

# Federal Parks & Recreation

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## **LWCF may move on Senate floor as part of big energy bill**

It will be a long uphill slog but the Senate is now considering an omnibus energy bill that includes a permanent authorization for the Land and Water Conservation Fund (LWCF).

The measure (S 2012) is sure to be a target for major policy amendments, perhaps poison pill amendments, from both Republicans and Democrats that are related and unrelated to energy.

Already, Sen. John Barrasso (R-Wyo.) is suggesting he will offer an amendment to block an Obama administration policy that has largely halted coal leasing on federal lands. "I'm prepared to act to protect middle-class workers from this latest attempt to turn out the lights on American energy," he said.

To repeat, S 2012 is primarily an energy policy bill. But chief sponsors Sen. Lisa Murkowski (R-Alaska) and Maria Cantwell (D-Wash.) added to it a provision to reauthorize LWCF, subject to annual appropriations, and to revise priorities under the program.

The LWCF provision could of course become a target for western senators who object to federal land acquisitions. Their amendments could attack just the federal acquisition side or the whole program.

Indeed, Barrasso January 27 introduced an amendment (SA 3032) to revise priorities under the law, giving more emphasis to state grants and less emphasis to federal land acquisition.

But for now LWCF is part of the bill. Said Cantwell of the land LWCF has bought, "These are important outdoor spaces that have generated an incredible outdoor economy for the United States

of America. It has generated economic revenue by providing the ability for people to go to the outdoors. I hope we will keep that as part of this legislation as it moves all the way through the U.S. Senate and the House and to the President's desk - permanent reauthorization of the Land and Water Conservation Fund."

Republican Sen. Steve Daines (R-Mont.) also endorsed the provision on the Senate floor January 27. "This is an important tool for increasing public access to public lands and one of the country's best conservation programs," he said.

Meanwhile, the same LWCF provision is included in a hunting and fishing access bill that is nearing the Senate floor. Both the Senate Energy Committee and the Senate Environment and Public Works Committee have approved versions of the sportsmen's bill that may be merged. *(See separate article page 6.)*

The energy committee version of the sportsmen's bill (S 556) includes the same LWCF provision as the energy bill. In addition to reauthorizing the underlying program it recommends that appropriators allot 40 percent of the total LWCF appropriation per year to federal land acquisition; at least 1.5 percent per year (or more than \$10 million) to access to federal land for recreational purposes; and at least 40 percent to a combination of state LWCF grants, Forest Legacy grants, endangered species grants and an American Battlefield Protection Program.

Right now, the Senate is taking up the omnibus energy bill. Consideration of it has been delayed because of a massive snowstorm that prevented senators from flying into the Capitol. The debate may extend into next week or longer, save for a fatal filibuster.

Some of the pressure has been taken off proposals to permanently reauthorize LWCF by a fiscal year 2016 appropriations bill (PL 114-113 of December 18), which extended the program three years through fiscal 2018. But

program advocates both in Congress and in the public are still seeking permanent authorization.

To that end, 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 Cantwell, S 1925 from Sen. Martin Heinrich (D-N.M.) and S 2165 from Cantwell.

In addition on Nov. 19, 2015, Barrasso introduced a bill (S 2318) to extend LWCF for 10 years. He 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 offered that bill as an amendment to the energy bill January 27, as noted above.

The House has not been as active as the Senate. Two bills to reauthorize LWCF have been introduced, one from ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.), HR 1814, and one from Rep. Mike Simpson (R-Idaho), HR 4151. And in mid-November House Natural Resources Committee Chairman Rob Bishop (R-Utah) introduced a discussion draft bill. Bishop's committee held a hearing on the issue Nov. 18, 2015.

The final fiscal 2016 LWCF appropriations provisions referee an ongoing dispute between western Republicans and conservationists. The western Republicans say Congress has emphasized federal acquisition at the expense of the state program, which is more popular with the public.

**The Bishop bill:** The draft would extend LWCF for seven years with an authorization of \$900 million per year, leaving it up to appropriators to decide how much of the \$900 million to set aside each year for LWCF. But the bill would have appropriators follow these nine percentage allocations therein:

\* 45 percent - stateside of LWCF

- \* 5 percent - urban fund
- \* 3.5 percent - federal land acquisition
- \* 3.5 percent - deferred federal land maintenance
- \* 3.5 percent - Forest Legacy (Forest Service)
- \* 3.5 percent - Endangered Species Act fund
- \* 1 percent - battlefield acquisition
- \* 20 percent - offshore energy development
- \* 15 percent - payments-in-lieu of taxes

**Senate LWCF bill:** The provision added to a Senate Energy Committee-passed sportsmen's bill (S 556) and the energy bill (S 2012) would allot 40 percent of the total LWCF appropriation per year for federal land acquisition and at least 1.5 percent per year (or more than \$10 million) for 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. The committee approved the bill Nov. 19, 2015.

**Fiscal 2016 LWCF appropriation:** In addition to the three-year program reauthorization PL 114-113 makes these allocations:

*LWCF FEDERAL:* The law includes \$234.2 million for the traditional federal land acquisition side of LWCF. That represents a \$56.6 million increase from a fiscal 2015 appropriation of \$177.6.

By agency the Bureau of Land Management will receive \$38.6 million compared to \$20 million in fiscal 2015; the Fish and Wildlife Service will receive \$68.5 million compared to \$47.5 million; the Park Service will receive \$63.7 million compared to \$51 million; and the Forest Service will receive \$63.4 million compared to \$47.5 million.

*LWCF STATE:* HR 2029 appropriates \$110 million, compared to \$48 million in fiscal 2015.

## Yosemite renames iconic sites in big concessioner dispute

A disagreement between two major league concessioners has moved the Park Service to rename famed sites within Yosemite National Park, including the famed Ahwahnee Hotel.

In the disagreement the current concessioner, Delaware North, 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 to take over March 1.

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, doing business as Delaware North Companies (DNCY), is so excessive that the government should referee the situation.

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

"The concessioners had been negotiating but in a response of the Justice Department it feared the negotiations were not going to be resolved soon," he said. "(Justice) feared there could be legal action by DNC by March 1 that would preclude our ability to continue operations."

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.

Said NPS in the press release, "Because the current concessioner, DNCY, claimed ownership and the right

to payment for tradenames, trademarks, and other intellectual property that it argues is worth over \$50 million, the National Park Service included the option to change the names of these sites as part of the prospectus."

But Delaware North objected to what it considered government intrusion in a business-to-business negotiation. Said the company, "DNC Parks & Resorts at Yosemite Inc. is shocked and disappointed that the National Park Service would announce unnecessary changes to the beloved names of places in Yosemite National Park, trying to use them as a bargaining chip in a legal dispute involving basic contract rights."

DNCY added, "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."

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.

The group said, "Specifically, we urge this new title to include direction to attract needed investment from concessioners to expand and improve visitor services in parks, including through modernization of lodges, campgrounds and marinas. Part of this modernization will depend upon new flexibility by the agency, including authority to issue concessions contracts of up to 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.

While the Grand Canyon contract is a big one the 15-year Yosemite contract is the largest single concession contract in the Park Service system. It is valued at \$2 billion.

## Utah Lands Initiative gets a mixed reaction, at best

Reps. Rob Bishop (R-Utah) and Jason Chaffetz (R-Utah) January 20 rolled out a massive Public Lands Initiative covering 18 million acres in seven Utah counties, to predictable reactions.

Even though the draft bill would designate 2.2 million acres of wilderness and establish 14 National Conservation Areas, environmentalists teed off on pro-development provisions. They include the establishment of broad energy development areas and the establishment of thousands of RS 2477 rights-of-way.

As we reported in the December 23 issue of *FPR*, environmentalists had already anticipated that the draft bill would be tilted toward commercial uses of the public lands. "This is really a fossil fuels bill," said Sharon Buccino, director of the land and wildlife program at the Natural Resources Defense Council. "It opens up areas managed as wilderness for coal mining, tar sands, oil shale, and oil and gas and dedicates millions of acres to energy development."

The National Parks Conservation Association (NPCA) called the draft bill a "missed opportunity," even though it would expand Arches National Park with 19,255 acres of Bureau of Land Management (BLM) land. And it would designate 333,866 acres of BLM land as a Canyonlands Wilderness adjacent to Canyonlands National Park.

But, said David Nimkin, Senior Southwest Regional Director of NPCA, "Canyonlands National Park should be expanded to its completion, which was proposed decades ago to protect the basin and its many natural and cultural resources. Instead, this bill would subject these lands to development

and foreclose their ever being added to the park." Environmentalists have recommended President Obama designate a 1.4 million-acre Canyonlands National Monument in the area.

NPCA also objected to the proposed designation of thousands of RS 2477 rights-of-way across public lands in Utah, although national parks would be exempt.

The association describes the provision as "a shocking giveaway that substantiates hundreds maybe thousands of cowpaths, overgrown two-tracks and old mining routes as roads in seven counties. This would encourage off-road vehicle use on federal lands where it doesn't currently happen. These controversial, permanent rights-of-way flout current laws and policies governing RS2477 claims."

But Gov. Gary Herbert (R-Utah) backed the draft bill. "I am supportive of this inclusive, bottom-up approach that moves us in the right direction," he said. "While the initiative is not perfect, as no true compromise is, it finds a way to give the state greater control over the use of Utah lands."

Bishop, chairman of the House Natural Resources Committee, outlined his ambitions in the bill that took three years and some 1,200 meetings to produce:

"Our goal has always stayed constant. We will conserve areas worthy of conservation. We will guarantee outdoor recreation for all Utahns. We will enhance economic development to fund Utah schools and create good jobs. We will provide certainty by ending the litigation and mindless debates. That certainty will allow everyone to plan for the future without outside groups imposing their misguided will."

The powered recreation advocacy group Americans for Responsible Recreational Access (ARRA) was generally sympathetic to the Bishop draft. Said ARRA Executive Director Larry Smith, "ARRA applauds all those who have taken part in this exercise, and while we understand that this current iteration

is just a draft and there are still details to be worked out, we are excited about the opportunity to see this process all the way through to the enactment of legislation."

We mentioned to Smith several areas where the bill might be favorable to ARRA, and he concurred. Those provisions would designate the RS 2477 ROWs (many of which would be open to off-road vehicles), designate recreation areas, and open public lands in general to powered recreation vehicles.

Smith said that he liked "all of the above." But, he qualified, "It is almost too big to get our hands around all of it. It will take some time. We are consulting with folks in Utah who were a part of the process, but what we can tell at this point, we like. A huge undertaking on their part which we would like to see in other states."

The possibility that President Obama would designate broad areas of eastern Utah as national monuments has given great impetus to the Public Lands Initiative. Even with the Bishop bill on the table the President is expected to designate one or more significant monuments in Utah this year.

Here's what the draft would do:

**CONSERVATION AREAS:** It would designate 40 wilderness areas covering 2.2 million acres, 14 National Conservation Areas and 375,000 acres of recreation zones. However, it would exempt the wilderness areas from the Clean Air Act requirement that the air over Class I wilderness areas be kept pristine.

**ENERGY ZONES:** It would open BLM-managed lands in the seven counties to energy development if the lands had been identified for such development with standards stipulations. The provision would apply to "oil, gas, oil shale, bituminous sands, wind, solar, geothermal, potash, coal, uranium and other locatable and saleable minerals."

**GRAZING:** It would continue grazing in most conservation areas, including wilderness, "in accordance with the

grazing permit that existed on January 1, 2016."

**RS 2477 RIGHTS-OF-WAY:** It would direct the Secretary of Interior to grant rights-of-way to all Class B and D roads claimed by the seven counties in federal court as of January 1, 2016, except for wilderness areas and national parks.

More detail on the legislation is available at: [UtahPLI.com](http://UtahPLI.com).

As mentioned, driving Bishop and Chaffetz in part is the possibility that the Obama administration would designate large national monuments in eastern Utah. Conservationists have often recommended designation of a 1.4 million-acre Canyonlands National Monument on BLM-managed land in southern Utah. They have asked President Obama to designate the monument adjacent to Canyonlands National Park.

Some 12.7 million acres of federal land in Utah are already reserved for conservation purposes, including national parks, wilderness, wilderness study areas, wild and scenic rivers, and national monuments. In addition Congressional Democrats are pushing for the designation of 9.1 million acres of new wilderness, mostly from BLM-managed lands.

Even less amenable has been a related argument over the State of Utah's claim to 31 millions of public lands in the state. Utah officials make no secret that development of those public lands is a major goal of the Transfer of Public Lands Act (TPLA), HB 148, signed into law on March 23, 2012, by Gov. Herbert. It demands the transfer of most federal land in the state, excepting only national parks (save for portions of Glen Canyon National Recreation Area), national monuments and wilderness areas.

## **Second Senate committee approves a hunt-fish bill**

Two Senate committees have now approved complementary versions of omnibus legislation to encourage hunting

and fishing on and off the public lands, setting up possible floor action.

Most recently, the Senate Environment and Public Works Committee (EPW) January 20 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, the Senate EPW bill immediately drew fierce criticism from ranking committee Democrat Barbara Boxer (D-Calif.) She objected to 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," said Boxer.

"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 by EPA, "(The bill) prevents groups for restricting ammunition choices, which would unnecessarily drive up costs, hurt participation in shooting sports, and consequently decrease

important conservation funds."

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 the Land and Water Conservation Fund (LWCF) and substantially revise it. And that would give many western Republicans cause to put a damaging hold on the bill. (See *related article page one on an energy bill on the Senate floor this week with the same LWCF provision.*)

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.

Gun rights issues are still ripe, in spite of or because of President Obama's recent campaign to regulate guns. They include provisions to bar limitations on the use of lead in ammunition components and fishing tackle, encourage target practice on public lands, authorize visitors to Corps of Engineers recreation areas to bear arms, among others.

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.

## **Supremes ponder NPS right to regulate Alaska hovercraft**

The National Park Service's authority to regulate hovercraft in national parks in Alaska came before the Supreme Court last week.

The facts of the case are clear: Yukon-Charley Rivers National Preserve officials in 2007 banned outdoorsman John Sturgeon from using his hovercraft in a river in the park to reach moose-hunting country. The park officials said the hovercraft was too loud.

The legal issues are not clear, puzzling even Supreme Court justices in a January 20 hearing. Sturgeon's attorneys argued Congress has given the State of Alaska power to regulate rivers in the park by asserting that riverbeds belong to Alaska, giving priority to the state. The U.S. Solicitor General countered that Congress has given the Park Service authority to regulate noisy hovercraft in all national parks including Alaska, giving priority to the Park Service.

Two lower courts agreed with the Park Service, but Supreme Court justices expressed significant doubts about a

decision of the Ninth U.S. Circuit Court of Appeals. That panel held on Oct. 6, 2014, that Park Service-wide rules governing navigable rivers that limit hovercraft govern in Alaska.

The appeals court said that the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) – and this gets tricky – exempts nonfederal lands in conservation units from federal regulations “solely” when regulations address just public lands. In other words more general regulations that don’t solely apply just to public lands don’t exempt nonfederal lands from regulation.

The Supreme Court justices became tongue-tied during their hearing of the case. Justice Stephen G. Breyer at one point said to Justice Antonin Scalia, “I just thought this case is too complicated to ask anything, but you’ve tempted me.”

An attorney for Sturgeon, Matthew T. Findley, told the court that Section 103(C) of ANILCA is clear in exempting navigable rivers within parks in Alaska from generic NPS regulations. “Section 103(c) makes crystal clear (navigable waters) are not part of the park and they are not subject to regulations solely enacted to manage our claim,” he said.

But Justice Sonia Sotomayor told Findley, “Your reading on a practical basis with respect to the navigable waters makes almost no sense to me.”

On the federal government’s behalf, Rachel P. Kovner, assistant to the Solicitor General, summed up, “And the question is, if we hold title to an interest in the water, how broad is that interest, and what does it let us regulate? And the interest has been defined by regulation. And consistent with the statements of what this land is being reserved for, it’s an interest that we hold over the entirety of the water. And that permits us to regulate the water.”

But Justice Samuel A. Alito had heard enough to convince him the Ninth Circuit decision was wrong. “It’s a

ridiculous interpretation, is it not?” he asked the government rhetorically.

Justice Elena Kagan appeared to agree with the federal government’s interpretation that when Congress in ANILCA exempted nonfederal lands from public lands regulations that exemption only would apply to rules that address just public lands. And, in this case, the hovercraft regulation applies to all lands within national parks.

“I mean, ‘solely’ is a very purposive word, you know?” she said. “I mean, Congress drops lots of words, but you put ‘solely’ in a sentence when you mean ‘solely.’ And this does not apply to public lands.”

A transcript of the Supreme Court debate is available at: [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/14-1209\\_n75o.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/14-1209_n75o.pdf).

## **Sportsmen suggest new standards for monuments**

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 own 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

(TRCP), said that phrase simply means the lands should not be transferred out of the Forest Service and BLM.

"We are referring to keeping lands under a multiple use focused agency (like the Forest Service or BLM)," he told us. "They understand hunting, fishing and wildlife management in a way that the Park Service doesn't. The lands would still be protected from resource extraction. Most monuments since the late 90's have been created this way."

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 Congress. Those environmentalists, as well as the sportsmen's groups, would prefer Congress pre-empt the President and pass legislation to designate monuments.

However, 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 Republican members have introduced a half-dozen bills in this Congress to establish such curbs.

So controversies have sprung up in the West over possible looming designations. Notably, in the takeover of the Malheur National Wildlife Refuge in Oregon this month the occupiers and their sympathizers object to the possible designation of a 2.5 million-acre Owyhee Canyonlands Conservation area nearby. (*See related article page 13.*)

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 going on in Utah where conservationists have recommended a 1.4 million-acre Canyonlands National Monument on BLM-managed 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. (*See related article page 4.*)

As mentioned, driving Bishop and Chaffetz in part is the possibility that the Obama administration would designate large national monuments in eastern Utah. Conservationists have often recommended designation of a 1.4 million-acre Canyonlands National Monument on BLM-managed land in southern Utah. They have asked President Obama to designate the monument adjacent to Canyonlands National Park.

Here's how the sportsmen summed up their recommendation:

"For national monument proposals to be supported by sportsmen, management of public lands within the monument must remain under a multiple-use agency, and wildlife management authority must be explicitly retained by the state fish and wildlife agency. Wherever this has been the case - such as the elk and mule deer habitat in the Missouri Breaks, which is managed by the BLM - some of the world's best hunting and fishing has been conserved. For that to continue, wherever hunting and fishing take place on public lands proposed for new national monuments, sportsmen must actively engage in proposals before the designation occurs. The Antiquities

Act, like any tool in the toolbox of a participatory democratic republic, only works when the citizens participate.”

Supporting the recommendations are such varied groups as Trout Unlimited, the North American Grouse Partnership and TRCP.

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)  
\_final.pdf

### **GAO: NPS approps shrink; other revenues grow a lot**

The timing may not be propitious, but the Government Accountability Office (GAO) reported earlier this month that Congressional appropriations for the Park Service decreased substantially over the last decade.

At the same time during fiscal years 2005 through 2014 nonappropriated contributions to the National Park System increased substantially, said GAO. That is, appropriations decreased by eight percent after inflation and contributions from fees, concessioners and philanthropists increased by 39 percent. Both numbers are adjusted for inflation.

The timing may not be propitious because Congress boosted the fiscal year 2016 appropriation for the National Park System substantially last month in an omnibus spending law (PL 114-113 of December 18). And GAO did not include fiscal 2016 and 2015 in its report.

Still, GAO said there are a number of steps Congress and the Park Service can take to boost revenues. In a report prepared for Senate Budget Committee Chairman Mike Enzi (R-Wyo.) and Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) GAO laid out these opportunities, and problems.

**Lifetime senior pass:** The price of the lifetime senior pass to the National Park System and other federal recreation areas has remained at \$10 since 1993, cutting a big hole in the agency’s

potential fee revenue. An Obama administration Park Service Centennial bill (HR 3356), introduced by Rep. Raúl Grijalva (D-Ariz.), would increase the fee to \$80 and bring in an additional \$35 million per year, said GAO. NPS sold 500,000 \$10 passes in fiscal 2014.

Said GAO, “Because of the limitations in (the recreation fee law), Park Service and the other agencies that administer the recreation fee program do not have the flexibility to periodically reassess and change the price of the lifetime senior pass. Providing this flexibility to these agencies would allow them to consider adjusting fees periodically, which is consistent with our guide on federal user fees.”

The Interior Department agrees. Said Deputy Assistant Secretary of Interior for Fish and Wildlife and Parks Michael Bean in a letter to GAO, “The Department supports amending (the recreation fee law) so that the federal agencies can determine whether to adjust the price of the senior pass, and will take this into account as we work with Congress on the reauthorization of the recreation fee law.”

The recreation fee law is the Federal Lands Recreation Enhancement Act of 1993, as amended.

**Concessioner fees:** GAO said that over the 2005-2014 decade revenues from commercial service fees and rents tripled from \$33 million in fiscal 2005 to \$95 million in 2014. Revenues from commercial use authorization led the way, jumping from \$29 million to \$85 million.

NPS told GAO that franchise fees increased because the minimum fee asked by the agency in contract prospectuses increased.

But GAO said NPS’s efforts to increase concessioner fees often resulted in a single bidder. “Our analysis of Park Service data found that 32 percent (8 of 25) of the Park Service’s largest contracts – those generating \$5 million or more—awarded between fiscal years 2005 and 2014 attracted one bidder,” said GAO.

Indeed, NPS's new policies have led to major controversies - and lawsuits - involving the concessions contracts at two major national parks - Grand Canyon and Yosemite. (See related article page 3.)

**Agency fee reviews:** GAO said NPS does not require periodic reviews by park units of fees, and some park units that choose not to increase fees are not required to justify their exemptions.

Said the report, "Without guidance to periodically review fees and direct the park units to provide information on deviations from the fee schedule, the Park Service may not ensure that its entrance fees are set at a reasonable level and may be missing opportunities to more effectively manage its fees."

In its response to GAO the Interior Department (1) endorsed allowing federal agencies to increase the senior pass, (2) said NPS is revising its manual on reevaluating entrance fees and (3) said NPS will henceforth require justification from park units that don't increase fees.

The report, *NATIONAL PARK SERVICE: Revenues from Fees and Donations Increased, but Some Enhancements Are Needed to Continue This Trend*, is available at: <http://www.gao.gov/products/GAO-16-166>.

## **Hill attempt to block EPA wetlands rule halted by veto**

President Obama for the moment has the upper hand over Congress in an ongoing dispute over EPA regulations that expand the kinds of water bodies requiring wetland protection permits.

After Congress approved a resolution (SJ Res 22) ordering EPA to withdraw the rule, President Obama on January 20 vetoed it. On January 21 Senate leaders attempted to take up an override of the veto but failed in a 52-to-40 vote to defeat a filibuster. Sixty Senate votes are needed to overcome a filibuster and a two-thirds majority to override a veto.

Republican senators who led the campaign to block the rule repeatedly cited two federal court decisions that already have prevented implementation of it. Said Sen. John Barrasso (R-Wyo.), "The courts have begun to weigh in on the concerns with this rule that we are going to vote on today. We hope we override the veto of the President, because the courts have said: Hey, we need to take a pause."

But Sen. Benjamin Cardin (D-Md.) said the rule is good for wildlife and good for recreation. "It is certainly important for wildlife habitat. I hear all of my friends talk about how important it is to preserve our wildlife," he said. "Well, that is very much engaged in what we are talking about."

Although the legislation is in the form of a resolution (SJ Res 22), it would have the authority to direct the President to withdraw the regulations. However, the President January 20 followed through on a promised veto from the Office of Management and Budget (OMB).

Said OMB in a Statement of Administration Policy, "The agencies' rulemaking, grounded in Science and the law, is essential to ensure clean water for future generations, and is responsive to calls for rulemaking from the Congress, industry, and community stakeholders as well as decisions of the U.S. Supreme Court. The final rule has been through an extensive public engagement process."

The original Senate vote was 53-to-44 in favor of the resolution and the House vote was 253-to-166.

Those votes represent about the 14<sup>th</sup> round in a 15 round heavyweight fight over the final rule published by EPA and the Corps of Engineers on May 27, 2015. It would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act, particularly navigable waters.

Two federal courts have already ruled against EPA and the Corps,

preventing implementation. The Sixth U.S. Circuit Court of Appeals stayed the regulation nationwide on Oct. 10, 2015. That followed up on an Aug. 27, 2015, injunction from Chief U.S. District Court Judge Ralph R. Erickson in North Dakota, that blocked the rule in 13 states, most of them in the West.

In the more recent circuit court decision, the panel took particular issue with provisions of the regulation that define what waters adjacent to, or involved with, navigable waters should require a permit. Section 404 of the Clean Water Act requires permits for the disturbance of wetlands.

The Sixth Circuit said EPA and the Corps when soliciting public opinion did not define what activities a certain distance from navigable waters would require a permit. And the final rule did establish such distances, a crucial distinction, the court said.

In a separate Congressional initiative Congress dropped from an omnibus fiscal year 2015 appropriations bill December 15 a provision that would have prevented EPA from implementing the rule.

The provision was included in legislation approved by both the House and Senate Appropriations Committees but was dropped in final negotiations between Democrats and Republicans. The House and Senate then went on to approve the spending bill December 18 and President Obama signed it the same day.

Congress dropped the provision despite a highly-critical Government Accountability Office (GAO) letter of December 14 that said EPA used "propaganda" in lining up support for the rule.

GAO said EPA indulged in propaganda by linking its proposal to webpages operated by the Natural Resources Defense Council and the Surfrider Foundation, and seeking support therein. That constitutes lobbying, which EPA is forbidden to do, said Susan A. Poling, EPA general counsel in a letter to House Environment and Public Works Committee Chairman

James Inhofe (R-Okla.)

Just before the House vote the National Wildlife Federation, along with eight other sportsmen's groups, argued the expansive EPA/Corps definition of waters requiring a permit is necessary to protect conservation lands, especially wildfowl breeding grounds. "America's hunters and anglers cannot afford to have Congress undermine effective Clean Water Act safeguards, leaving communities and valuable fish and wildlife habitat at risk indefinitely," said the groups in a January 11 letter to all Congressmen.

Signing the letter were the American Fisheries Society, American Fly Fishing Trade Association, Backcountry Hunters and Anglers, International Federation of Fly Fishers, Izaak Walton League of America, National Wildlife Federation, Theodore Roosevelt Conservation Partnership and Trout Unlimited.

## **Oregon refuge crisis deepens, produces sharp Hill responses**

The intense takeover of the Malheur Wildlife Refuge in Oregon took a turn for the worse January 26 with the death of one person in a confrontation with local policy.

According to the Oregon State Police and the FBI a shoot-out occurred after a traffic stop. Six people were arrested, including the putative leader of the occupation, Ammon Bundy.

Even before the shooting, as the occupation winds up four weeks, the bitter feelings held by all sides showed no indication of slacking off.

Democrats and environmentalists continue to pummel critics of the federal government for illegally occupying the refuge while armed. And Republicans and property rights advocates continue to pummel the federal government for mismanaging the public lands.

After praising the Obama administration for forbearance in not

forcing the protestors off the refuge, Rep. Jared Huffman (D-Calif.) last week upbraided the protestors. "But let's be clear about this," he said. "There has to be accountability for the occupiers. This armed group of thugs occupying a refuge in the State to my north can't be allowed to do this without consequences."

The Congressman who represents the area, Rep. Greg Walden (R-Ore.), paints the bad guys as federal land managers. After saying he doesn't condone the takeover, Walden said on the House floor, "There is a better solution here. The President needs to back off on the monument. The BLM needs to make sure Susie Hammond isn't pushed into bankruptcy and has her ranch taken by the government and added to those that have been. We need to be better at hearing people from all walks of life and all regions of our country and understanding this anger that is out there and what we can do to bring about correct change and peaceful resolution."

Susie Hammond is the wife of Dwight Hammond and the mother of Steven Hammond, who were sent to prison January 4 by the Ninth U.S. Circuit Court of Appeals for two fires they admittedly set that burned public lands in 2001 and 2006. The Hammonds said they lit the fires to block invasive plants and to protect their private property from wildfires. The protestors then occupied the refuge to protest alleged mistreatment of the Hammonds.

Walden also mentioned in his floor speech a possible monument, meaning a proposal from conservationists to protect 2.5 million acres of mostly Bureau of Land Management (BLM) land in eastern Oregon through an Owyhee Canyonlands Conservation Proposal. Two million acres of that would be wilderness.

"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," said Walden. "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."

The takeover of the Malheur refuge in Oregon is fueled in part by a broader campaign in the West (of which the possible monument is a part) demanding the turnover of federal lands to state and local governments, or devolution, as it is known.

Thus far the campaign in states such as Utah and Nevada has focused on lands that have traditionally been used for consumptive uses, such as grazing, oil and gas drilling, mining and timber cutting.

But the takeover of the Malheur National Wildlife Refuge has put new focus on the land disposal issue, and state and Congressional attempts to carry out wholesale transfers of the federal estate.

The proximate cause of the takeover of the Malheur refuge on January 2 was the appeals court order sending public lands ranchers Steven and Dwight Hammond to prison for arson. That moved an ad hoc coalition of ranchers and anti-government protestors to occupy the refuge.

The protestors, including Ammon Bundy, the son of public lands rancher Cliven Bundy in Nevada, contend the treatment of the Hammonds is typical of abusive treatment meted out by the Obama administration to public lands ranchers across the West. And they say Congress should dispose of much of the federal estate in the West. The occupiers are armed and they vow to remain in the refuge for the foreseeable future.

In the legal issue at hand Congress mandates a five-year prison sentence for anyone convicted of arson on the public lands. However, U.S. District Court Judge Michael R. Hogan had held that in this case the Eighth Amendment to the U.S. Constitution prohibiting cruel and unusual punishment overrides that mandate. He then sent Hammond junior to prison for 12 months and a day and Hammond senior to prison for three months.

Hogan issued his sentence after the Hammonds admitted culpability in a plea agreement. The Hammonds in turn argued that the plea agreement required that the government accept Hogan's sentence.

But the appeals court said, "Because the district court erred by sentencing the Hammonds to terms of imprisonment less than the statutory minimum, we vacate the sentences and remand for resentencing in compliance with the law."

**Congress responds:** The Republican majority in Congress has been listening to the protestors and in March 2015 both the House and Senate adopted positions endorsing the disposal of federal lands to state and local governments.

They acted in the passage of fiscal year 2016 Congressional budgets that the House approved March 25, 2015, (H Con Res 27) and the Senate approved March 27, 2015, (S Con Res 11). Those positions are advisory to line committees that would still have to move additional legislation to actually authorize any land transfers.

The Senate approved a lead amendment from Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) March 27, 2015, in a close 51-to-49 vote that favors disposal of the federal estate through sale, transfer or exchange to state and local governments.

In a separate Congressional initiative Utah Rep. Chris Stewart (R) and House Natural Resources Committee Chairman Rob Bishop (R) established a Congressional team to study possible disposal of federal lands.

We asked for a statement from Murkowski's office and Bishop's office on the occupation and received no reply.

Sportsmen objected to the occupation. "National wildlife refuges like Malheur are a treasure shared by all Americans," said Backcountry Hunters & Anglers President Land Tawney. "The actions being perpetrated by extremists in Oregon are the misguided actions of a fringe element - and should be condemned by sportsmen and all citizens in the strongest terms."

But the American Land Rights Association, which advocates for private property, sided with the Hammonds, if not the protestors. The association is particularly upset because the U.S. Attorney in Oregon used a terrorism law to demand the five-year sentence for the Hammonds.

The association warned in a bulletin to its members, "The BLM could use this law against any rancher, farmer or landowner near Federal land," said the association. "In this case the BLM is using this law in an unjust way to gain control and ownership of the Hammond Ranch in Southeast Oregon."

The State of Utah has led the West in the demand for disposal of public lands. On March 23, 2012, Gov. Gary Herbert (R-Utah) signed the Transfer of Public Lands Act (TPLA), HB 148. It demands the transfer of more than 31 million acres of federal land, excepting only national parks (save for portions of Glen Canyon National Recreation Area), national monuments and wilderness areas.

Although the law said the transfers were to begin on Jan. 1, 2015, none have taken place yet.

## **Grijalva has ambitious plan, but he is not in charge**

President Obama may not have laid out a broad Democratic Party park and recreation agenda in his January 12 State of the Union address, but ranking House Natural Resources Committee Democrat Raúl M. Grijalva (D-Ariz.) has.

Coincident with a House and Senate Republican retreat January 15, Grijalva recommended a consideration by the committee of legislation raising \$500 million for the Park Service Centennial and permanently reauthorizing the Land and Water Conservation Fund (LWCF).

Grijalva's recommendations will not matter much because Democrats control neither the committee nor the House. Republicans do and they, through their committee chairman Rob Bishop (R-Utah), have not laid out their 2016 agenda yet.

Bishop did, however, introduce draft bills late last year to raise money for the Centennial and to reauthorize a greatly revised LWCF for seven years.

Of the Park Service Centennial Grijalva said in a four-page agenda, "(W)e should be focused on effective management of public lands. At the top of that list is identifying ways to provide the National Park Service with the money it needs to address the nearly \$13 billion backlog that continues to grow thanks to congressional neglect. The agency projects that it will take approximately \$700 million just to maintain the status quo. We should harness the public's interest in this landmark anniversary to make sure our national parks are prepared to thrive for another 100 years of telling our nation's story and preserving our most treasured landscapes."

Of LWCF Grijalva said, "Last year, Congress extended the authorization until 2018, but this popular, successful, budget-neutral program should be permanent."

Grijalva has put his money where his mouth is, having introduced an Obama administration Centennial bill (HR 3556) that would have Congressional authorizing committees approve \$500 million per year in new legislative authority, broken down into \$100 million for the new Centennial Challenge Fund, \$300 million for deferred maintenance in a new Second Century Infrastructure Investment and \$100 million for a new

competitive Public Lands Centennial Fund.

The Bishop bill includes a Centennial Challenge Fund but would not establish a federal match, relying strictly on donations; an endowment for the Park Service using donations and an increase in lodging fees of less than five percent, again the amount of money to be contained in the endowment is open-ended; a catch-all interpretation and education program that would work with park partners; an intellectual property program that would allow NPS to sell the rights to reproductions of museum objects; and a \$25 million, one-to-one matching program for the National Park Foundation.

Grijalva has also introduced an LWCF reauthorization bill that would make the program permanent and would guarantee \$900 million per year for it. *(See related article on LWCF on page one.)*

Bishop's draft LWCF bill would extend LWCF for seven years with an authorization of \$900 million per year, leaving it up to appropriators to decide how much of the \$900 million to set aside each year for LWCF. But the bill would require appropriators to follow these nine percentage allocations therein:

- \* 45 percent - stateside of LWCF
- \* 5 percent - urban fund
- \* 3.5 percent - federal land acquisition
- \* 3.5 percent - deferred federal land maintenance
- \* 3.5 percent - Forest Legacy (Forest Service)
- \* 3.5 percent - Endangered Species Act fund
- \* 1 percent - battlefield acquisition
- \* 20 percent - offshore energy development
- \* 15 percent - payments-in-lieu of taxes

The Grijalva vision is at: <http://democrats-naturalresources.house.gov/download/2016-natural-resources-committee-proposed-agenda>.

## Notes

**WWI Memorial design proposed.** The World War One Centennial Commission took an initial step January 26 toward the erection of a World War One Memorial at Pershing Park in Washington, D.C. The commission chose a design for the site that combines a raised lawn with bas-relief images of American soldiers. The memorial is expected to cost as much as \$35 million from private donations. The design is subject to revision and will have to pass through a half-dozen local and federal bodies, including the Park Service. The federal site is already problematic because it already contains a memorial to Gen. John J. Pershing, a commander in World War One. The site is hard by the White House and the Treasury Department in Washington. Siting memorials in downtown Washington, D.C. and gaining approval of their design is a gnarly business given the great number of competing interests involved - philanthropic, military and artistic. Example one is the ongoing dispute over a memorial to former President Dwight D. Eisenhower. The Eisenhower family, and some House Republicans, don't like the design of the proposed Ike Memorial. So Congress refused to put up any of the requested \$68.2 million for construction of the facility in fiscal year 2016. More background on the World War One memorial is at: <http://www.worldwar1centennial.org>.

### **NPCA praises methane rule.**

Several national parks will benefit from a proposed Bureau of Land Management (BLM) rule of January 22 that would set new standards for the venting of methane from natural gas operations on public and American Indian lands. The National Parks Conservation Association (NPCA) said several parks in the West receive pollutants from oil and gas leases adjacent to parks. "These rules will help reduce pollution and flaring at many Western parks adjacent to BLM lands, including Mesa Verde National Park, Chaco Culture National Historical Park, and Arches National Park," said Nick Lund, senior manager for conservation programs for the association. However, the oil and gas industry says the proposal is excessive because industry

already does a competent job of reducing the release of methane. "Through technological innovation driven by market forces, industry has greatly increased gas capture and reduced leakage rates. Since 1990, oil and natural gas producers have decreased methane emissions by 21 percent even as natural gas production has climbed 47 percent—all without federal regulation," said Kathleen Sgamma, vice president of government and public affairs at the Western Energy Alliance.

## Conference Calendar

### FEBRUARY

2-3. **National Ski Areas Association Eastern Conference** in Killington, Vermont. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

20-24. **National Association of Counties Legislative Conference** in Washington, DC. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

### MARCH

6-10. **Association of Partners for Public Lands 2015 Partnership Convention & Trade Show** in Spokane, Wash. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>.

13-18. **North American Wildlife & Natural Resources Conference** in Pittsburgh, Pa. Contact: Wildlife Management Institute, 1146 19th Street, NW, Suite 700, Washington, DC 20036. (202) 371-1808. <http://www.wildlifemanagementinstitute.org>.

### APRIL

5-9. **American Alliance for Health, Physical Education, Recreation and Dance National Convention & Expo** in Minneapolis, Minn. Contact: AAHPERD, 1900 Association Drive, Reston, VA 20191(703) 476-3400. <http://www.aahperd.org>.