

Federal Parks & Recreation

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Approps may be endangered by Congressional budget fight

The weeks-long House dispute over abiding by a fiscal year 2017 spending agreement spread to the Senate this week. Democratic leaders demanded that the Senate take up appropriations bills in accordance with the agreement (PL 114-74) that Congress struck with President Obama on Nov. 2, 2015.

Well aware that Republicans are split over the advisability of sticking to a domestic spending cap in that deal, the Democrats put pressure on Senate Majority Mitch McConnell (R-Ky.) to stick to the agreement. And they asked his support in moving appropriations bills, pronto.

"We are writing to reiterate our interest in working cooperatively to facilitate the Fiscal Year 2017 appropriations process," Senate Minority Leader Harry Reid (D-Nev.) and other Democratic leaders wrote McConnell March 7. "As such, we urge you to encourage the Appropriations Committee to act as soon as possible to adopt fair subcommittee allocations that comply with the framework of last year's Bipartisan Budget Act."

Republican leaders in both the House and the Senate have postponed action on a fiscal 2017 Congressional budget, reportedly because conservative members are demanding spending decreases from the budget agreement, as we reported in an *FPR Bulletin* March 7.

Senate Budget Committee Chairman Mike Enzi (R-Wyo.) said March 7 that his committee has postponed mark-up of a fiscal 2017 budget. But he said the Senate could write appropriations bills without a formal budget.

"The Senate already has top-line

numbers and budget enforcement features available this year so that a regular order appropriations process can move forward while we continue to discuss broader budget challenges," he said. Those numbers and features come from the November 2015 budget agreement.

In their letter the Democrats also asked McConnell to bar "poison pill" riders.

In the House Speaker Paul Ryan (R-Wis.) is having his own problems persuading his Republican majority to stick to the budget agreement.

That agreement sets a firm cap on fiscal year 2017 domestic and Defense spending. But the House Budget Committee has been unable to summon enough Republican support to approve a budget that would put flesh on spending priorities under the agreement.

Conservative Republicans, marching as members of the House Freedom Caucus, are asking for serious cuts in the overall spending agreement. As a result of the dispute House Budget Committee Chairman Tom Price (R-Ga.) has delayed committee action on a budget.

Without a budget agreement appropriators will almost certainly face opposition to even status quo spending bills from the House Freedom Caucus. So Congress may be in the familiar fix of being forced to move omnibus spending resolutions in the fall to keep the government in business. As noted, Sen. Enzi maintains Congress would be able to move bills without a budget agreement.

Conservationists and sportsmen (and some of both) urged Congress March 3 to stick to the budget agreement. "With this budget deal, Sen. Cochran and other lawmakers delivered a huge win for wildlife and sportsmen," said Wildlife Mississippi Executive Director James Cummins. "We're calling on Congress to stick to this deal, so we can ensure our kids and grandkids get to enjoy the same opportunities we have to spend a day afield." Sen. Thad Cochran (R-Miss.) chairs the Senate Appropriations Committee.

The sportsmen wrote in their

letter to Congressional leaders in both houses, "Since 1977, the percentage of the federal budget devoted to conservation has been cut in half. This trend has negatively impacted the ability of wildlife managers and scientists to conserve the habitat on which many hunters and anglers rely." More than 40 groups signed the letter.

House Republicans met in a closed meeting March 3 to discuss the budget, with Ryan and Price reportedly urging members to come together on a budget within the overall agreement caps.

In addition to overall domestic spending the Republicans are reportedly divided over Defense spending, with budget hawks wanting to cut both domestic and Defense spending and Defense hawks opposed to any cuts in the military.

For its part the Obama administration is also ignoring the spending agreement by recommending increases in spending on park and rec programs in fiscal year 2017.

Three administration 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 the bill, diversion of a county assistance program out of the 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, with a full-funding request of \$900 million. For the National Park Service Centennial, according to the National Parks Conservation Association, the administration recommended an "overall \$250 million, 9 percent increase in appropriated funding for the National Park Service," including a \$155 million increase in Park Service operations.

Separately for Centennial authorization programs the administration renewed its call on Congress to put up \$500 million per year for them.

The administration was somewhat limited in its request by the budget agreement. That deal 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.

In its fiscal 2017 budget request for an Interior and Related Agencies appropriations bill the administration actually recommended a \$300 million decrease, from \$13.2 billion in fiscal 2016 to \$12.9 billion in fiscal 2017.

But that's deceptive because the budget assumes approximately \$1.1 billion in wildfire costs would be moved out of the Interior bill. So net-net the administration is asking for significantly more.

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 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.

Under a cloud, Aramark takes over Yosemite concessions

Despite a national controversy over the names of sites in Yosemite National Park, new head concessioner

Aramark is predicting a bright future for park visitors.

Aramark, which took over as lead concessioner in the park March 1, said it has an ambitious plan to renovate and modernize facilities throughout the park. At the same time the concessioner, operating as Yosemite Hospitality LLC, said it would retain 95 percent of the existing employees that served the previous concessioner, Delaware North Companies (DNCY).

"While Aramark may be the new concessioner, I'm pleased that so many of the names and faces of the staff remain the same," said Bob Concienne, vice president of operations for Aramark at Yosemite National Park. Aramark will honor all reservations made through DNCY, he said.

Aramark is caught up in a three-way dispute over the names of the iconic sites in the park with the previous concessioner, DNCY, and with NPS. Delaware North is asking Aramark to pay \$51 million for the naming rights within the park, which DNCY trademarked. But the feds say the intellectual property is worth about \$3.5 million.

The Park Service, concerned that litigation over the naming rights could close the park, on January 14 renamed sites within Yosemite, including the famed Ahwahnee Hotel. The new name is the Majestic Yosemite Hotel.

In a Sept. 17, 2015, lawsuit in the U.S. Court of Federal Claims DNCY argued that Aramark owes it the \$51 million for intellectual property.

DNCY said that NPS should have required that Aramark purchase its intellectual property *before* the new contract began 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," said the government.

Both sides ask the court to decide on unspecified damages.

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

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

In addition to renaming Ahwahnee the Majestic Yosemite Hotel, NPS redubbed Curry Village as Half Dome Village and Yosemite Lodge as Yosemite Valley Lodge, to name a few changes.

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 10-to-15 years now. They recommend

contracts be authorized for as long 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.

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.

Centennial legislation begins to move in House; Senate?

The House and Senate are edging incrementally toward production of Park Service Centennial legislation, but without much money.

Most recently, on March 3 House Natural Resources Committee Chairman Rob Bishop (R-Utah) introduced legislation (HR 4860) that would take major steps forward, such as establishing a Centennial Challenge Fund and revising senior citizen America The Beautiful Pass rates.

Bishop made a two-sentence announcement on introducing his bill, but, more important, immediately scheduled a mark-up of the bill for March 15. "We want to unleash private philanthropy to enhance our parks," he said. "Expanding opportunities for private donors will improve visitor experience and encourage the next century of Americans to enjoy some of our nation's most beautiful and inspiring places."

When he held a hearing on a draft version of his bill December 2 Republicans and Democrats promised to work together. Said Bishop at the time, "I'm looking forward to come up with what hopefully will be a bipartisan approach, which is why this is a discussion draft, which means quite frankly we are open to suggestions."

Ranking committee Democrat Raúl M. Grijalva (D-Ariz.) was equally ecumenical. "I look forward to working with the chairman on areas where there might possibly be some compromise," he said.

Grijalva has introduced in bill form (HR 3556) Obama administration recommendations for the Centennial that include \$500 million per year in authorizations. The Bishop bill scarcely mentions money.

In the Senate, three senior Senate Energy Committee leaders have developed a stalking horse legislative proposal for the 2016 Centennial, and beyond. Led by Sen. Rob Portman (R-Ohio), the three have offered the legislation as an amendment (SA 3295) to a comprehensive energy bill (S 2012).

Like the Bishop bill the Senate amendment would establish a Centennial Challenge Fund. Unlike the Bishop bill the senators would not revise the America The Beautiful Pass for senior citizens.

Of note the Senate amendment was also sponsored by Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) and ranking committee Democrat Sen. Maria Cantwell (D-Wash.)

Park Service concessioners are optimistic the Bishop bill presents a starting point for Centennial assistance from the Hill, if not a well-endowed fund. "It's probably something that can fly, although it's not very ambitious," said Derrick Crandall, counselor to the National Park Hospitality Association.

The concessioners have a laundry list of concessions reforms they are eager for Congress to address, such as an extension of contracts beyond the current 10-to-15-year limit to as much as 40 years. And they want a clarification of the meaning of leasehold surrender interest.

Both the contract length and leasehold surrender interest provisions are part of huge controversies over new concessions contracts in Grand Canyon and Yosemite National Parks.

On the appropriations front Congress in a fiscal year 2016 appropriations bill (PL 114-113 of Dec. 18, 2015) put up more than \$100 million extra for the Park Service Centennial.

Most significantly, it approved a \$94 million increase in Park Service operations, a \$5 million increase for a Centennial Challenge program and a \$54 million increase in a construction line item, some of which will be used for the Centennial.

For fiscal 2017 for the Centennial, according to the National Parks Conservation Association (NPCA), the administration recommended an "overall \$250 million, 9 percent increase in appropriated funding for the National Park Service," including a \$155 million increase in Park Service operations.

The chairman of the House subcommittee on Interior and Related Agencies, Rep. Ken Calvert (R-Calif.), suggested March 2 at an Interior Department budget hearing the subcommittee will again back the Centennial.

"Last year, the subcommittee made a substantial investment in our national parks by providing additional funds for park operations and addressing longstanding deferred maintenance issues," he said. "We will endeavor to make similar investments this year within the confines of our 302(b) allocation."

As we reported in the last issue of *FPR* the Senate amendment (and now the Bishop bill) are widely viewed as placeholders for more substantive legislation that is in the pipeline. That is, they would establish the Challenge Fund and other structures now with further investment anticipated down the line.

Said Cantwell February 23 at a Senate Energy Committee hearing on the Interior Department's fiscal year 2016 budget, "I support our efforts to get legislation and was happy to introduce the initiative by the administration. But, having said that, we need to work together - Sens. Murkowski Portman and

others - on a National Park Service bipartisan effort to make sure the national parks' next 100 years are well positioned. So I know this is a big challenge in supporting new dollars."

The ambitious administration authorization recommendation, introduced as legislation (HR 3556, S 2257) by both Grijalva and Cantwell, would approve an additional \$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, in addition to the challenge fund, would establish an endowment for the Park Service using both nonfederal donations and an increase in lodging fees of less than five percent. The amount of money to be contained in the endowment is open-ended.

Other titles in the bill would include a catchall interpretation and education program that would work with park partners and a \$25 million, one-to-one matching program for the National Park Foundation.

The Senate amendment from Cantwell, Portman and Murkowski includes elements of both the administration and Bishop recommendations, including a Centennial Challenge Fund, an endowment for the parks, and an expanded education and interpretation program. Altogether the amendment would put up \$25 million overall to implement the legislation.

FS rejects development permit next to Grand Canyon Park

The Forest Service March 4 cut short its review of a proposed special use permit that could lead to a major development near Grand Canyon National Park.

The service rejected the permit out-of-hand because of possible negative impacts on the park's infrastructure, particularly water supplies. The

Interior Department and the park vigorously opposed the project.

Said Kaibab National Forest Supervisor Heather Provencio in a letter to the applicants rejecting the proposal, even before environmental analysis began, "Based on information received in the record, I have determined that the Tusayan proposal is deeply controversial, is opposed by local and national communities, would stress local and Park infrastructure, and have untold impacts to the surrounding Tribal and National Park lands."

Of water she said, "For example, the current fresh water conveyance system serving the Park is marginally capable of meeting their needs and could not absorb the additional needs of the connected development."

Grand Canyon Superintendent Dave Uberuaga said the development could also overwhelm the park with a spike in visitation. He told the Forest Service before the decision, "We are also concerned about large increases in visitation and local populations and how we might manage those with limited resources and an aging infrastructure. What will be the environmental and fiscal effects? . . . We don't know, as no analysis has taken place, and concerns that we and others have expressed, have not been addressed in an adequate manner."

The applicant is seeking roadway and utility easements on land managed by the Kaibab National Forest in Arizona. The easement would help the Stilo Development Group gain access to private land where it would build housing units and retail space on the southern side of Grand Canyon. The application was actually submitted by the Town of Tusayan.

On behalf of Stilo, an Italian company, Tusayan sought road and utility easements along 5.7 miles of the Kaibab National Forest to private land within half-mile of the park.

The *Arizona Republic* quoted Stilo representative Tom De Paolo as saying

the company would review the Forest Service decision. "To prematurely cave to pressure is unusual," De Paolo said. "We'll leave it at that."

But Grand Canyon Trust Program Manager Roger Clark said, "The whole package of issues represented one of the most significant threats to the Grand Canyon, and we're pleased that it has now been rejected."

Stilo has been working on the project for the last two decades and has obtained the approval of the small community of Tusayan (population 580). The proposal calls for the construction of 2,200 homes and three million square feet of business space.

The Park Service fears the development would quadruple the town's demand for water, putting pressure on water now used to sustain the environment in the park. But the developer says it has obtained a supply of water from the rights held by a nearby rancher.

Now Stilo is seeking approval of the Kaibab National Forest for road and utility access across public lands.

The Kaibab National Forest scoping packet is at: www.fs.usda.gov/goto/TusayanEasement. Stilo provides background information on its proposal at <http://www.tusayansfuture.com/>.

Sportsmen's bill picks up controversial amendments

As is its practice, the House last week loaded up a popular sportsmen's bill (HR 2406) with controversial amendments, and then approved the whole package February 26 pretty much on party lines, 242-to-161.

House subcommittee on Federal Lands Chairman Tom McClintock (R-Calif.) focused on popular base provisions of the bill and said the measure meets three major needs of the public lands:

"It removes the arbitrary and capricious restrictions that are increasingly imposed on hunting and

fishing by various Federal agencies; it enlists sportsmen in the long-neglected management of overpopulated species; and it gives more funds to States for recreational activities on public lands while encouraging greater participation by the public in developing these policies."

But Rep. Lois Capps (D-Calif.) focused on the controversial provisions and said, "For fishing and hunting to be sustained, it must be done with a mind toward conservation. Unfortunately, this bill fails to achieve this need, and it threatens the very environment that supports the animals. Of course, by doing so, it endangers the sustainability and long-term viability of hunting and fishing, also."

The Office of Management and Budget (OMB), hoping to save the popular provisions, gave the measure a mixed review. "These important recreational opportunities abound on public lands (and) are valued by millions of Americans who hunt and fish on public lands, forests, parks, and refuges," said OMB in a State of Administration Policy. "Accordingly, the Administration supports certain titles of H.R. 2406 that protect and further those opportunities, but opposes others which include harmful provisions that impair Federal management of federally-owned lands and undermine important existing public land and environmental laws, rules, and processes."

OMB singled out for criticism provisions that would limit environmental review, prohibit regulations barring the use of lead in sporting equipment, and forbid NPS from limiting the transportation of bows and crossbows across national parks.

Main provisions in the bill would declare BLM and Forest Service lands open to hunting and fishing and recreation unless specifically closed; reauthorize the Federal Land Transaction Facilitation Act; 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.

On the controversial side during debate February 26 the House adopted by a vote of 232-to-171 an amendment that would delist the Wyoming population of the gray wolf under the Endangered Species Act, reversing a federal court decision.

Sportsmen endorsed the basic thrust of the bill, but environmentalists did not. For sportsmen, the Theodore Roosevelt Conservation Partnership called the House action a "step in the right direction."

Partnership President Whit Forsburgh said now it's the Senate's turn. "What's important now is Senate action on a suite of sportsmen's priorities, including provisions aimed not only at expanding access but also at investing in key habitat conservation programs," he said.

Environmental groups that often align with sportsmen didn't this time. "The Wilderness Society, along with numerous other national conservation groups, opposes HR 2406, which was passed by the House of Representatives today," said Alan Rowsome, senior director of government relations for The Wilderness Society. "This legislation includes provisions that threaten public lands and erode bedrock conservation laws and policies. None of those harmful provisions advance the purported intent of this bill."

Rowsome singled out for criticism a provision that would allow possible destructive activities in wilderness areas, such as road construction.

In the Senate backers of counterpart 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 introduced the

sportsmen's package as an amendment to it. No votes have been held on those amendments yet.

One of those packages (SA 3177) just addresses 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 is 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.

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.

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. Or to attach an amendment to the energy bill.

In addition to lead and pesticides disputes in the EPW bill, the energy committee measure contains a potentially explosive provision of its own; it

would make permanent Land and Water Conservation Fund and substantially revise it. And that would give many western Republicans cause to put a damaging hold on the bill.

Solons admit money sources in highway bill are gimmicks

Congressional leaders are beginning to acknowledge that they didn't approve enough real money to implement a \$305 billion surface transportation bill that was enacted in December.

So Republican and Democratic House and Senate members said last month they must come up with new legislation to pay for the five-year law.

At a conference hosted by the American Association of Surface Transportation Officials (AASHTO), Rep. Sam Graves (R-Mo.) said the funding mechanisms in the law were bogus.

"Quite honestly some of the funding that was done was gimmickry and we've got to come up with a legislative solution when it comes to dollars in the Highway Trust Fund," said Graves, who chairs the House subcommittee on Highways.

Ranking House Transportation Committee ranking Democrat Peter DeFazio (D-Ore.) agreed. "None of this is sustainable, bottom line," he said.

Finding real money for the law (PL 114-94 of Dec. 4, 2015) is crucial for outdoor programs because they are usually the first to be offered as sacrificial lambs when the money runs low.

Congress used to rely on the Highway Trust Fund via gasoline taxes to pay for all surface transportation programs, but that tax now contributes only \$34 billion per year of the needed \$60 billion. So Congress in PL 114-94 came up with \$26 billion more per year from other sources of revenue.

In the end Congress patched together several funding sources

including such high-risk strategies as using proceeds from the sale of oil in the Strategic Petroleum Reserve, a transfer of money held by the Federal Reserve in case of an emergency and privatization of income tax collection.

As for the park and rec implications of PL 114-94, the law effectively retained a broad category of spending that finances outdoor programs called the Transportation Alternatives Program (TAP). House and Senate conferees did jigger the initiative and incorporate it in a Surface Transportation Block Grant Program. TAP is to receive \$835 million 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, 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.

Now House leaders are beginning to lay the groundwork for legislation that would make sure PL 114-94 has enough money for the next five years to carry out those park and rec programs, as well as highway construction.

Rep. Graves said he suspects some sort of vehicle miles traveled program will be a prime candidate to pay for the law. "I really believe we're going to end up with some form of vehicles miles traveled (VMT)," he told AASHTO. "It would provide a little more flexibility for states as a very viable option."

But DeFazio said the votes for VMT were not there, yet. "It's a growing

discussion, but right now it doesn't enjoy anywhere near majority support and there are problems, like crossing state lines when you do it on a state-by-state basis," he said.

DeFazio said he would prefer to assess a tax on the wholesale price of oil used for transportation, rather than on the retail sale of gasoline, as the Highway Trust Fund does now. "I would propose going to a wholesale tax on a barrel of oil," he told AASHTO. "You could forget about the retail tax."

Both Graves and DeFazio agreed that an increase in the retail gasoline tax, which pays the freight now, is out of the question politically.

In PL 114-94 there are other risks 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.

RS 2477 addition to Utah withdrawal bill under fire

Legislation to withdraw 625,000 acres of BLM land in Utah for the military drew a mixed response at a hearing of the House subcommittee on Federal Lands late last month.

The Utah Congressional delegation loved it and the Department of Defense supported it. But the Bureau of Land

Management (BLM) had big problems with a provision to grant RS 2477 rights-of-way (ROWS) to local governments. And environmentalists hated it.

The Obama administration generally endorsed the withdrawal for the Utah Test and Training Range (UTTR) for testing F-35 jets. Testifying for the U.S. Air Force, James Sample, director of range planning, said, "We believe that the bill's concept of short, periodic closures would serve the public interest better than the alternative of a complete withdrawal, reservation, and closure of the lands at issue. . ."

But testifying for the Interior Department, Karen E. Mouristen, assistant director of BLM for Energy and Minerals, objected to the RS 2477 ROW conveyances. "The resolution of these disputed claims is not necessary for the management of the periodic closures around the UTTR," she said. "For this and many other reasons, the Administration strongly opposes the resolution of these right-of-way claims in the manner laid out in this bill."

The bill (HR 4579), introduced by Rep. Chris Stewart (R-Utah), would convey 6,000 miles of RS 2477 ROWs to Box Elder, Juab, and Tooele Counties, Utah. Sen. Orrin Hatch (R-Utah) has introduced a counterpart bill (S 2383).

The base goal of the legislation is to withdraw the 625,000 acres for the Air Force to accommodate F-35 jets for training, while retaining the lands under BLM management.

For the Southern Utah Wilderness Alliance (SUWA) the bills represent an attempt by the State of Utah to take advantage of military needs to assert claims to federal lands.

Said SUWA in a bulletin to its members just before the House hearing, "Rep. Stewart's proposed expansion is merely part of the broader effort by the State of Utah to seize our nation's public lands."

SUWA objected primarily to the conveyance of RS 2477 ROWs to the three counties.

"These so-called routes, many of which are simply faded two-tracks, cow paths or streambeds in the desert, run directly across federal public lands and fragment critical habitats, proposed wilderness, wilderness study areas, and even parts of the designated Cedar Mountain Wilderness!" SUWA said in its bulletin. "Caught up in the state's land grab fever, these counties have sued the federal government to wrest control of these bogus routes, but are unlikely to win the majority in court. Forfeiting them now in this bill would set a dangerous precedent, not just in Utah, but throughout the West."

On the RS 2477 ROW front, Rep. Paul Cook (R-Calif.) in January introduced legislation (HR 4313) that would ease standards of proof for ROWs in federal court. Cook would allow simple sworn statements to be entered as proof that the ROWs had been used over the years for transportation and were maintained by local governments.

The State of Utah has entered claims in federal court for thousands of such RS 2477 rights-of-way, including in Box Elder, Juab, and Tooele Counties.

In still another area the Stewart/Hatch bills would direct BLM to exchange 98,523 acres of public lands in five Utah counties for 84,400 acres of state-owned land and mineral rights.

BLM's Mouristen said the bureau has misgivings about the exchange because the public lands include sage-grouse habitat and potential historic sites.

Scholars outline options to give Utah federal land say

The two University of Utah professors who have questioned the legal and economic viability of Utah's demand for transfer of most public lands in the state to the state have struck again.

This time, instead of questioning the Utah law demanding federal lands, the professors last week outlined a half-dozen policy options that they believe would improve relations between

local citizens and various levels of government.

Some of the alternatives in the new analysis include private-government collaboration, better state and local plans, more flexible local demands, more money for feds and states from higher energy royalties, transition assistance to local governments, and land exchanges.

"The alternatives outlined here are not as dramatic politically as demanding the transfer of federal lands under threat of litigation, but they have worked to improve public land management and to increase opportunities for public land communities," conclude the authors.

Those University of Utah authors - John Ruple, a research associate professor and Bob Keiter, a distinguished professor of law - have written three other analyses questioning the practicality of a landmark Utah law (HB 148 of March 23, 2012). It directs the federal government to transfer to Utah 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.

In their lead report on Oct. 27, 2014, Keiter and Ruple published a "white paper" that rejected the legal basis for the Utah state government's claim to federal lands.

Utah has taken the lead in the campaign in the West for greater state and local control over public lands.

At the federal level Reps. Rob Bishop (R-Utah) and Jason Chaffetz (R-Utah) in January published a draft bill that would revise public lands management priorities covering 18 million acres in seven Utah counties.

However, environmentalists immediately called the proposal a nonstarter because it favored fossil fuels development over protection of conservation lands.

In a more recent development

involving Utah land assertions the Utah Congressional delegation is attempting to gain local control over 6,000 miles of rights-of-way (ROWs) across public lands. Their proposed bill (HR 4579, S 2383) would transfer the RS 2477 ROWs to Box Elder, Juab, and Tooele Counties. (See previous article.)

At a February 25 hearing of the House Federal Lands subcommittee, the Obama administration objected to the RS 2477 provision. The base goal of the legislation is to withdraw the 625,000 acres for the Air Force to accommodate F-35 jets, while retaining the lands under Bureau of Land Management control.

Testifying for the Interior Department, Karen E. Mouristen, assistant director of BLM for Energy and Minerals, said, "The resolution of these disputed claims is not necessary for the management of the periodic closures around the UTTR. For this and many other reasons, the Administration strongly opposes the resolution of these right-of-way claims in the manner laid out in this bill."

The most recent analysis from Ruple and Keiter is available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2741156.

Notes

Urban LWCF money on tap. The Park Service said March 9 that it is taking applications for \$15 million in grant money for outdoor recreation in urban areas. The money, appropriated by Congress in a fiscal year 2016 appropriations bill (PL 114-113 of Dec. 18, 2015), is to be used to create new recreation opportunities or upgrade existing ones in underserved areas. The money is to be awarded in segments from \$250,000 to \$750,000 and must be matched by local governments. Last year NPS spent \$2.9 million on such grants. This year, as part of a \$110 million appropriation for the state side of the Land and Water Conservation Fund (LWCF), Congress put up \$15 million. Applications are to be coordinated through the lead LWCF agency in each state. Find further information and application instructions at: <http://www.>

grants.gov. Once there, go to *Funding Opportunity Number P16AS00065; Title: Land and Water Conservation Fund Outdoor Recreation Legacy Partnership Program*. Said NPS Director Jonathan B. Jarvis, "I think Congress recognized the value of the projects and partnerships and they responded with a fivefold increase in project grant dollars this year," Jarvis said. "We're looking to build on the excitement generated by these pilot projects and grants to add many more projects across the country."

FWS would delist Y'stone grizzly.

The Fish and Wildlife Service (FWS) March 3 proposed the delisting of the Yellowstone grizzly bear population across its 20 million-acre habitat under the Endangered Species Act. FWS said the bear, headquartered in Yellowstone and Grand Teton National Parks, had recovered from just 136 bears 40 years ago to more than 700 now. The Wyoming Congressional delegation welcomed the proposal. "Science has shown that the grizzly bear has been recovered for years and it has become ever more evident as the bears have spread far beyond the intended ranges," said Rep. Cynthia Lummis (R-Wyo.) "Grizzly bear management belongs in the hands of the State of Wyoming, where we have the knowledge and expertise necessary to maintain a balanced and healthy grizzly bear population." The National Parks Conservation Association responded more cautiously, even with some trepidation. "Frustratingly, this draft rule released for public review is essentially incomplete, as it fails to provide details that would impact bears in our national parks," said Stephanie Adams, Yellowstone Program Manager for the association. "It also relies on outdated state plans, one a decade old, for grizzly management. The draft rule is missing critical information to outline how state agencies will partner with the National Park Service, in addressing bear management on lands adjacent to national parks." FWS Director Dan Ashe said if the bear is eventually delisted, his agency and state partners will continue to protect it. "Even with this proposed delisting, the Service remains committed to the conservation of the Yellowstone grizzly bear, and will stay engaged to ensure

that this incredible species remains recovered," he said. "We will continue to be part of a strong monitoring program, implementation of the conservation strategy, and partnership with our state and federal partners." More at <http://www.fws.gov/mountain-prairie/es/grizzlyBear.php>.

National rec agenda pondered.

The outdoor recreation community March 8 began to formulate a broad recreation agenda for the next President of the United States, similar to the successful one the community prepared in 1993 for President Clinton. Recreation industry leaders met in Washington, D.C., to brainstorm a strategy for preparing such an agenda. In 1993 recreation leaders recommended such initiatives as an America the Beautiful Passport for entrance to federal recreation areas, a national system of scenic byways and a Wallop-Breaux Trust Fund to finance sportfishing programs. All were enacted. "We got a 95 percent success rate with the Clinton/Gore administration," said Derrick Crandall, president of the American Recreation Coalition. "We plan to present a draft to the Western Governors' Association in June." More at www.funoutdoors.com/news.

Utah senators ask monuments curb.

Utah Sens. Mike Lee and Orrin Hatch, both Republicans, introduced legislation March 7 that would bar the designation of new national monuments in their state unless approved by Congress. The proposal, in the form of an amendment (SA 3447) to an omnibus energy bill (S 2012), is the most recent in a dozen or so proposed curbs on a President's designation authority now circulating on the Hill. Of concern to the delegation, conservationists have recommended a 1.4 million-acre Canyonlands National Monument on Bureau of Land Management land in the southern part of the state. In one of his most ambitious uses of the Antiquities Act of 1906, President Obama February 12 designated more than 1.8 million acres of California Desert as parts of three national monuments. The Utah delegation is now worried about a Canyonlands monument. Thus, Rep. Rob Bishop (R-Utah) and the rest of the delegation on February 12 asked President Obama not to use the

Antiquities Act of 1906 to designate a Canyonlands monument. "Use of the Antiquities Act within will be met with fierce local opposition and will further polarize federal land-use discussions for years, if not decades," the delegation wrote, with Bishop and Hatch the lead signatories.

Appropriators worry about fire money. House appropriators focused first and foremost on financing wildfire suppression late last month in a hearing on the Forest Service's fiscal year 2017 budget request. The costs of fighting wildfire have hamstrung appropriators in recent years. Subcommittee on Interior and Related Agencies Chairman Ken Calvert (R-Calif.) welcomed an administration recommendation that fire-fighting costs be shifted out of annual appropriations bills, but he didn't commit to action on the recommendation. Ranking subcommittee Democrat Betty McCollum (D-Minn.) in turn lauded the administration/Simpson initiative. She warned of dire consequences for other programs if Congress continues to pay emergency wildfire expenses out of annual appropriations bills. "Experts predict that if we don't take action to address this problem, wildfire spending will exceed 67 percent of the Forest Service budget by 2025," she said. "This imbalance would translate to a nearly \$700 million reduction to nonfire programs." Forest Service Chief Tom Tidwell naturally endorsed the administration wildfire transfer proposal. Rep. Mike Simpson (R-Idaho) and Sen. Ron Wyden (D-Ore.) have introduced the administration's bill (HR 167, S 235). Because of the Republican impasse over lifting a budget cap to permit the transfer of wildfire funding to the disaster account, appropriators in a fiscal year 2016 appropriations bill (PL 114-113 of Dec. 18, 2015) simply increased spending. The appropriators put up a total of \$4.2 billion for wildfire fighting for the next fire season, including \$593 million in the event of a catastrophic fire season, i.e. one that exceeds the 10-year average. And that extra wildfire money came out of the hide of other programs.

NPS posts cultural awards. The Park Service February 29 cited four

senior employees for their work in cultural resource management. The four received the 2014 Appleman-Judd-Lewis Awards for Excellence in Cultural Resources Stewardship and Management for helping to preserve valuable cultural resources in the parks. Linda Cook, superintendent of Weir Farm National Historic Site, was honored for a 10-year restoration of the site's key buildings. Tracy Fortmann, superintendent of the Fort Vancouver National Historic Site, was honored for transforming an outdated site into a "vibrant educational experience," NPS said. Charles F. Lawson, chief of cultural resources at Biscayne National Park, was honored for his work on park resources including a Maritime Heritage Trail. And Randall Skeirik, historical architect for NPS's Vanishing Treasures Program, was honored for his efforts at preserving historic structures throughout the National Park System.

Jewell says DoI after protestors. In the wake of the 40-day takeover of the Malheur National Wildlife Refuge by government critics, Secretary of Interior Sally Jewell said February 23 that her agency is following through on the prosecution of the protestors. Environmentalists have charged repeatedly that a Justice Department and BLM failure to arrest Cliven Bundy and his fellow protestors two years ago has given way to additional protests around the West. And they are demanding legal action against the new round of protestors at the Malheur refuge in Oregon. Said Jewell, "We are continuing to cooperate with the Department of Justice, the FBI and others as the investigation moves forward. We remain committed to working with local communities on the management of public land." The takeover caused the department serious problems, she said. "It was an incredibly disruptive and distressing time for our employees, their families and the Harney County community. I'm proud of our Department of Interior law enforcement personnel who supported the response and helped keep our employees safe," said Jewell. Public Employees for Environmental Responsibility Executive Director Jeff Ruch criticized the department's reaction to the Bundy situation.

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.