure repair initiatives. And that is where critics, such as the Western Slope No-Fee Coalition, say the law went awry.

Notes

Farm bill spending criticized.

Conservationists and their allies in the House are raising alarms about a proposal to reduce spending for conservation programs in a multi-year farm bill by \$1 billion. House and Senate Agriculture Committee leaders had reached a tacit agreement last month to spend \$5 billion on conservation programs over the next five year. However, some farm state legislators are petitioning the committees to establish a \$4 billion emergency disaster program, including \$1 billion from conservation. At an April 3 press conference Reps. Ron Kind (D-Wis.), Paul Ryan (R-Wis.), Earl Blumenauer (D-Ore.), and Jeff Flake (R-Ariz.) stood up for the conservation programs. "Negotiators should not put these programs on the chopping block in favor of additional subsidies for millionaire farmers who don't need them," said Kind. The House and Senate have given themselves until April 18 to complete the five-year farm bill (HR 2419) that is now in a House-Senate conference committee. The House and Senate Agriculture Committees are negotiating with each other and with the White House on a

spending formula for the legislation. At press time the House and Senate were considering a further extension.

Wetlands bill takes Senate step.

The Senate Environment and Public Works Committee held an opening hearing April 9 on legislation (S 1870) that would require a Corps of Engineers/EPA wetlands construction permit for most waters in the country. Former EPA Administration Carol M. Browner endorsed the bill from Sen. Russ Feingold (D-Wis.) and 200 of his colleagues that would overturn a Supreme Court decision that implied permits should only be required for projects that affect navigable waters. House Transportation Committee Chairman James Oberstar (D-Minn.) and 172 cosponsors have introduced counterpart House legislation (HR 2421.) Both bills are aimed at reversing a June 19, 2006, Supreme Court decision, *Rapanos v. U.S. Nos. 04-1034 and 04-1384*. Despite the large number of cosponsors, HR 2421 and S 1870 have a tough road ahead because conservative groups regard the *Rapanos* dispute as a signature private property rights issue. In addition Sen. John Barrasso (R-Wyo.) said the legislation would severely disrupt state water law.

House approves Pacific protection.

The House approved legislation (HR 1187) March 31 that would protect 1,739 square nautical miles off the California coast. The legislation would add the land and ocean to the Gulf of Farallones and Cordell Bank National Marine Sanctuaries. "These additions would protect virtually the entire upwelling region, which is critical to the ecosystem's productivity, particularly the health of many valuable commercial and recreational fisheries in the area," said Rep. Patrick Kennedy (D-R.I.) Rep. Rob Bishop (R-Utah) opposed the bill because he said it would add almost 100 miles of coastline, with little or no public comment. But bill sponsor Lynn Woolsey (D-Calif.) said the proposal had been through three years of public comment. The House approved the bill without a tabulated count but with more than two-thirds in favor.

Immigration wall backed, opposed.

The U.S. Department of Homeland Security

said April 1 it will issue waivers of environmental laws in order to build an immigration barrier in the southwestern United States. A 470-mile wall in California, Arizona, New Mexico, and Texas, would pass through National Wildlife Refuges and lands managed as wilderness. Homeland Security Secretary Michael Chertoff said, "these waivers will enable important security projects to keep moving forward." The Sierra Club and Defenders of Wildlife petitioned the Supreme Court March 17 to declare the law authorizing the waivers unconstitutional. The environmentalists said the separation of powers provision of the Constitution forbids such a delegation of power. On April 7 fourteen House Democrats joined the lawsuit, led by House Homeland Security Committee Chairman Bennie G. Thompson (D-Miss.) Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) wrote Secretary of Interior Dirk Kempthorne April 2 to determine the department's role in promoting the fence.

BLM director is ailing. BLM Director Jim Caswell has prostate cancer and was scheduled to undergo surgery this week to have it removed. He will be out of the office for six weeks after surgery but will remain in contact with the agency and with agency policies. "The prognosis is good," said a BLM spokesman. "There is no evidence the cancer has spread beyond the prostate." Caswell, 62, learned of the cancer last month and is encouraging bureau employees to get tested for prostate cancer.

Conference calendar

APRIL

13-16. **National Hydropower Association** annual meeting. Contact: National Hydropower Association, One Massachusetts Ave., N.W., Suite 850, Washington, DC 20001. (202) 682-1700. <http://www.hydro.org>.

15-17. **Outdoor Industry Association Capitol Summit** in Washington, D.C. Contact: Outdoor Industry Association, 4909 Pearl East Circle, Suite 200, Boulder, CO 80301. (303) 444-3353. <http://www.outdoorindustry.org>.

27-29. **America Boating Congress** in Washington, D.C. Contact: National Marine Manufacturers Association, 444 N. Capitol Street, NW Suite 645, Washington, DC 20001. (202) 737-9750. <http://www.nmma.org>.

MAY

4-7. **National Sporting Goods Association** annual meeting in Phoenix. Contact: National Sporting Goods Association, 1601 Feehanville Drive, Suite 300, Mt. Prospect, IL 60056-6035. (847) 296-6742. <http://www.nsga.org>.

4-7. **National Summit on Environmental Stewardship "For People, Parks, and Public Lands"** in Portland, Ore. Contact: National Recreation and Parks Association, 22377 Belmont Ridge Road, Ashburn, VA 20148-4150. (703) 858-0784. <http://www.nrpa.org/esummit>.

13-15. **National Association of Recreation Resource Planners** annual meeting in Missoula, Mont. Contact: National Association of Recreation Resource Planners, 2001 Jefferson Davis Highway, Suite 1004, Arlington, VA 22202-3617. (703) 416-0060. <http://www.narrp.org>.

28-31. **National Ski Areas Association** annual meeting in San Francisco, Calif. Contact: National Ski Areas Association, 133 South Van Gordon St., Suite 300, Lakewood, CO 90228. (303) 987-1111. <http://www.nsaa.org>.

JUNE

11-14. **International Snowmobile Congress** in Boise, Idaho. Contact: Perry Hesteness, Idaho State Snowmobilers Association. (208) 309-1750. <http://www.idahosnowbiz.com/>.

18-21. **International Mountain Biking Association** 2008 World Summit in Park City, Utah. Contact: International Mountain Bicycling Association, MBA 207 Canyon - Suite 301, Boulder, CO 80302 (303) 545-9011. <http://www.imba.com/about/index.html>

20-24. **U.S. Conference of Mayors** annual meeting in Miami. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, D.C. 20006. (202) 293-7330. <http://www.usmayors.org>.