

Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Celina Richardson

Volume 26 Number 8, April 25, 2008

In this issue. . .

First Centennial awards set.

NPS allocates \$53 million to 114 parties in 38 states. Bill to establish \$2B program still needs offsets to move Page 1

SAFETEA bill moves up a bit.

Senate approves corrections bill but adds complicating amendment. Many projects are at risk .. Page 2

Deal would limit Hatteras OHVs.

Proposed settlement of lawsuit calls for ban at night. Judge still must approve decree .. Page 3

House approves new BEACH act.

Would extend law and have EPA study fairness of grants for testing health of beaches .. Page 4

Hill critics fire at Utah OHVs.

Nine senators and 87 House members wary of BLM plans Page 5

OHVs wary of FS route plans.

Fear deadline will be missed, money at root of concern ... Page 6

Conferees: Farm bill pact near?

House, Senate leaders send each other new final pitches Page 7

GOP, Corps oppose wetlands bill.

Object to measure defining water bodies that need permits ... Page 8

FS publishes risky planning rule.

Does minimal EIS review. Enviros promise more litigation Page 9

Notes Page 10

Boxscore of Legislation Page 12

Kempthorne, Bomar roll out first NPS Challenge awards

The Park Service April 24 allocated \$53 million to park improvement projects in an inaugural round of Centennial Challenge Fund grants. Federal appropriations will provide \$24.6 million of the \$53 million and matching nonfederal contributions \$28.4 million.

Meanwhile, legislation to establish a semi-permanent, \$2 billion Centennial Challenge Fund continues to face the same problem that has bedeviled it for a year - finding an offset from new money or savings from other existing programs to pay the freight.

The Senate and House are still working on separate, but similar, bills. Although the Senate Energy Committee has yet to begin work on its lead bill (S 2817), it may actually be further along than its counterpart House Natural Resources Committee.

That's because the sponsors of S 2817, led by Sen. Ken Salazar (D-Colo.), have apparently come up with a more workable offset - Outer Continental Shelf oil and gas revenues that exceed anticipated revenues. The \$90 million per year from offshore royalties (plus \$10 million from special postage stamps) would be matched each year by \$100 million in nonfederal donations.

House Natural Resources Committee Democrats and Republicans on paper are still at loggerheads over offsets. Unusually, the Democrats favor Bush administration recommendations that the money come from the state share of oil and gas royalties, a fee for processing oil and gas leasing permits, and cancellation of an ultra-deepwater oil and gas research program.

Committee Republicans for a variety of reasons object to the administra-

tion levies. They would prefer to see some revenues come from an enhanced timber salvage sale program.

Program supporters such as Tom Hill, legislative representative for the National Parks Conservation Association, are not totally discouraged by the House impasse. "I'm kind of optimistic because the bill in the Senate is starting to pick up cosponsors," he said. "I think they can bridge the partisan gap because this is not a partisan issue."

At least three possible options present themselves to House Natural Resources Committee Chairman Nick Joe Rahall (D-W.Va.), lead sponsor of the House bill (HR 3094.) One, he could adopt the Senate proposal on offshore oil and gas royalties and the special stamp. It is understood the committee has sought, or will seek, a Congressional Budget Office "score" on such a strategy.

Two, Rahall could attempt to work out a compromise with committee Republicans on options already before the committee, paired with the special stamp or other proposals. Finally, the House approved a Congressional budget (H Res 312) March 13 that could allow the committee to go outside its jurisdiction and use any revenues or cost-savings they could find from any House program.

We emphasize Rahall's role not only because he is the lead sponsor of the bill the committee is considering, but also because he received the National Parks Conservation Association's prestigious William Penn Mott, Jr., Award April 16. And this was after all National Park Week.

Secretary of Interior Dirk Kempthorne and NPS Director Mary Bomar announced the initial Centennial Challenge Fund grants at an event on the Capitol grounds. Congress included the \$24.6 million in a fiscal year 2008 appropriations bill (PL 110-161 of Dec. 26, 2007) to give the program a head start in anticipation of the enactment of the Centennial Challenge Fund legislation.

The grants will fund 110 projects

and involve 114 parties in 38 states. Park superintendents reportedly briefed partners this week on the grants. Information on the selected projects is available at: <http://www.nps.gov/2016>.

Bill to correct SAFETEA-LU details faces new obstacles

Although both the House and Senate have now approved legislation (HR 1195) to make "technical corrections" to a giant, three-year old surface transportation law, the measure still has a way to go.

The Senate posted one obstacle when it included in its bill an amendment calling on the Justice Department to investigate an earmark in the existing law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act, of August 10, 2005 (SAFETEA-LU.)

That earmark allocated \$10 million for the construction of an Interstate 75 interchange in Florida even though the provision had not been in SAFETEA-LU when the House and Senate had voted to pass the legislation in 2005. The earmark was added later before President Bush signed the bill.

The House-passed version of HR 1195 includes no such provision. Thus, the House would have to accept the Senate provision for HR 1195 to pass.

And Speaker of the House Nancy Pelosi (D-Calif.) reportedly would prefer that the House Ethics Committee conduct an investigation, not the Justice Department. Former House Transportation Committee Chairman Don Young (R-Alaska) sought the interchange, even though the Florida Congressman who represented the area opposed it.

HR 1195 is called a technical corrections bill because at the bottom line it would not increase spending above the \$286.5 billion SAFETEA-LU provide for transportation infrastructure for fiscal years 2005 to 2009.

Said Sen. Barbara Boxer (D-Calif.), chairman of the Senate Environment and Public Works Committee on the

Senate floor, "It is foolish for us to ignore this bill or to try to stop this bill because it doesn't cost an additional penny. The funding comes through the highway trust fund, and that funding is there. If we do not make these technical corrections, a lot of projects simply will be stalled."

Said Sen. James Inhofe (R-Okla.), ranking committee Republican who agrees with Boxer on virtually nothing except SAFETEA-LU, "Now, it is my understanding, and I believe it is true, that the total amount of authorization that was in the bill itself is not changed by the technical corrections bill. A lot of people are implying it is. I do not believe it is. We have had staff and ourselves looking at it. It may change some of the priorities in the authorization, but the overall figure, the top line, is going to be the same."

In another obstacle the Bush administration is digging in its heels because HR 1195 revises many, perhaps hundreds of, earmarks that are in SAFETEA-LU.

"The presence of excessive earmarks in the 2005 bill created significant inefficiencies in the allocation of resources to fund transportation infrastructure," said the Office of Management and Budget in threatening a veto. "The effort through H.R. 1195 to modify these earmarks from an authorization that passed only three years ago is a further reflection of those inefficiencies. Therefore, the Administration urges that these provisions be removed from the bill."

Sen. Jim DeMint (R-S.C.) backed the White House. "While it certainly is correct that the total cost of the bill is about the same, we do need to remember that by next year, we are projecting over a \$3 billion shortfall in the trust fund," he said on the Senate floor. "So instead of adding to earmarks and creating new ones, it makes sense to try to save some of that money so we can fund important infrastructure projects around the country."

If the technical corrections bill fails to pass, it could bring to a halt

numerous earmarked park and recreation projects around the country that require slightly altered legal direction. Not to mention big highway projects that are in the same boat.

Thus when push came to shove the Senate approved HR 1195 by an 88-to-2 margin. The House approved its version in March 2007 by a voice vote.

Interim deal would limit OHVs on Hatteras beaches

The National Park Service has agreed to bar off-highway vehicle (OHV) use at night on Cape Hatteras National Seashore beaches to protect the piping plover, loggerhead sea turtle, and other species.

If accepted by a federal judge, the consent decree would essentially forbid OHV use at night during the peak summer and shoulder seasons. And it would bar OHV access within breeding zones. The decree would last until NPS completes a travel management plan.

The Park Service is not ready to predict the decree will reduce OHV use. "I don't necessarily expect to see a reduction in use," a park official told *FPR*. "Anytime you make a management change, it's a wild card. We do know we need to do a better job of balancing OHV use with protection of birds."

The decree would settle a lawsuit brought on behalf of Defenders of Wildlife and the National Audubon Society against the Park Service and Dare and Hyde Counties in North Carolina. Judge Terrence Boyle must sign off on the decree before it can become final. He hasn't indicated when he will render a decision. The case is cited as *Defenders of Wildlife et. al. v. NPS, No. 2:07-CV-45-BO*.

"This agreement should lay to rest any concerns that wildlife can't coexist with beach driving at Cape Hatteras," said Jason Rylander, staff attorney for Defenders. "While this proposed consent decree still requires approval from the court, the partnership that put this deal together has demonstrated that we

can protect our wildlife heritage while ensuring that traditions like beach driving, fishing and surfing will continue along the seashore."

The environmentalists filed suit in October 2007 to protest Park Service and Fish and Wildlife Service management policies that they argue endanger the plovers, turtles and other species. One of their first demands was a ban on beach driving on 12 percent of the shoreline.

OHV use at night would be banned at night from May to November, except for educational purposes. Says the decree, "To increase the chances of successful turtle nesting, NPS shall close all potential sea turtle nesting habitat (ocean intertidal zone, ocean backshore, and dunes) to nonessential ORV use from 10 p.m. until 6 a.m. from May 1 to November 15, except as set forth in paragraph 25 below."

The paragraph 25 exception would allow permits only for educational purposes.

The highly-technical, complex 23-page agreement also would establish barriers around breeding grounds. For instance for the piping plover the decree says, "The ORV closure area shall extend for 1000 m (meters) on each side of a line drawn through the nest site and perpendicular to the long axis of the beach. If disturbance from ORVs and/or pedestrians, as observed by NPS natural resource management staff, occurs within the given buffer distance, the buffer zone shall be expanded in 50 m increments until no disturbance occurs."

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

The decree and background information are available at:
http://www.defenders.org/newsroom/press_releases_folder/2008/04_16_2008_hatteras_beach_driving_negotiations_successful.php.

House passes new BEACHES Act, orders study of health grants

Despite Republican demands that Congress address more important issues, the House April 16 approved legislation (HR 2537) to beef up a law that calls on states to protect their beaches.

The program is powered by grants to states to monitor the health of beaches. Under an existing 2000 law Congress may authorize up to \$30 million per year in grants, although appropriators usually put up \$10 million. HR 2537 would increase the authorization to \$40 million.

The bill also addresses - but does not resolve - a controversy noted by the Government Accountability Office: EPA allocates grants to states based almost entirely on the length of the beach season, and not on the number of visitors to beaches. Thus, some states with lengthy beaches and short seasons qualify for less grant money than states with short beaches and long seasons.

Rep. Candace Miller (R-Mich.) complained, "My home State of Michigan is disadvantaged by the minimal consideration given to beach miles. In 2006, Michigan, that has 3,224 shoreline miles, received a grant allocation of only \$278,000. By contrast, one of our neighboring States, that has only 63 shoreline miles, received \$243,000. Due in part to this funding disparity, Michigan is only able to monitor 212 of its 905 beaches."

HR 2537 directs EPA to conduct a study over the next year of the formula it uses to distribute grant money to states. The legislation would have EPA consider "varied beach monitoring and notification needs, including beach mileage, beach usage, and length of beach season, and other factors that the Administrator determines to be appropriate."

However, Benjamin H. Grumbles, assistant administration for Water at EPA, told a Senate subcommittee last year that many states like the existing

formal. "One of the key issues identified by (a) State/EPA workgroup is how to ensure that any readjustment to the formula does not occur at the cost of a particular state being unable to continue its current monitoring and reporting activities," he said.

The original Beaches Environmental Assessment and Coastal Health Act (BEACH Act, PL 106-284) was signed in 2000 and has been used since to identify bacteria in coastal waters and beaches. Rep. Frank Pallone, Jr. (D-N.J.) is the lead sponsor of the new bill (HR 2537.)

Sen. Frank Lautenberg (D-N.J.) is the lead sponsor of a Senate bill (S 1506) that would jack up the grant authorization to \$60 million, even more than the \$40 million in the House bill. Both bills would extend the law through 2012. The Senate has taken no action on the Lautenberg bill yet.

The legislation would have EPA develop a strategy for testing beach waters within six hours. EPA's Grumbles said the administration is working on the problem but would need five years to come up with new standards.

Although Republican Rep. Miller welcomed the BEACH Act amendments bill, other Republicans said it was a waste of the House's time.

Said Rep. Steve Chabot (R-Ohio), "I rise to express my deep disappointment with today's debate in the House. With our Nation facing record high gas prices, the majority leadership in the House has chosen to debate legislation not on securing reliable and affordable energy, but on beaches. I suggest a better use of our time and the American people's time would be to have a serious debate about energy."

Hill critics of OHV use aim their fire at Utah plans

Nine senators and 87 House members last week asked the Interior Department to limit off-highway vehicle (OHV) use in 11 million acres of public land in Utah overseen by the Bureau of Land Management (BLM.)

The legislators wrote Secretary of Interior Dirk Kempthorne to complain that six draft resource management plans BLM is developing leave open 3 million acres of pristine land to OHV use.

"Indeed, the BLM's preferred plans would authorize nearly 1,000 miles of off-road vehicle routes in these roadless areas," said the legislators, led by Sen. Dick Durbin (D-Ill.) and Rep. Maurice Hinchey (D-N.Y.)

The Utah plans have focused national attention on the use of motorized vehicles on federal lands. Both the BLM and the Forest Service are writing travel management plans to designate routes across the country where OHVs are welcome.

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 carry out the strategy on Oct. 1, 2001.

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. (*See following article on Forest Service program.*)

OHV users and their critics in the environmental community have focused much of their attention in Utah on the revision of management plans in the Kanab, Moab, Monticello, Price, Richfield and Vernal districts. Those plans will govern 11 million acres of the 23 million acres BLM manages in the state. The comment period deadlines for the six draft plans have closed and final plans are due out soon.

OHV users argue that they willingly agreed to limit the use of their vehicles on public lands to designated routes, an agreement that wasn't universally popular with their community.

But environmentalists and their allies in Congress counter that BLM has tilted too much toward OHV use and against protection of the resource. In

their April 17 letter to Kempthorne in re the Utah draft plans the House and Senate members paired their attack on OHV use with an attack on oil and gas development.

Said Hinchey, "Once again, the federal government has a choice - either open up the wilderness quality land in Utah for oil and gas development and off-road vehicles, or safeguard these millions of acres so that generations of future Americans can enjoy this part of our country in its natural, precious state."

In their letter to Kempthorne the House and Senate members urged that he insure BLM chooses a management alternative from the draft plans that provides maximum protection to the land, i.e. limits OHV use as much as possible.

The legislators said, "Decisive action at the highest levels of the Interior Department is necessary to ensure that these iconic roadless lands of the Colorado Plateau are protected from the scars of off-road vehicle routes and energy development."

More information is available at BLM's website: http://www.blm.gov/wo/st/en/prog/Recreation/recreation_national/travel_management.html.

OHVers fear FS won't finish route plans anytime soon

Motorized recreation interests are becoming frustrated by a Forest Service program to designate routes for off-highway vehicle (OHV) users.

The recreationists fear the Forest Service won't complete the designation process in the next two years, as promised.

Money may be at the root of the problem, said Larry E. Smith, executive director Americans for Responsible Recreational Access (ARRA.) In an interview with FPR Smith said, "Our big frustration is I don't think the agency is adequately funding the effort. We had supported the need to establish a design-

nated fund, but they argued against it."

Smith said Congress has not provided as much money to the Forest Service as recreationists would like, but did not lay the blame entirely on the Hill. "On the Hill last year Congress restored travel management money," he said. "We are asking for that again. But money for travel management doesn't come just from recreation management or from trails (accounts) but is allocated by each forest (from all accounts.)"

Deidre St. Louis, Forest Service off-highway vehicle program manager, said, "We're still on schedule." That schedule calls for completion of about half of individual forest travel management plans by the end of fiscal year 2008 and the remainder by the end of fiscal 2009.

The Forest Service kicked off its campaign to write travel management plans for recreation vehicles in 155 forests and 20 grasslands with Nov. 2, 2005 regulations. The idea is to restrict motorized recreation vehicle use to designated corridors.

The Bureau of Land Management (BLM) is going through a similar exercise. Much of the attention right now is focused on six resource management plans BLM is nearing completion in Utah. Nine senators and 87 House members last week asked the Interior Department to limit OHV uses in Utah. (See previous article.)

In addition such environmental groups as the Public Employees for Environmental Responsibility (PEER) are attempting to limit OHV use nationally on public lands. For instance on April 17 PEER and its allies filed a petition with the Council on Environmental Quality, asking the administration to forbid OHV use on federal lands that could conflict with hunting opportunities.

Federal land managers from all agencies are presently developing conservation plans, due to be finished by August 17, that promote hunting. PEER says OHV use often clashes with hunting. "America desperately needs a strong

coordinated federal approach to protect hunting and fishing from on-going off-road abuse of our wild lands," said Daniel Patterson, Southwest PEER director.

The petition was sent to the Council on Environmental Quality. "It is in that spirit that we call on you to begin implementation of the President's August 16, 2007 Executive Order (13443) with a priority on ending and mitigating the harm caused to hunting and fishing opportunities from illegal and reckless off-road vehicle use on national public lands," said PEER.

Of course the point of the Forest Service and BLM travel management plans is to restrict OHVs to "legal" routes.

But ARRA's Smith said such groups as PEER don't always cooperate in developing travel management plans. "I see a major conflict between OHV and recreation people with those people who don't want access," he said. "We've tried to work within the system and see if we can compromise, but there doesn't seem to be a willingness on others' parts."

In a slightly different area Smith fears that recreation initiatives such as a Recreational Trails Program will be at a disadvantage when Congress writes a new surface transportation law next year. The existing law, the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), is due to expire then.

"We're potentially in real trouble when you have bridges collapsing. The next highway bill will feel the effect," he said. "Any program that takes money away from concrete and steel is going to be in real trouble. We hear that DoT has not asked for money in the budget for recreational trails. We realize there will be a new administration but the bureaucracy is setting the tone. We're assuming we're going to need to be more proactive."

More information on the Forest Service travel management program is available at: <http://www.fs.fed.us/recreation/programs/ohv/>.

House, Senate conferees say they are close on farm bill

House and Senate leaders were tossing "final" farm bill proposals around this week as they faced still another deadline for completing a bill before the farming season begins.

The most recent extension of the old law expires today, April 25. "My gut instinct is something is going to break," said one conservationist who is close to the discussions. "I think they would have gone for a longer extension if they weren't serious." Congress at press time was preparing a two-week extension of the old law.

Formal discussions are being held in House-Senate conference committees, as well as in informal discussions running parallel to the conferences. The conferees last met formally April 22.

Said Senate Agriculture Committee Chairman Tom Harkins (D-Iowa) before the conferees started meeting this week, "I intend to start calling for formal votes of the conference committee (shortly.) It's time to finish this bill, so I urge House conferees to consider this framework and negotiate in good faith so that we can meet our impending deadline."

Conservationists - including both sportsmen and environmentalists - are urging conferees to include in the bill (HR 2419) a \$5 billion increase in overall conservation spending. In an April 11 proposal Senate conferees recommended a \$4 billion increase for conservation, including the conservation reserve program (CRP), but not counting a sode-saver program. In an April 10 proposal House conferees had recommended the same.

But conservationists are concerned that a last-second, \$4 billion disaster assistance program included in the Senate proposal would in part come out of their programs. A coalition of Democratic and Republican House members protested earlier this month. Reps. Ron Kind (D-Wis.), Paul Ryan (R-Wis.), Earl Blumenauer (D-Ore.), and Jeff Flake (R-Ariz.) objected to the proposal.

The House and Senate conferees must also strike an agreement with the Bush administration on sources of off-sets to pay for new spending. The April 10 House proposal and April 11 Senate proposal recommended a combination of business user fees, broker fees and credit card compliance to come up with the money. The House is seeking \$4 billion in new money and the Senate, because of the disaster assistance program, \$10 billion.

President Bush said April 22 that Congress must make a deal this week or extend a 2002 farm bill through the entire year to give farmers more opportunity to plan their seasons. "(T)here are no signs that the conference committee will reach agreement on an acceptable farm bill by Friday," he said. "I therefore call on Congress to provide our agricultural producers with the certainty to make sound business and planting decisions about this year's crop by extending current law for at least one year."

Major substantive concerns for conservationists are caps in the 2002 farm law on acreage that farmers are paid to set aside for conservation, such as a Grasslands Reserves Program, a Wetlands Reserve Program and a Conservation Reserve Program. Those programs have either reached acreage caps or are approaching the caps. Without a farm bill and infusions of new money little additional acreage could be set aside.

The House would allow for increases in the Conservation Reserve Program beginning Oct. 1, 2009, and would add 200,000 acres per year to the Wetlands Reserve Program.

The version of HR 2419 approved by the Senate Dec. 14, 2007, includes basic conservation programs such as a Conservation Reserve Program, a Wildlife Habitat Improvement Program, a Wetlands Reserve Program, a Grasslands Reserve Program, and an Environmental Quality Incentives Program. It also includes a new program to encourage private land-owners to open their property to hunters and fishermen.

The House approved its version of

HR 2419 July 27, 2007. It also included most of the conservation programs advocated by hunters and fishermen.

GOP leaders and Corps fault bill to regulate wetlands

Despite a significant number of sponsors, legislation to expand federal permitting of projects in wetlands faces opposition that may be just as significant as the number of sponsors.

At House and Senate hearings earlier this month the Bush administration teamed with senior Republicans on both sides of the Hill to blast the legislation (HR 2421, S 1870.)

The critics said the bills, designed to require permits in areas beyond navigable waters, would essentially "cripple" the nation's economy and promote a flood of lawsuits.

"This bill could lead to the regulation of virtually every wet area in the country," said Rep. John Mica (R-Fla.), ranking Republican on the House Transportation Committee at an April 16 hearing. "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."

He added, "With our economy in troubled waters, this legislation would put another nail in our economic coffin, creating even more uncertainty in the marketplace and driving up the cost of producing almost any U.S. product."

Mica then teamed up with Sen. James Inhofe (R-Okla.), his counterpart as ranking Republican on the Senate Environment and Public Works Committee, to attack the legislation. Inhofe said, "We should not propose, let alone pass legislative language that increases uncertainty, burdens local governments, and challenges the sanctity of private property rights."

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. House Transportation Com-

mittee Chairman James Oberstar (D-Minn.) and Sen. Russ Feingold (D-Minn.) are the lead sponsors. Twenty senators have sponsored S 1980 and 178 House members back HR 2421.

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."

Woodle continued, "A second concern is that the bill could open up a whole new line of litigation regarding the limits of Congress's legislative power under the constitution, creating additional uncertainty and unpredictability for the environment, the regulated community and state and federal agencies."

At the House committee hearing Oberstar said that administrative interpretations of the *Rapanos* decision by the Corps and EPA wouldn't suffice. "The lack of a clear, definitive standard in the *Rapanos* decision would mean that any subsequent agency action would further build on this judicial 'house of cards,'" he said.

An aide to Oberstar said that the chairman has asked all witnesses to provide him with suggestions for a definition of a wetland that should be regu-

lated. "That's the next step," said the staff member. "We're waiting to see what comes back."

In a letter to 25 witnesses who have testified on the issue Oberstar put limits on the recommendations. "I request that you include language protecting geographically isolated, intrastate waters, and intermittent, ephemeral, and headwater streams, to the extent that these waters were subject to the Clean Water Act prior to (*Rapanos*)," he said.

As introduced the bills 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."

Ducks Unlimited and other sportsmen's groups have taken the lead in supporting HR 2421 and S 1870. They fear that unregulated construction in wetlands will destroy crucial habitat and breeding grounds. They argue that 52 percent of the nation's wetlands have been lost and that 80,000 acres disappear each year.

FS publishes new planning rule with minimal EIS review

The Forest Service completed a new planning rule April 21 that runs the risk of ending up on the losing end of a federal court decision.

A coalition of environmentalists led by Earthjustice promised to return to court to follow up on a previous lawsuit that persuaded a federal court in northern California to block a 2005 administration planning rule. The environmentalists and the court said the

Forest Service failed to prepare an EIS for the 2005 rule.

This time around the Forest Service has prepared an EIS. However, environmentalists argue the EIS failed to assess the environmental impacts of the rule. The Forest Service says no assessment is required now because individual forests will evaluate any impacts later when specific projects are proposed.

"That's going to be the next big issue - did they do an adequate EIS?" said Mike Anderson, senior resource analyst for The Wilderness Society. "We dealt with that in the last case when the Forest Service argued that plans don't make decisions. I think we're going to be largely rearguing that in the next bout of litigation."

In a record of decision the service said succinctly, "The EIS explains there are no environmental impacts resulting from promulgating this rule." A service spokesman confirmed, "The planning rule doesn't have any impacts on the ground. When we review projects, that's when the rubber will hit the road."

One coalition of 14 environmental groups, including the Center for Biological Diversity, jumped the gun April 11 and filed suit before the regulations became official in the *Federal Register*, but after the record of decision and EIS were made public. "The Forest Service violated the law in preparing new rules in 2000 and 2005, and the 2008 rule is also fatally flawed," said Marc Fink, an attorney with the center.

The Bush administration issued the first iteration of its national forest planning rules on Jan. 5, 2005. The 2005 rule and the new rule are designed to give the 155 national forests guidance in writing land use plans that last for a decade.

U.S. District Court Judge Phyllis J. Hamilton in Northern California ruled March 30, 2007, that the Forest Service violated NEPA by not writing a programmatic EIS for the 2005 rule. The Forest

Service said 38 forest plans have been held up because of the decision.

These eight forests had proposed plans and were forced to suspend them because of Judge Hamilton's decision: Cimarron-Comanche, Colo.; Lolo, Mont.; Bitterroot, Mont.; Flathead, Mont.; Idaho Panhandle; Kootenai, Mont.; Uwharrie, N.C.; and Grand Mesa Uncompahgre and Gunnison, Colo.

In the final SEIS the Forest Service chose an Alternative M as its preferred alternative. The service said Alternative M is modeled on the preferred Alternative A in the 2005 planning rule, with some minor variations.

The Forest Service said plans written under Alternative M, compared to a 1982 Reagan administration planning rule, would take three years to complete instead of five, would cost the agency about \$50 million per year to prepare plans instead of \$71 million and would cost \$51 million to monitor instead of \$33 million.

The 2005 rule was controversial for a second EIS disagreement. The rule allowed individual forests to bypass preparation of an EIS for forest plans. That authority to bypass an EIS is included in the new rule. The service offers the same argument it offered in 2005 for not preparing a programmatic analysis: Plans don't authorize any specific activities that require environmental analysis; the analysis can be done later when specific projects are proposed, such as for a fuel reduction/timber harvest projects.

The Forest Service rule, record of decision and final EIS are available at: http://www.fs.fed.us/emc/nfma/2008_planning_rule.html.

Notes

Concessions board enters fray. An advisory board to the Park Service last week asked NPS Director Mary Bomar to put together a policy that clarifies who has the right to sell what products within national parks. The National Park Service Concessions Management Advisory Board said NPS should resolve

an ongoing dispute between concessioners and cooperating associations over the right to sell retail products. In an April 16 letter to Bomar the board said, "A major issue of concern to the Board is the role of cooperating associations and their sale of retail products in the national parks. This issue has been around for some time to the frustration of all parties concerned. It is time for NPS to air the issues fully and come to closure on this matter with a comprehensive plan that works for concessioners, cooperators, the agency and above all - the visitor." The board said concessioners are frustrated because cooperating association use favored space within parks, yet don't pay the franchise fees and business costs that concessioners do.

DoI backs Utah lands bill. The Department of Interior April 22 praised a new southern Utah lands bill (S 2834) that would both authorize land sales and protect broad swaths of public land. Assistant Secretary of Interior for Land and Minerals Management Julie Jacobson told the Senate Energy Committee the administration supports the protective land designations in the bill, such as two new national conservation areas and a major wild and scenic river. Jacobson did not object to the proposed sale of 5,000 acres of Bureau of Land Management (BLM) land that has not yet been cleared for disposal by land management plans. Bill sponsors Sens. Bob Bennett (R-Utah) and Orrin Hatch (R-Utah) say the 5,000 acres represents a compromise from the 19,000 acres they would have sold in a Washington County bill in the last Congress. The administration opposed such sales in the last Congress because land use plans didn't declare them excess. This time the lands will be identified in plans. Bennett is optimistic that the compromises he has made will open the way to enactment this year. "The persistence we've applied now appears to be paying off as our bill has gained extremely diverse support and a very good chance of passing," he said. S 2834 would designate 166 miles of the Virgin River and its tributaries in Zion National Park as part of the National Wild and Scenic Rivers System.

N.J. parks in big trouble. A fiscal year 2009 budget proposal for New Jersey's park management fund would reduce spending by 25 percent, forcing the partial closure of major state parks, state forests and recreation areas. The budget would chop \$8.8 million out of a \$34 million fiscal 2008 budget, according to the National Trust for Historic Preservation. Meanwhile, the environmental group Public Employees for Environmental Responsibility (PEER) said April 21 the New Jersey Department of Environmental Protection is failing to collect millions of dollars in fees from corporations that use state lands. Those fees are due from oil companies, power companies and farmers who pay below market rent to use public lands, said PEER. As an example PEER said farmers in Six Mile Run and Delaware and Raritan Canal State Park pay no rent. Delaware and Raritan Canal State Park is slated to close some facilities and to suspend interpretive services.

Electric corridors criticized. State and local governments repeated charges April 15 at a Congressional hearing that the Department of Energy (DoE) failed to consult with them before designating two huge electrical transmission corridors - one in the Southwest and one in the East. Environmentalists have already flooded the courts with lawsuits protesting the designations. The corridors should help energy companies gain approval of electrical transmission rights-of-way by granting the Federal Energy Regulatory Commission authority to override state and local objections and by providing companies with eminent domain powers. At the April 15 hearing of the House subcommittee on National Parks, Forests and Public Lands, a New Mexico state Official said, "The State of New Mexico and the department have expressed their willingness to work with DOE and BLM on this effort, but we have had no indication that the agencies are interested in ensuring that the citizens of New Mexico and the other affected western states will have the environmental and other impacts of the energy corridors fully evaluated before the designations occur." The testimony was delivered by Joanna Prukop, secretary of the New

Mexico Energy, Minerals and Natural Resources Department. The chairman of the House subcommittee, Rep. Raúl Grijalva (D-Ariz.), suggested that Con-

gress write a new law and force DoE to do extensive consultation before designation new corridors.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations 2009 No bills yet	President Bush submitted his budget recommendations Feb. 4.	President would decrease spending for most park and rec programs, except NPS.
Congressional Budget 2009 H Con Res 312 (Spratt) S Con Res 70 (Conrad)	House approved March 13. Senate approved March 13.	Would increase natural resources spending but mostly for Hurricane Katrina.
NPS Centennial Challenge S 1253 (Bingaman) HR 2959 (Rod Bishop) HR 3094 (Rahall) S 2817 (Salazar)	House and Senate hearings Aug. 2, 2007.	S 1253 and HR 2959 would establish \$2 billion program to help the parks. Rahall would impose new DOI fees. Salazar would rely on OCS royalties.
NPS tax assistance HR 1731 (Baird)	Baird introduced March 28, 2007.	Would authorize NPS improvement fund financed by income tax check-off.
FLREA repeal S 2438 (Baucus)	Baucus introduced Dec. 10, 2007.	Would repeal most of 2004 federal agency recreation fee law.
Heritage areas national S 278 (Thomas) HR 1483 (Regula)	Senate committee approved July 25, 2007. House approved Oct. 25, 2007.	Would establish national standards for new NHA designations. HR 1483 Would designate six new NHAs.
Farm bill HR 2419 (Peterson)	Senate approved Dec. 14, 2007. House approved July 27, 2007.	Would authorize major conservation programs for five years, including new Open Fields program.
Conservation tax credits S 469 (Baucus) HR 1576 (Thompson)	Senate committee approved Sept. 20, 2007. Thompson introduced March 19, 2007.	Would make semi-permanent conservation tax credits Congress approved last year.
Wildlife conservation grants HR 3221 (Pelosi) HR 2338 (Dicks)	House approved August 4, 2007. Dicks introduced May 16, 2007.	Both would make grant program permanent, open way for new source(s) of money.
American Discovery Trail/National Discovery Trails HR 74 (Bartlett)	Bartlett introduced Jan. 4, 2007.	Would designate an American Discovery Trail and discovery trail system.
Trail acquisition authority S 169 (Allard) HR 1847 (M Udall)	Allard introduced Jan. 4, 2007. Udall introduced March 29, 2007.	Would authorize land acquisition authority for nine national trails.
Trail expansion authority S 580 (Hatch)	Senate committee approved June 26, 2007.	Would authorize route variations for four national historic trails.
Arizona trail S 1304 McCain HR 2297 (Giffords)	Senate hearing Sept. 11, 2007. Giffords introduced May 14, 2007.	Would designate 807-mile trail from bottom to top of Arizona.
NLCS for Bureau of Land Management HR 2016 (Grijalva) S 1139 (Bingaman)	Senate panel approved May 23, 2007. House approved April 9.	Would give Congressional blessing to national conservation system.
Rim of the Valley (SMMNRA) S 1053 (Feinstein) HR 1835 (Schiff)	House approved Dec. 4, 2007 in omnibus bill, HR 3998.	Would authorize a study of a major expansion of SMMNRA.