

# Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

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**NPS maintenance backlog up; 2017 budget would address**

Just before the Obama administration February 9 requested a substantial \$163 million increase in appropriations to attack a Park Service maintenance backlog, the agency issued some bad news. It said the backlog had swelled in the last year by even more than that amount.

On February 5 NPS pegged its maintenance backlog at \$11.927 billion, or \$434 million more than it was a year ago. Half of that backlog is for road construction that is paid for by a surface transportation law. The other half is paid from fiscal year appropriations bills.

In releasing its fiscal 2017 budget request February 9 the administration asked for \$1.094.5 billion for non-roads Park Service maintenance, compared to a fiscal 2016 appropriation of \$931.5 million. We count just facility maintenance and construction line items.

The fiscal 2016 appropriation represented an almost \$100 million increase over fiscal 2015. The fiscal 2017 budget request would add \$163 million on top of the \$100 million.

And that does not include a \$15 million fiscal 2016 appropriation for a Centennial Challenge Fund that is to be matched by nonfederal money. For fiscal 2017 the administration asked for \$35 million for the fund.

So NPS Director Jonathan B. Jarvis is bullish. With the release of an annual report on the agency's maintenance backlog February 5, he both praised Congress for the fiscal 2016 appropriations hike, and asked for more.

"We have a lot yet to do but I

think everything is moving in the right direction," he said. "Congress has pitched in with base funding and with additional funds for the Centennial Challenge - a program that enables us to leverage private and non-profit partner contributions to complete important projects that improve visitor services in parks. There is more Congress can do through the Centennial Act now under consideration including short-term mandatory appropriations."

The National Parks Conservation Association (NPCA) also put pressure on the Hill. "If Congress doesn't make our parks a national priority in the federal budget now, then when?" asked NPCA President Theresa Pierno. "While Congress did begin to reverse years of declining funding for our national parks with its latest spending bill, the reality is that years of underfunding have significantly harmed our parks."

But Republican appropriators are in no mood to sharply increase federal spending, no matter what the cause.

As House Appropriations Committee Chairman Hal Rogers (R-Ky.) summed up the administration request, "The President's final budget unfortunately doesn't look much different than other years - it is a spending wish list that doesn't reflect our real budgetary constraints and that would saddle hard-working Americans with additional taxes and fees."

NPS said that at the conclusion of fiscal 2015 on Sept. 30, 2015, the total deferred maintenance backlog for the Park Service came to \$11.927 billion. One year earlier the total backlog was \$11.493 billion. So it had increased by \$434 million.

For nonroad, appropriated maintenance NPS said the backlog hit \$5.952 billion at the end of September, or \$91 million more than the \$5.861 billion backlog at the end of fiscal 2014.

For road maintenance paid by a surface transportation bill the NPS backlog reached \$5.975 billion at the end of September, or \$343 million more

than the \$5.632 billion backlog at the end of fiscal 2014.

In December President Obama signed into law surface transportation legislation (PL 114-94) that provides a modest increase to NPS road spending over the next five years.

The law sets aside \$335 million in fiscal 2016 for federal land roads, with \$268 million of that going to the National Park Service. By fiscal 2020 the federal lands allocation would increase to \$375 million and the NPS share \$300 million. In addition the bill establishes a Federal Lands Access Program for major road projects beginning at \$250 million in fiscal 2016 and growing to \$270 million in fiscal 2020.

Meanwhile, the Senate has before it a proposal to allocate \$150 million per year in new money to Park Service maintenance from offshore oil and gas revenues. The proposal is part of an omnibus energy bill (S 2012) and is part of a larger provision to revise the Land and Water Conservation Fund. S 2012 is temporarily stalled but may shake loose soon.

## **Administration takes one more shot at fully-funded LWCF**

The Obama administration February 4 put an exclamation point on its long-standing request for full funding for the Land and Water Conservation Fund (LWCF), making the request even before the fiscal 2017 budget came out five days later on February 9.

The administration echoed its recommendation of the last three years that Congress take a bifurcated approach to putting up the \$900 million per year it said the program deserves.

Under the recommendation for fiscal 2017 about half of the \$900 million would come from regular appropriations, or \$475 million, and about half of it would come from new legislation to guarantee money for the program each year without an appropriation, or \$425 million. For the following fiscal year

and beyond the administration would have all money guaranteed outside an appropriations bill.

The plan was announced February 4 by Deputy Assistant Secretary of Interior for Policy Kris Sarri and Under Secretary of Agriculture Robert Bonnie. They emphasized the economic benefits rendered by LWCF.

"When we talk about investing in our future, the Land and Water Conservation Fund is one of the most effective programs there is, with conservation and recreation projects serving as a big boon to local economies, bolstering tourism and supporting jobs," they said in a joint statement. "For every \$1 invested through the Land and Water Conservation Fund, there is an estimated return of \$4 in local economic activity. This is not only good for our nation, environment and people, it's also a good return on investment."

The proposal is not likely to go far in Congress. Western Republicans have long criticized the program, particularly federal land acquisition. Still Congress is being pressured by both political parties to authorize the program in perpetuity, but perhaps still subject to annual appropriations.

Most prominently, House Natural Resources Committee Chairman Rob Bishop (R-Utah) late last year proposed a draft LWCF reauthorization bill that would allocate just 3.5 percent of annual LWCF money to federal land acquisition. His draft would also extend LWCF for seven years, always as an appropriated program.

On release of the administration recommendation, ranking committee Democrat Raúl M. Grijalva (D-Ariz.) praised it and criticized Bishop. "Conserving and preserving land and recreational opportunities for future generations shouldn't get tangled up in the partisan games too many House Republicans have been playing," he said. "Two hundred of my colleagues in Congress, both Democrats and Republicans, have spoken up and cosponsored my bill permanently

reauthorizing the program, but Chairman Bishop has twiddled his thumbs and ignored the public's plea to reauthorize the fund."

Grijalva has introduced the administration's recommendation as a stand-alone bill (HR 1814).

Meanwhile, the Senate in the last two weeks began consideration of legislation that would authorize LWCF permanently (the fiscal 2016 appropriations bill extended it through fiscal 2018) and revise spending priorities. The Senate provision would also set aside \$150 million per year from offshore oil and gas royalties for Park Service maintenance.

Although that legislation, an omnibus energy bill (S 2012), is currently stuck on the Senate floor in a dispute about water quality assistance to Flint, Mich., it may shake loose shortly.

If it does shake loose, two major amendments are waiting in line on the Senate floor that would revise LWCF priorities. One amendment would give more emphasis to state grants than to federal acquisition and the other would require Congressional approval of any federal acquisition costing more than \$50,000 per acre.

The base energy bill would allot 40 percent of the total LWCF appropriation per year to federal land acquisition and at least 1.5 percent per year (or more than \$10 million) to improve access to federal land for recreational purposes. It would also require expenditure of at least 40 percent of annual LWCF appropriations for a combination of state LWCF grants, Forest Legacy grants, endangered species grants and an American Battlefield Protection Program.

In one Senate floor amendment (SA 3032) Sen. John Barrasso (R-Wyo.) would rejigger the formula by directing appropriators to allot 60 percent of LWCF money each year to states and 40 percent to federal land buys. He has introduced that legislation as a stand-alone bill (S 2318).

In the other Senate floor amendment (SA 3210) Sen. James Lankford (R-Okla.) would require Congressional approval of any federal land acquisition costing more than \$50,000 per acre. And he would have NPS give more emphasis to federal land management agency maintenance.

A half-dozen LWCF reauthorization bills have been introduced in the House and Senate, most straight-up permanent extensions. In the Senate they include S 338 from Sen. Richard Burr (R-N.C.), S 890 from Sen. Maria Cantwell (D-Wash.), S 1925 from Sen. Martin Heinrich (D-N.M.) and S 2165 from Cantwell.

In the House two bills to reauthorize LWCF have been introduced, one from Grijalva, HR 1814, and one from Rep. Mike Simpson (R-Idaho), HR 4151. And in mid-November Bishop introduced his discussion draft bill. Bishop's committee held a hearing on the issue Nov. 18, 2015.

The numbers: Here are the administration's LWCF recommendations for fiscal 2017, compared to a fiscal 2016 appropriations law (PL 114-113 of Dec. 18, 2015):

**LWCF FEDERAL:** From appropriations, the budget recommends \$257.347 million for the traditional federal land acquisition side of LWCF, compared to a fiscal 2016 appropriation of \$234.2 million. By agency the Bureau of Land Management (BLM) would receive \$44 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service would receive \$58.7 million compared to \$68.5 million; the Park Service would receive \$68 million compared to \$63.7 million; and the Forest Service would receive \$65.7 million compared to \$63.4 million.

**LWCF STATE:** The administration recommended \$110 million, the same as in fiscal 2016.

## **White House budget proposes increases for park and rec**

Although boxed in by a spending agreement it struck with Congress in

November, the Obama administration February 9 nevertheless recommended modest increases in spending on park and rec programs in fiscal year 2017.

Three proposals in particular would free up more money for park and recreation programs in an Interior Department and Related agencies spending bill - diversion of emergency wildfire spending out of a bill, diversion of a county assistant program out of a bill and new revenues on commodity users of public lands.

One big winner in the administration budget would be the Land and Water Conservation Fund (LWCF). *(See previous article.)*

**NPS CENTENNIAL:** The administration renewed its call for a trio of new Park Service Centennial programs that would require new authorization from Congress worth \$500 million per year. It asked for \$100 million for a new Centennial Challenge Fund, \$300 million per year for deferred maintenance in a new Second Century Infrastructure Investment and \$100 million for a new competitive Public Lands Centennial Fund.

House and Senate committees in 2015 held hearings to lay the groundwork for the authorizing Centennial legislation - a Centennial Challenge Fund, Second Century Infrastructure Investment and a competitive Public Lands Centennial Fund. However, no legislation has begun to move in committee, although House Natural Resources Committee Chairman Rob Bishop (R-Utah) did introduce a stripped-down discussion draft bill late last year.

Says the administration budget request, "The Budget proposes \$860 million in discretionary and mandatory funding to allow NPS, over 10 years, to make targeted, measurable, and quantifiable upgrades to all of its highest priority non-transportation assets and restore and maintain them in good condition."

The National Parks Conservation Association (NPCA) estimated that the budget request recommends an "overall \$250 million, 9 percent increase in

appropriated funding for the National Park Service," including a \$155 million increase in Park Service operations.

In a separate development Sen. Maria Cantwell (D-Wash.) offered an amendment (SA 3295) on the Senate floor February 9 that would implement the administration's \$500 million per year Centennial program. Cantwell, ranking Democrat on the Senate Energy Committee, posted the amendment to a high-priority energy bill (S 2012). Given already delicate debate on the energy bill about nonconforming amendments, SA 3295 is a long shot at best.

Cantwell had earlier introduced the provision as a stand-alone bill (S 2257), as had ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.), HR 3556.

For other land management agencies the fiscal 2017 budget recommends an appropriation of \$1.501 billion for the National Forest System compared to \$1.509 billion in fiscal 2016 and an appropriation of \$1.075 billion for Bureau of Land Management (BLM) resource management compared to an appropriation of \$1.073 billion in fiscal 2016.

**FIRE:** The administration resumed its request of the last two years that Congress shift emergency wildfire costs above the average to disaster spending. The budget asks Congress once again to transfer any costs above 70 percent of emergency costs out of the regular appropriations bill.

Says the fiscal 2017 budget request, "It is a priority of the Administration to ensure adequate funds are available to fight wildland fires, protect communities and human lives, and implement appropriate land management activities to improve the resiliency of the Nation's forests and rangelands. To accomplish this, the Budget again proposes to establish a new budget framework for wildland fire suppression, similar to how other natural disasters are funded."

Congress responded to that request in fiscal 2016 by simply appropriating more money for fighting wildfires.

Three Senate committee chairmen said on the floor January 27 that they were working on a solution to paying for soaring wildfire costs. Senate Budget Committee Chairman Mike Enzi (R-Wyo.), Senate Agriculture Committee Chairman Pat Roberts (R-Kan.) and Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) said they intend in 2016 to tackle the problem of exploding emergency wildfire spending.

Although the three did not offer any concrete solutions, a lead champion of the administration plan, Sen. Ron Wyden (D-Ore.), said of the colloquy among the three chairmen, "But I think what we heard last week strikes me as a beginning to finally getting this unstuck, . . ."

**PILT:** The administration asked Congress to put up money for the payment-in-lieu of taxes county assistance program (PILT) outside the appropriations bill. In the fiscal 2016 appropriations law Congress included \$452 million for PILT, decreasing the amount of money available for other programs. In recent years Congress had financed PILT outside of appropriations bills with guaranteed money.

Says the administration budget, "The 2017 Budget proposes to extend mandatory funding for PILT for one additional year while a sustainable long-term funding solution is developed for the program. The cost of a one-year extension at the current authorized level is estimated to be \$480 million in FY 2017."

**FLREA:** Once again the administration recommended that Congress extend the existing Federal Land Recreation Enhancement Act (FLREA) for one more year through Sept. 30, 2018, to give the House and Senate time to rewrite the law. The law is scheduled to expire on Sept. 30, 2017.

**New revenues:** As it has for years, the administration recommended imposition of a royalty on hard rock minerals produced from public lands, an increase in the grazing fee on public lands and numerous levies on energy companies operating on the public lands.

Congress has for years ignored those recommendations.

The administration was somewhat limited in its budget request by the budget agreement (PL 114-74 of Nov. 2, 2015). It essentially freezes fiscal 2017 domestic spending at fiscal 2016 levels. To generate revenues above the agreement - without requiring offsets for higher spending - the administration proposed the new commodity levies.

However, conservative House members are suggesting the agreement is not sacrosanct. They reportedly asked Speaker of the House Paul Ryan (R-Wis.) last week to sharply reduce federal spending. The conservatives, members of the House Freedom Caucus, have not made a formal request yet to slash the fiscal 2017 budget, according to media accounts.

And old-line Republicans are not pleased with the administration's proposed new revenue recommendations. Said House Appropriations Committee Chairman Thad Cochran (R-Miss.), "President Obama's final budget proposal contains all manner of new spending and tax increases, and a troubling reliance on mandatory spending to skirt spending limits. There will be little appetite in Congress for mandatory spending that diminishes fiscal discipline and congressional oversight."

**The numbers:** Here are some of the administration's recommendations compared to a fiscal 2016 appropriations law (PL 114-113 of Dec. 18, 2015):

**LWCF FEDERAL:** From appropriations, the budget recommends \$257.347 million for the traditional federal land acquisition side of LWCF, compared to a fiscal 2016 appropriation of \$234.2 million. By agency the Bureau of Land Management (BLM) would receive \$44 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service would receive \$58.7 million compared to \$68.5 million; the Park Service would receive \$68 million compared to \$63.7 million; and the Forest Service would receive \$65.7 million compared to \$63.4 million.

**LWCF STATE:** From appropriations, the administration recommended \$110 million, the same as in fiscal 2016.

**PARK SERVICE OPERATIONS:** The administration recommended \$2.524 billion, compared to a fiscal 2016 appropriation of \$2.396 billion.

**PARK SERVICE CONSTRUCTION:** The administration recommended \$252 million, compared to a fiscal 2016 appropriation of \$192.5 million.

**PARK SERVICE HISTORIC PRESERVATION:** The administration recommended \$87.4 million, compared to a fiscal 2016 appropriation of \$65.4 million.

**PARK SERVICE RECREATION AND PRESERVATION:** The administration recommended \$54.4 million, compared to a fiscal 2016 appropriation of \$62.6 million.

**PARK SERVICE HERITAGE GRANTS:** The administration recommended \$8.5 million, compared to a fiscal 2016 appropriation of \$19.8 million.

**STATE WILDLIFE CONSERVATION GRANTS:** The administration recommended \$67 million, compared to a fiscal 2016 appropriation of \$60.6 million.

**NATIONAL FOREST SYSTEM:** The administration recommended \$1.501 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

**NATIONAL FOREST RECREATION:** The administration recommended \$263.9 million, compared to a fiscal 2016 appropriation of \$261.7 million.

**NATIONAL FOREST TRAILS:** The administration recommended \$78.5 million, compared to a fiscal 2016 appropriation of \$77.5 million.

**BLM RESOURCE MANAGEMENT:** The administration recommended \$1.075 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

**BLM RECREATION MANAGEMENT:** The administration recommended \$71.9 million, compared to a fiscal 2016

appropriation of \$69.5 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The administration recommended \$50.7 million compared to a fiscal 2016 appropriation of \$36.9 million.

FWS REFUGE MANAGEMENT: The administration recommended \$506.6 million compared to a fiscal 2016 appropriation of \$481.4 million.

## **White House would boost surface transportation money**

The Obama administration formally proposed February 9 a significant new source of revenue for surface transportation - a \$10 per barrel tax on oil. It could produce a modest windfall for park and recreation programs.

However, pushing the tax through a Republican Congress that is strongly supportive of energy industries will be difficult to impossible.

But the proposal for the tax, which could produce as much as \$65 billion per year, is on the table and up for discussion as part of a broader reform of the nation's tax code.

The sketchy administration proposal would allocate \$30 billion per year to a broad array of new and different programs to "transform regional transportation systems," said the White House.

"We need a sustainable funding solution that takes into account the integrated, interdependent nature of our transportation system," said the administration. "Travelers choose between walking, biking, driving, flying, and taking the train; and companies choose between trucks, barges, airplanes and rail lines. So to meet our needs in the future, we have to make significant investments across all modes of transportation."

House Ways and Means Committee Chairman Paul Ryan (R-Wis.) immediately attempted to pour cold water on the idea, calling it "little more than an election-year distraction" that would be

"dead on arrival" on the Hill.

The energy industry is opposed. Said Kathleen Sgamma, vice president of government and public affairs at the Western Energy Alliance: "The proposed \$10 per barrel tax is out of step with reality as economic growth slows in the world's largest oil-producing country, the United States, because of low oil prices. Increased taxes on American oil is a recipe for more job losses and continued sluggish growth."

The White House views the tax - the equivalent of an increase of 24 cents per gallon of gasoline - as a supplement to a five-year surface transportation law the President signed Dec. 4, 2015 (PL 114-94). The current gasoline tax is 18.4 cents per gallon.

PL 114-94 should provide a modest increase in park and recreation spending over the next five years.

In one major provision the law effectively retained a broad category of spending that finances park and rec programs called the Transportation Alternatives Program. House and Senate conferees renamed the initiative a Surface Transportation Block Grant Program and set aside \$835 million for it in this fiscal year and the next fiscal year. After that it would receive \$850 million per year.

The law also insures that the Recreational Trails Program (RTP), one of the individual programs that would draw money from the block grant program, continues to receive a guaranteed \$85 million per year.

In a second overarching provision the law sets aside \$335 million in fiscal 2016 for federal land roads, with \$268 million of that going to the National Park Service. By fiscal 2020 the federal lands allocation would increase to \$375 million and the NPS share \$300 million. In addition the bill establishes a Federal Lands Access Program for major road projects beginning at \$250 million in fiscal 2016 and growing to \$270 million in fiscal 2020.

But the big hold up in completing

the bill was not directly related to outdoor programs; it was finding money to pay for the \$300 billion monster.

The Highway Trust Fund is the lead mechanism to pay for surface transportation programs, but it contributes only \$34 billion per year of the needed \$60 billion. So Congress and the White House must come up with \$26 billion or more per year from other sources of revenue, or increase gasoline taxes.

To that end the conferees patched together several funding sources including such high-risk strategies as using proceeds from the sale of oil in the Strategic Petroleum Reserve and money held by the Federal Reserve in case of an emergency.

There are other risks in the final bill that directly affect park and recreation programs. For instance the block grant program allows urban areas to transfer half of their money from the \$850 million per year block grant to other purposes.

In addition the Recreational Trails Program once again will allow states to opt out of the program. In fiscal 2015 and fiscal 2014 only Florida opted out. In fiscal 2013 Kansas also did.

On the other hand the law does include a new low-interest loan program for communities that want to connect trails, bike lanes and sidewalks. The Transportation Infrastructure Financing and Investment Act would require projects to cost at least \$10 million (down from \$50 million previously) and would provide communities with a streamlined application process.

## **Senate rejects curbs on national monuments in vote**

The national debate over the designation of major national monuments in President Obama's last year in office continues to deepen.

The debate has been intensified in the last month by the occupation of

the Malheur National Wildlife Refuge in Oregon by critics of federal management of the public lands. The possibility of the designation of a 2.5 million acre Owyhee Canyonlands monument is part of that debate.

To slow - or stop - such designations Sen. Mike Lee (R-Utah) introduced an amendment (SA 3023) to an omnibus energy bill (S 2012) January 27. But the Senate rejected the amendment February 2 by a vote of 47-to-48. Sixty votes were needed for passage.

Lee would allow a President to continue to unilaterally designate national monuments on federal lands under the Antiquities Act of 1906, but he would qualify that authority. If Congress or a state did not pass laws supporting the designation within three years, the designation would expire. And of course a Republican House or Senate would unlikely support such a designation.

Lee said on the floor, "The purpose of this amendment is simple - to put in the hands of the people the right to decide whether a monument close to them will be designated. My amendment would leave intact the President's authority to designate a monument such that we could protect land from imminent destruction, but it puts a fuse on that."

But ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) took issue with the amendment. "So this amendment requires State and Federal approval over a Federal land designation, which is unprecedented, giving away Federal land management responsibilities to States and a veto over these conservation efforts," she said.

It is a common assumption that President Obama, at the urging of environmental groups, will designate a handful of major national monuments in his last year in office. However, those environmentalists would as soon Congress pre-empt the President and pass legislation to designate monuments.

The Republican majority in



Congress has expressed more interest in legislation that would curb the President's authority under the Antiquities Act of 1906 by requiring Congressional or state approval of any Presidential designation.

House and Senate members have introduced a half-dozen bills in this Congress to establish such curbs. Lee's amendment follows that lead.

So controversies have sprung up in the West over possible looming designations. Notably, in the takeover of the Malheur National Wildlife Refuge in Oregon last month the occupiers and their sympathizers objected to the possible designation of a 2.5 million-acre Owyhee Canyonlands Conservation area nearby.

Said administration critic Rep. Greg Walden (R-Ore.), "Right now, this administration, secretly, but not so much, is threatening, in the next county over (to the Malheur refuge), that looks a lot like this one, Malheur County, to force a monument of 2.5 million acres, we believe." He added, "I think this is outrageous. It flies in the face of the people and the way of life and the public access." The Malheur refuge is in Harney County.

But Rep. Peter DeFazio (D-Ore.), who frequently works with Walden on land management issues, disagrees this time. He said the Owyhee Canyonlands should be protected. "This vast high desert area is worthy of protection, whether it is monument or wilderness," he said. "Many Oregonians, including people in eastern and central Oregon, agree that this is worthy of protection."

A similar fight is underway in Utah where conservationists have recommended a 1.4 million-acre Canyonlands National Monument on Bureau of Land Management land in the southern part of the state.

Perhaps in reaction to that recommendation Rep. Rob Bishop (R-Utah) January 20 proposed the designation of 333,866 acres of BLM land as a Canyonlands Wilderness Area adjacent to Canyonlands National Park. Bishop included the proposal in a discussion

draft of a Utah Lands Initiative he unveiled January 20.

As mentioned, driving Bishop and Rep. Jason Chaffetz (R-Utah) in part is the possibility that the Obama administration would designate large national monuments in eastern Utah. Conservationists have often recommended designation of the 1.4 million-acre Canyonlands National Monument.

With the designation of a handful of large national monuments possible in this last year of the Obama administration, hunters and fishermen are setting out their standards for new monuments.

Some of those tenets are predictable and noncontroversial, such as insuring that state fish and wildlife agencies have authority over fish and wildlife and that sportsmen have access to a monument.

But the tenets, circulated January 21, border on controversy when they recommend that any monuments designated from Forest Service and Bureau of Land Management (BLM) lands "remain under the authority of a multiple-use focused land management agency."

For some environmentalists, the words "multiple use" are code for commodity uses, such as oil and gas drilling, grazing and timber harvesting.

But Joel Webster, western public lands director for the Theodore Roosevelt Conservation Partnership, said that phrase simply means the lands should not be transferred out of the Forest Service and BLM.

The sportsmen's report is available at: [http://backcountryhunters.org/images/national\\_monuments\\_report\\_final.pdf](http://backcountryhunters.org/images/national_monuments_report_final.pdf).

## **Hunt-fish bill offered to omnibus energy legislation**

Leading Senate backers of omnibus sportsmen's legislation are offering it in two separate packages as amendments

to a "might-pass" omnibus energy bill (S 2012).

The energy bill is presently on the Senate floor and Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) has twice offered the sportsmen's package as an amendment to it. No votes have been held yet on the sportsmen's packages.

One of those packages (SA 3177) just addresses the hunting and fishing provisions the committee approved Nov. 19, 2015.

The other package (SA 3234) includes not only the hunting and fishing provisions, but also other kinds of bills approved by the committee, such as land exchanges and hydropower projects. Ranking committee Democrat Maria Cantwell (D-Wash.) cosponsored the latter package.

Not in either proposed amendment are a clutch of controversial provisions approved in sportsmen's legislation (S 659) by the Senate Environment and Public Works Committee (EPW) January 20.

Those provisions would forbid EPA from banning lead in sporting gear and would revise regulations on spraying pesticides. Ranking EPW Democrat Barbara Boxer (D-Calif.) has promised to do all she can to block the two provisions.

Even without the EPW controversies, it is not a given that Senate leaders will allow either of the two sportsmen's amendments to come to the floor; the leaders are trying to limit non-germane additions to the lead bill.

Despite all those conditions, the Senate in a number of ways is making the hunting and fishing package a priority. As noted two Senate committees have now approved complementary versions of omnibus legislation, setting up possible floor action singly or as an amendment to other legislation.

On January 20 the Senate EPW committee approved sportsmen's legislation (S 659) containing

provisions affecting programs that it oversees. The Senate Energy Committee Nov. 19, 2015, approved its own sportsmen's legislation (S 556) with provisions affecting programs it oversees.

Most Democrats and Republicans support in one fashion or another omnibus legislation to encourage hunting and fishing on and off the public lands. As they have for the last six years.

But the legislation also gets derailed over other issues such as gun rights and the renewal of the Land and Water Conservation Fund (LWCF).

For example, Boxer objected vociferously to EPW committee provisions that would forbid EPA from banning lead in sporting gear and would revise regulations on spraying pesticides.

"Taken together, these provisions are much more than just a poke in the eye to people, but are defiant acts toward American families who expect their country to protect them from poisons like pesticides that can harm the nervous system, impact the development of children and even cause cancer, and lead that can cause irreversible brain damage," she said.

"Unless the poison pills are dropped, I will do everything in my power to prevent this legislation from reaching the Senate floor. And if it does reach the Senate floor, I will do everything I can to stop it from becoming law."

But Sen. Deb Fischer (R-Neb.) said on the Senate floor of a possible lead ban, "(The bill) prevents groups for restricting ammunition choices, which would unnecessarily drive up costs, hurt participation in shooting sports, and consequently decrease important conservation fund."

Of pesticide regulations she said, "Pesticide users and registrants in Nebraska have been forced to deal with redundant federal regulations. The Environmental Protection Agency already regulates pesticides through strict instructions on product labels."

Fischer concluded, "Members of Congress have worked hard on the Bipartisan Sportsmen's Act for the last six year. It is time for the Senate to take action."

The game plan now is for Senate leaders to merge the provision of the EPW and energy committee bills and to bring them to the floor as one piece of legislation.

In addition to the lead and pesticides disputes in the EPW bill, the energy committee measure contains a potentially explosive provision of its own; it would make permanent LWCF and substantially revise it. And that would give many western Republicans cause to put a damaging hold on the bill.

Among the popular provisions in various packages of sportsmen's initiatives are proposals to declare federal lands managed by the Bureau of Land Management and the Forest Service open to hunting and fishing unless specifically closed; reauthorize the Federal Land Transaction Facilitation Act (FLTFA), which transfers money from federal land sales to the acquisition of conservation lands; and set aside at least 1.5 percent of annual LWCF money to secure access to public lands for hunting, fishing and other recreational uses.

However, when a wildly popular sportsmen's bill came to the Senate floor on July 10, 2014, it failed when it became caught up in the political crossfire between Democrats and Republicans in an election year.

The proximate cause of defeat was the refusal of Senate Majority Leader Harry Reid (D-Nev.) to allow any of 80 amendments to come to the floor. Reid said many of those amendments, such as gun rights, were designed to force Democrats to vote on controversial issues. He said Republicans were willing to sacrifice the bill for political gain.

Here's where the House and Senate stand right now:

HOUSE NATURAL RESOURCES COMMITTEE:

The House committee Oct. 8, 2015, approved legislation (HR 2406) by a vote of 21-to-15 that includes provisions that would declare BLM and Forest Service lands open to hunting and fishing and recreation unless specifically closed; reauthorize FLTFA; encourage the expansion of target ranges on BLM and Forest Service land; expand the right to bear arm on federal lands in several ways; bar the regulation of lead in ammunition; and increase opportunities for film crew permits in the national parks and on public lands.

The measure does not include a popular provision to allocate 1.5 percent of LWCF money to expand access to public lands for hunting and fishing.

Committee Democrats opposed HR 2406, saying in a committee report that "the bill includes several unrelated and harmful titles dealing with importation of polar bear trophies, hunting birds using bait, use of fire arms at Army Corps of Engineers facilities, and toxic substances contained in ammunition and fishing tackle."

SENATE ENERGY COMMITTEE: The Senate Energy Committee Nov. 19, 2015, approved legislation (S 556) of its own that includes direction to federal land managers to keep public lands open to sportsmen unless officially closed; to reduce restrictions on commercial filming in national parks; to improve access to "high priority" federal lands where hunting, fishing and outdoor recreation are permitted. It also includes the FLTFA reauthorization and the LWCF reauthorization.

The energy committee bill contains few of the contentions House committee provisions. Only Sen. Mike Lee (R-Utah) opposed the bill in committee.

SENATE EPW COMMITTEE: The EPW committee approved its bill (S 659) January 20. It contains several of the energy committee provisions, such as FLTFA and declaring federal lands open for hunting and fishing unless specifically closed. But it also contains more controversial provisions on regulating lead and pesticides.

## Concessioners say NPS should stay out of Yosemite fight

The Yosemite National Park concessioner that is to be replaced March 1 is criticizing the Park Service for interfering in a dispute with the new concessioner over naming rights to famed facilities in the park.

The Park Service on January 14 renamed sites within Yosemite, including the famed Ahwahnee Hotel, to prevent litigation over the naming rights from closing down the park. But in late January in an update of a lawsuit, the current concessioner claimed the Park Service move is devaluing its rights to the names of the sites.

The current concessioner, Delaware North Companies (DNCY), is asking the incoming concessioner, Aramark, for \$51 million for the transfer of intellectual property rights. The feds say the intellectual property is only worth about \$3.5 million. Aramark is doing business as Yosemite Hospitality LLC.

In an amended filing in the U.S. Court of Federal Claims two weeks ago DNCY charged that NPS renamed the park facilities to devalue the concessioner's intellectual property. The claim says NPS changed the names "in the mistaken belief that Aramark will have to pay less money for the trademarks if NPS and Aramark decline to use them."

The National Park Hospitality Association, which represents park concessioners, maintains that the Park Service should not interfere in a company-to-company transaction.

"This is a traditional process where the winner of a new concessions contract holds negotiations with the holder of the old concessions contract, which requires the new concessioner to pay fair market value for real property and intellectual property," said Derrick Crandall, counselor to the association.

"For reasons I don't understand the Park Service hasn't called on the two companies to undertake discussions." He said the companies should be allowed to go to arbitration.

The intellectual rights held by Delaware North include the trademarked names of the landmark Yosemite sites, Internet sites and a customer database.

Normally, the two concessioners would negotiate their differences. But the Park Service said the \$51 million demand of Delaware North is so excessive that the government should intervene.

Yosemite spokesman Scott Gediman told us the Park Service renamed the park facilities because it was afraid that ongoing litigation brought by DNCY would lead to a court injunction closing the park.

Thus, to avoid the intellectual property fight NPS said in a press release January 14 it would rename Ahwahnee as the Majestic Yosemite Hotel, Curry Village as Half Dome Village, and Yosemite Lodge as Yosemite Valley Lodge, to name a few changes.

But Delaware North objected to what it considered government intrusion in a business-to-business negotiation. Said the company, "This is especially so because the NPS is fully aware that DNCY has offered to license these trademarks, free of any charge, to allow NPS or the new concessionaire at Yosemite to use the trademarks and avoid any name changes or impact on the park visitor experience while this dispute is being settled by the courts." DNCY said it would let Aramark, doing business as Yosemite Hospitality LLC, use the traditional site names while negotiations continue.

In a Sept. 17, 2015, lawsuit in the U.S. Court of Federal Claims DNCY argued that Aramark owes it \$51 million for intellectual property, not the \$3.5 million the Park Service quotes.

DNCY said in the suit that NPS should require the purchase of its intellectual property *before* the new contract begins March 1. "The Contract requires NPS to make the successor's purchase of and payment for DNCY's Other Property 'a condition to the granting of' the next contract to operate concessions in Yosemite," said the company.

A predecessor concessioner to DNCY had trademarked the Yosemite site names prior to DNCY taking over in 1993, and those trademarks conveyed.

In a January 4 response to the court the Justice Department said DNCY has breached its contract. "By setting forth a grossly exaggerated and improper fair value of \$51 million for its intellectual property, attempting, at the (Government Accountability Office), to stop the solicitation based upon its \$51 (sic) valuation of the trademarks (relative to NPS's \$3.5 million valuation), and then ultimately requesting payment of \$51 million for its trademarks and certain intangibles, DNCY has breached its duty of good faith and fair dealing with respect to Section 12 of DNCY's Concession Contract," Justice told the court.

Both sides ask the court to decide on unspecified damages.

This is one of many disputes between concessioners and the Park Service centered on possessory interest, or the value of improvements that an incumbent concessioner has placed on park facilities. Possessory interest is also called leaseholder surrender interest. When a contract is put up for bid a winning bidder must pay the incumbent concessioner for those possessory interests.

Concessioners belonging to the National Park Hospitality Association in December urged the Senate Energy Committee to loosen up the concessions contract system, by among other things authorizing contract terms longer than the 15 years now. They recommend as much as 40 years.

In the most notorious concessioner-Park Service dispute, incumbent concessioner Xanterra Parks & Resorts, sued Grand Canyon National Park over a new contract proposal that the company said would require it to put up too much money. NPS eventually capitulated and used its own money to pay the fees.

The 15-year Yosemite concession is the largest single contract in the

Park Service system. It is valued at \$2 billion.

## Notes

### **House Dems endorse NPS oil rules.**

Fifty-seven House members February 9 endorsed proposed regulations to set new standards for oil and gas development in the National Park System and in National Wildlife Refuges. Both national parks and wildlife refuges allow oil and gas development on subsurface mineral rights that were grandfathered when the parks and refuges were designated. The agencies have always had authority to regulate surface uses, but could not forbid development, creating a delicate balance. Now both agencies have proposed tougher rules for regulating those subsurface rights. The Democratic House members, led by ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.), wrote Secretary of Interior Sally Jewell, "Existing rules governing oil and gas operations in parks and refuges are inadequate, putting these precious lands and the wildlife that depend on them in unnecessary danger. The proposed rules are a major improvement that will provide additional safeguards for lands, wildlife, and the American taxpayer, and we urge you to finalize them at the earliest possible opportunity." The Democrats said oil and gas development in parks and refuges is no small deal. "It would probably surprise the general public to learn that there are over 530 oil and gas operations in 12 units of the National Park System, and over 5,000 oil and gas wells on over 100 wildlife refuges, with 1,665 of those wells still actively producing oil or gas," the Democrats reminded Jewell. The Park Service on Oct. 23, 2015, completed a draft EIS on new regulations that would subject all oil and gas operations in the national parks to its regulations. The Fish and Wildlife Service (FWS) Dec. 11, 2015, proposed its own rules. There is pushback. Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) charged the FWS proposal constituted a double standard because the federal government hasn't cleaned up 118 exploration wells it drilled in the National Petroleum Reserve Alaska that is managed by the Bureau of Land

Management. The NPS draft EIS is available at: <http://parkplanning.nps.gov/DEIS9B>. More information on the FWS proposal is available at <http://www.fws.gov/refuges/oil-and-gas/>.

#### **Senate eyes NPS pipelines rider.**

To the dismay of environmentalists the Senate had before it this week legislation that would expedite the approval of natural gas pipelines across national parks. The provision would authorize the Interior Department and the Federal Energy Regulatory Commission to approve natural gas rights-of-way (ROWs) across the parks. Under existing law Congress must approve such ROWs. The amendment (SA 3031) was offered by Sen. John Barrasso (R-Wyo.) and four other senators to an omnibus energy bill (S 2012). The House approved a similar provision in an omnibus energy bill (HR 8) of its own Dec. 3, 2015. House Natural Resources Committee Republicans made the case for the provision in a report accompanying HR 8. "Unfortunately, natural gas pipelines construction projects have been severely constricted in areas where pipeline rights-of-way must cross federal lands," they said. "Currently, the Mineral Leasing Act provides authority for the Secretary of the Interior to issue rights-of-way for pipelines on federal lands; however, NPS lands are explicitly exempt." In a veto message aimed at HR 8 the Obama administration criticized the amendment. Conservationists including the Coalition to Protect America's National Parks wrote all senators January 28 in opposition to Sen. Barrasso's amendment, "Oil and natural gas pipelines are utilities that could cause an impairment to national parks and therefore were not included in the list of public utilities that receive Secretarial approval under the Mineral Leasing Act and the National Park Service's administrative regulations," they said. "The threat of rupture and explosion posed by natural gas pipelines requires that their construction through our most prized public lands gain Congressional approval."

**Gulf aid set for four city parks.** A blue ribbon panel of trustees overseeing the restoration of the Gulf

of Mexico after the Deepwater Horizon oil spill February 5 singled out four city parks for special assistance. The Deepwater Horizon Trustee Council said it will allocate \$34.4 million total to three city parks in Florida and one in Texas. The projects are part of an early restoration phase that is spending \$1 billion that BP has put up in atonement for the spill. Altogether BP says it will allocate \$8 billion for restoration. In the February 5 announcement the trustees said they will allocate in the fifth early restoration phase the \$34.4 million to: Innerarity Point in Escambia County, Fla., for acquisition of 3.38 acres and construction of a public park; City of Destin, Fla., for acquisition of a 3.42-acre parcel and construction of a public park; Lynn Haven, Fla., for acquisition of a 90.7-acre tract and construction of a public park; and Island View Park in Franklin County, Texas, for construction of a public park on a 7.3-acre parcel owned by the county. The trustees said additional assistance is in line for the Florida coast of \$11,043,389. The trustees include leaders of four federal agencies and five Gulf states. Lots of background info at: <http://www.gulfspillrestoration.noaa.gov> or <http://www.doi.gov/deepwaterhorizon>.

#### **ARC honors Missouri Gov. Nixon.**

The American Recreation Coalition (ARC) and the Coleman Company formally presented January 28 their highest honor - the Sheldon Coleman Great Outdoors Award - to Missouri Gov. Jay Nixon (D-Mo.) Nixon was a co-recipient with Wyoming Gov. Matt Mead (R-Wyo.), who received his award earlier. ARC, which represents the recreation industry and recreation users, said Oct. 6, 2015, it is honoring Nixon for hosting one of the most successful Outdoors Days in June 2015 as well as for making state parks, trails and waterways a top priority. ARC praised Mead both for his support of the Great Outdoors Month (he hosted a first bilingual Capital Campout) as well as for a public service announcement urging visitation to Wyoming's outdoors. Sheldon Coleman, who died in 1988 at the age of 87, was a longtime chairman of The Coleman Company and a champion of outdoor recreation.

## Boxscore of legislation

### Fiscal year 2016 appropriations (full-year)

HR 2029 (Dent). President Obama signed into law Dec. 18, 2015, as PL 114-113. Increases spending over fiscal 2015, but wildfires and PILT reduce the total. Few riders make the cut.

### Appropriations FY 2016 Energy and Water

HR 2029 (Dent). President Obama signed into law Dec. 18, 2015, as PL 114-113. Law provides mild increase for Corps and Bureau of Reclamation. Does not block EPA/Corps wetlands rule.

### Appropriations FY 2016 Transportation

HR 2029 (Dent). President Obama signed into law Dec. 18, 2015, as PL 114-113. Roughly maintains surface transportation spending at fiscal 2015 levels.

### Land and Water Conservation Fund

S 338 (Burr), S 890 (Cantwell), HR 1814 (Grijalva), S 2012 (Murkowski), S 1925 (Heinrich), S 2165 (Cantwell), unnumbered draft (Bishop), HR 4151 (Simpson), HR 2029 (Dent). Fiscal 2016 appropriations bill extends program as is for three years. Grijalva introduced April 15, 2015. Senate committee approved Murkowski bill July 30, 2015. Bishop posted draft November 5, 2015. Simpson introduced December 1, 2015. All but Bishop would extend program at \$900 million per year in perpetuity. Bishop would extend for seven years. S 890, HR 1814 and S 1925 would guarantee the money each year. Simpson would change allocation to 40 percent federal, 40 percent state and related initiatives and 20 percent flexible.

### Urban park fund

HR 201 (Sires). Sires introduced January 7, 2015. Would authorize HUD grants and HUD loans to provide assistance to urban parks.

### NPS Centennial

HR 3556 (Grijalva), S 2257 (Cantwell), unnumbered draft (Bishop). House hearing December 2, 2015. Senate hearing December 8, 2015. S 3556 and S 2557 are administration bills that would have Congress put up an additional \$800 million for the Park Service Centennial in 2016. Fiscal 2016 spending bill

includes extra \$100 million for program.

### Federal land recreation fees

HR 1991 (Bishop), HR 2822 (Calvert), S 1645 (Murkowski), HR 719. House committee approved April 29, 2015. Senate hearing September 17, 2015. President Obama signed into law an extension of the fee law through Sept. 30, 2017, as part of PL 114-53 of September 30, 2015.

### Emergency fire spending

HR 167 (Simpson), S 235 (Wyden), S 508 (McCain), S 1645 (Murkowski), HR 2647 (Westerman). Simpson introduced January 6, 2015. Wyden introduced January 22, 2015. McCain introduced February 12, 2015. Senate committee approved S 1645 June 18, 2015. House approved HR 2647 July 9, 2015. All would shift emergency fire fighting costs out of line appropriations and into disaster spending. McCain would also increase timber harvests. Appropriators did not include provision in fiscal 2016 spending bill above.

### Monument restrictions

HR 330 (Young), HR 488 (Amodei), S 437 (Murkowski), HR 900 (Labrador), S 228 (Crapo), HR 3946 (Gosar). Young introduced January 13, 2015. Amodei introduced January 22, 2015. Murkowski introduced February 10, 2015. Labrador introduced February 11, 2015. Crapo introduced January 21, 2015. Gosar introduced November 5, 2015. All would require Congressional or state approval of national monuments.

### Wetlands regulations

HR 594 (Gosar), HR 2028 (Simpson), S 1140 (Barrasso). House approved HR 2028 May 1. Barrasso introduced April 30, 2015. Would forbid completion by EPA of regulations expanding kinds of water bodies requiring wetlands protection permit. 141 cosponsors. Also included in House and Senate spending bills.

### Surface transportation

S 1647 (Inhofe), HR 22 (Davis), HR 3763 (Shuster). President Obama signed into law (PL 114-94) on Dec. 4, 2015. House approved HR 3763 November 5. Inhofe and Shuster would revise law for next six years.